RECENT DECISIONS

Administrative Law—*A judicial judgment forfeiting a bail filed for the temporary release of an alien pending a deportation proceeding is not set aside by a subsequent order of the President revoking his previous deportation order and allowing the alien to reside in the Philippines, nor may it be reversed on this ground by the Chairman of the Deportation Board.*

REPUBLIC OF THE PHILIPPINES v. COURT OF APPEALS, et al.

G.R. No. L-9928, January 31, 1958

Although the deportation proceeding is not criminal,[1] the Deportation Board may so use the machinery of the criminal law as to adopt the law relating to bail.[2] It is an established rule in criminal procedure that the forfeiture of a bond [3] does not deprive the court of its inherent discretionary power to relieve the bondsmen from liability where the purpose of the bail is shown to have been accomplished by placing the principal in prison to serve his sentence,[4] so long as the properties covered by the bond have not yet been sold.[5]

In deportation proceedings, is the exercise by the court of this discretionary power, after the forfeiture of a bond for the temporary release of an alien, precluded by an order of the President of the Philippines revoking his previous order of deportation? Does this revocatory order of the President authorize the Chairman of the Deportation Board to set aside the court's judgment of forfeiture and to release and/or cancel the entire bail?

These were the issues involved in the instant case, the Supreme Court answering both questions in the negative. One Chung Kiat Kang was ordered deported as an undesirable alien by the President, and pending action on his motion for reconsideration, he was allowed to be at liberty upon filing a surety bond with the Deportation Board. The alien failed to report to the Commissioner of Immigration once a week as stipulated in the surety bond. After the alien's motion for reconsideration was denied by the Deportation Board, the Commissioner of Immigration required the alien to appear and report at the Commission. The alien having failed to do so, the Commissioner declared the bail forfeited and duly notified the surety thereof. Upon failure of the surety to pay as required by the Commissioner, a complaint was filed in the Court of First Instance of Manila which, after trial, rendered judgment forfeiting the surety bond.

On appeal by the defendants, the respondent Court of Appeals reversed the judgment of the Court of First Instance on the ground that the Chairman of the Deportation Board had authorized the release and/or cancellation of the bail, pursuant to an order of the President, issued after the judgment of for-

[1] Tiu Chun Hai v. Deportation Board, G.R. No. L-19109, May 18, 1956.
[2] United States v. Go-Siaco, 12 Phil. 490 (1909).
[3] RULES OF COURT, Rule 110, sec. 15.
[4] People v. Alamada, G.R. No. L-2155, May 15, 1951; People v. Calabon, 53 Phil. 945 (1928); People v. Reyes, 48 Phil. 159 (1925).
[5] People v. Arlatinco, G.R. No. L-3411, May 30, 1951.

feiture in the Court of First Instance, revoking his (the President's) previous deportation order and allowing the alien to reside in the Philippines.

In reversing the judgment of the Court of Appeals and reviving that of the Court of First Instance of Manila, the Supreme Court, speaking through Justice Padilla, said:

> "The revocation of the order of deportation does not have the effect of setting aside or annulling the forfeiture of the bond ordered by the Commissioner of Immigration and by the Court of First Instance, because the terms of the surety bond had already been breached . . . A contrary view would encourage aliens and their sureties to take lightly, if not flout their undertakings."

Citing Executive Order No. 398,[6] Justice Padilla observed:

> "The Chairman of the Deportation Board may prescribe and approve the amount and terms of the bond that may be filed by any respondent for his release but nowhere in the aforesaid executive order is he authorized to release the principal and the surety from a bond filed especially after the terms thereof had been violated by both the principal and the surety."

Nicodemo T. Ferrer

———oOo———

Administrative Law—*The decisions of the Collector of Customs are not appealable directly to the Court of Tax Appeals but to the Commissioner of Customs in consonance with the doctrine of exhaustion of administrative remedies.*

SAMPAGUITA SHOE AND SLIPPER FACTORY v. COMMISSIONER OF CUSOMS, et al.

G.R. No. L-10285, January 14, 1958

It is a sound rule, long recognized and adhered to, that before one resorts to the courts, the administrative remedies provided by law should first be exhausted. The soundness of this rule lies in the fact that it provides for a policy of orderly procedure which favors a preliminary administrative sifting process and serves to prevent atempts to swamp the courts by a resort to them in the first instance.[1]

In the instant case, the Supreme Court had another occasion to emphasize the doctrine of exhaustion of administrative remedies by following its decision in the case of *Rufino Lopez & Sons, Inc. v. Court of Tax Appeals* [2] and reiterating the same judicial construction of Sections 7 and 11 of Republic Act No. 1125 [3] which it first enunciated in the latter case, decided just a year ago.

Petitioner imported from the United States patent leather. The papers necessary for its release were found in order, but when the shipment was opened for examination and appraisal, they were declared to be upper leather and not patent leather. Thus, seizure proceedings were instituted. After the hearing, however, the Collector of Customs rendered a decision ordering the release of the goods upon payment of taxes and other charges. But this ruling was later reversed by the Collector of Customs, holding that the imported leather was pri-

[6] Sec. 1, par. (c) of Exec. Order No. 398 (Jan. 5, 1951) provides: "Any respondent may file a bond with the Deportation Board in such amount and containing such conditions as the Chairman of the Board may approve and prescribe; Provided, however, That if at any stage of the proceedings it appears to the Board that there is strong evidence against the respondent or there is strong probability of his escaping or evading the proceedings of the Board, it may order his arrest and commitment." 47 O.G. 6 (1951).

[1] United States v. Sing Tuck, 194 U.S. 161.
[2] G.R. No. L-9274, Feb. 1, 1957.
[3] This statute created the Court of Tax Appeals.

marily intended as upper leather and should not be classified as patent leather. The goods were thus confiscated and declared forfeited to the Government pursuant to the provision of Section 1363(f) of the Revised Administrative Code and Paragraph 9 of Central Bank Circular Nos. 44 and 45. The importer was duly notified of this decision by registered mail, with instructions that appeal if any should be interposed within 15 days from receipt of said communication, otherwise the decision would become final and executory. The Commissioner of Customs affirmed the decision of the Collector of customs after the petitioner failed to make any appeal within the required period. Later, a petition was filed with the Commissioner to set aside the decision of the Collector of Customs because the importer allegedly did not receive the notice of the decision at the date when the period to appeal was supposed to have run but long after the period has expired. The truth is that the notice was properly received by his employee. The petition was denied and the Commissioner of Customs reiterated his concurrence to the decision of the Collector of Customs.

The importer appealed to the Court of Tax Appeals. The appeal, however, was dismissed for lack of jurisdiction because appellant failed to appeal first to the Commissioner of Customs from the decision of the Collector of Customs. A petition was filed with the Supreme Court to review the case by certiorari. The stand of the Court of Tax Appeals was upheld.

It appears that the importer failed to observe the procedure laid down by Section 1380 of the Revised Administrative Code;[4] thus, the lower court acted properly in dismissing the petition in view of the petitioner's failure to exhaust administrative remedies. He did not interpose any appeal to the Commissioner of Customs but instead resorted to the Court of Tax Appeals upon denial of its petition to set aside the decision of the Collector of Customs, supposedly in its conviction that an appeal would only be futile because the Commissioner already prejudged the case when he took a hand in the seizure of the imported goods and influenced the amendment of the first decision of the Collector.

From Section 11 of the Republic Act No. 1125,[5] the petitioner concludes that an appeal may be brought directly to the Court of Tax Appeals without the necessity of first bringing the matter to the attention of the Commissioner. But Section 11 of the same statute provides otherwise.[6]

Citing the case of *Rufino Lopez & Sons, Inc. v. Court of Tax Appeals,* wherein the court resolved the conflict between the two sections, the interpretation that the Legislature must have meant and intended to say *Commissioner of Customs* instead of *Collector of Customs* in the framing of Section 11 was reiterated. As the Court puts it:

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[4] "*Review by Commissioner.*—The person aggrieved by the decision of the Collector of Customs in any matter presented upon protest or by his action in any seizure may, within fifteen days after notification in writing by the Collector of his action or decision, give written notice to the Collector signifying his desire to have the matter reviewed by the Commissioner.

"Thereupon, the Collector of Customs shall forthwith transmit all the papers in the cause to the Commissioner who shall aprove, modify or reverse the action of his subordinate and shall take such steps and make such order as may be necessary to give effect to his decision."

[5] "*Who may Appeal; Effect of Appeal.*—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs, or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within 30 days after receipt of such a decision or ruling."

[6] "*Jurisdiction.*—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—(1) Decision of the Collector of Internal Revenue . . . (2) Decision of the Commissioner of Customs . . . (3) Decision of provincial or city Board of Assessment Appeals. . . ."

"It would really seem illogical that in laying down the jurisdiction of the Tax Court, the law should confine the same to the review of decision by Commissioner of Customs and in the same breath allow aggrieved parties to appeal directly from decision of the Collector to the same Court."

Amado A. Bulaong, Jr.

—oOo—

Civil Law—*Donation, whether construed as inter vivos or as mortis causa, void.*

AZNAR v. SUCILLA

G.R. No. L-10806, Jan. 27, 1958

The intimate relations of the spouses during the marriage places the weaker spouse under the will of the stronger, whatever the sex, so that the former might be obliged, either by abuse of affection or by threats of violence to transfer some properties to the latter. The law seeks to prevent such exploitation in marriages which might have been contracted under the stimulus of greed.[1]

Hence, donations made by one spouse to another during marriage are a patent nullity,[2] and donations *inter vivos* although labeled donations *mortis causa* will be nullified if really meant to be effective during the existence of the marriage.

In this case, Inocentes Aznar executed on March 15, 1948 in favor of his wife Asuncion Sucilla, a deed of donation written in Tagalog, properly verified, but without an attestation clause, donating his interests in the conjugal property located in Bolillo, Quezon to his wife and such donation having been properly accepted by the donee. Upon the death of Aznar on March 22, 1948, plaintiffs who are nephews and nieces of the deceased challeged the validity of the deed of donation, alleging that being a donation *inter vivos* such is void under Article 1334 of the old Civil Code.[3] Defendant on the other hand insists that the said deed of donation is a donation *mortis causa*. The Supreme Court held that whether the document is a deed of donation *mortis causa* (as the deed was labeled by the deceased himself) or as one made *inter vivos*, the same is null and void. If it should be construed as donation *mortis causa* it is not valid because it does not contain an attestation clause, which like a will, it must contain for its validity.

On the other hand if the said document should be considered as a donation *inter vivos* it would certainly fall under Article 1334 of the old Civil Code which provides that:

"All donations between spouses made during the marriage shall be void."[4]

it appearing that the deed of donation as well as the demise occured in 1948. Consequently, the donation in question, being patently null and void, cannot be invoked by his wife Asuncion Sucilla to defeat the claims of the nephews and nieces of the deceased.

Romulo M. Villa

[1] 9 Manresa, 265-262.
[2] Uy Coque v. Navas, 45 Phil. 430.
[3] Art. 133 of the new Civil Code.
[4] Art. 1334 of the old Civil Code.

Civil Law—*Possessor in good faith is entitled to the fruits received before the possession is legally interrupted.*

LABAJO, et al. v. ENRIQUEZ

G.R. No. L-11093, January 27, 1958

Under the Civil Code, a possessor in good faith is entitled to the fruits received before the possession is legally interrupted,[1] and a possessor is always presumed to have acted in good faith, the burden of proof resting upon him who alleges bad faith on the part of the possessor.[2] Possession being an outyard sign of ownership, it is to be presumed that the right of the possessor is well-founded.[3] A person not aware that there exists in his title or mode of acquisition any flaw which invalidates it, is deemed to be a possessor in good faith.[4] The essence of bona fide or good faith, therefore, lies in the honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another.[5] In other words, good faith, or lack of it, is in its last analysis a question of intention.[6]

But possession in good faith loses its character from the moment the possessor becomes aware that he possesses the thing improperly or wrongly.[7] Good faith ends, therefore, when the possessor discovers flaw in his title so as to reasonably inform him that after all, he may not be the legal owner of the property.[8] and from the moment his possession is legally interrupted,[9] the possessor is obliged to return the fruits received, for he ceases to be considered a possessor in good faith.[10]

The Supreme Court of the Philippines applied these principles in the instant case. Labajo, et al., plaintiffs herein, were co-owners of a registered land situated in Tacloban, Leyte. They alleged that during their absence from Tacloban, the defendant, Enriquez, without their knowledge and consent, voluntarily administered the said lot by leasing it and collecting rentals amounting to ₱2,552.00. Upon demand by the plaintiffs for reimbursement for the amount, the defendant refused. Hence, the present action.

In answer, the defendant contented that when he bought a lot in Tacloban, contiguous and adjacent to the plaintiffs' lot, he thought that the latter was included in the parcel he had bought and so in good faith he occupied and rented said lot together with his own lot, and that during said period he had been paying the real estate taxes. Being a possessor in good faith, he alleged that he is entitled to the rentals.

The Supreme Court, through Justice Montemayor, affirmed the lower court's decision dimissing the plaintiffs' complaint. According to the Court, defendant's claim of good faith, alleging that the lot in question was adjacent to his,

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[1] Art. 544.
[2] Art. 527.
[3] "The appearance of lawful possession must be accepted even though it be really nothing more than a disguise for bad faith, because this cannot be known with certainty until proved and because every person is presumed to be honest until the contrary is proved. Protection is thus given to the possessor against all persons whoever they may be; hence this article demands proof of bad faith." II TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 212 (1954 ed.).
[3] II TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 212 (1954 ed.).
[4] CIVIL CODE OF THE PHILIPPINES, art. 526.
[5] Bernardo *et al.* v. Bernardo *et al.*, 50 O.G. 5789 (1954).
[6] Leung Yee v. Strong Machinery Co. and Williamson, 37 Phil. 644 (1918).
[7] CIVIL CODE OF THE PHILIPPINES, art. 528.
[8] Lopez Inc. v. Philippine & Eastern Trading Co., Inc., 52 O.G. 1452 (1956).
[9] Art. 1123 of the Civil Code provides: "Civil interruption is produced by judicial summons to the possessor."
[10] Tacan v. Tobon, 53 Phil. 356 (1929).

and that he believed in good faith that it formed part of his lot, was not disproved by the plaintiffs; neither did they submit any evidence to show bad faith on the part of the defendant. As such, the defendant is entitled to the rentals received by him until he was advised by the plaintiffs that the lot belonged to another.[11]

Efren C. Gutierrez

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Civil Law—*Nullity of contracts due to illegal consideration or subject matter, when executed (and not merely executory), produces the effect of barring any action by a guilty party to recover what it has already given under the contract.*

LIGUEZ v. COURT OF APPEALS, et al.

G.R. No. L-11240, February 13, 1958

It is a familiar principle that the courts will not aid either party in the enforcement of an illegal contract, but will leave them both where it finds them. Where, however, the plaintiff can establish a cause of action without exposing its illegality, the vice does not affect his right to recover.[1] This doctrine was followed in the instant case.

It appears from the previous report[2] that the case began upon complaint filed by petitioner-appellant Liguez against the widow and heirs of the late Salvador Lopez to recover a parcel of land. Plaintiff claimed the land by virtue of a deed of donation, executed in her favor by the late owner, Lopez, in 1943. The widow and heirs opposed the claim on the ground that the donation was null and void for having an illicit *causa* or consideration, which was plaintiff's entering into marital relations with Lopez, a maried man at the time.[3] The Supreme Court, reversing the ruling of the lower court and the Court of Appeals, declared Liguez entitled to so much of the donated property as may be found not to prejudice the legitimes of the heirs.

Against the decision of the Supreme Court, the widow and heirs interposed the instant motion for reconsideration. One of the grounds raised was that the donation in question, being with an illicit cause, is null and void and *inexistent*, and produced no effects whatsoever. The motion was denied.

Previously, in the main decision, the Court had already declared the donation tainted by immoral (i.e., illegal) *causa*, which necessarily involves the consequence that it is void and of no effect. Nevertheless, the Court was com-

[11] Justice Sabino Padilla, in a lone dissenting opinion, expressed the view that the land in question, being a registered land under the Land Registration Law (Act No. 496), the mere belief of the defendant that said lot was included in the land purchased by him does not render him a possessor in good faith. According to him, one who purchases a parcel of land registered under the Torrens system must be presumed to know the area and boundaries thereof.

However, the Supreme Court in the case of Co Tao v. Joaquin Chan Chico, 46 O.G. 5514 (1949) held: "It is but stating the obvious to say that outside of the individuals versed in the science of surveying, and this is already going far, no one can determine the precise extent or location of his property by merely examining his paper title. The fact is even surveyors cannot with exactitude do so."

[1] Perez v. Herranz, 7 Phil. 695 (1907).

[2] G.R. No. L-11240, Dec. 18, 1957.

[3] The Court of Appeals found that when the donation was made, Lopez had been living with the parents of appellant for barely a month; that the donation was made in view of the desire of Lopez to have sexual relations with appellant; that Lopez had confessed to his love for appellant to the instrumental witnesses to the donation, remarking that her parents would not allow Lopez to live with her unless he first donated the land in question; that after the donation, Lopez and appellant lived together until Lopez was killed in 1943.

pelled to apply Articles 1305 [4] and 1306 [5] of the Civil Code of 1889,[6] and under said articles, it was held that the nullity of contracts due to illegal consideration or subject matter, when *executed* (and not merely executory), does produce the effect of barring any action by a guilty party to recover what it has already given under the contract. According to Justice J. B. L. Reyes, in so far as the guilty party, i.e., Lopez, is concerned, his act of conveying property pusuant to an illicit contract operated to divest him of the ownership of the conveyed property, and to bar him from recovering it from his transferee, i.e., Liguez, just as if the transfer were through a bargain legal at its inception.[7] That is, the conveyance, to the extent that it has been carried out, becomes conclusive as between the guilty parties, even if without effect against strangers without notice; hence, a guilty party could no longer ask the courts for a restoration to the *status quo ante*.[8]

In considering the argument that the appellant Liguez' suit to recover the property amounts to an enforcement of the illegal contract itself, Justice Reyes pointed out that the donation by Lopez to Liguez was already a full and completed conveyance. The retention of the donated land by the donor or his privies, i.e., the present appellees, cannot deprive the donation of its transferring effect, "either because donation does not need to be completed by tradition [9] or else, because the execution of the notarial deed is equivalent to the physical tradition of the property, as expressly provided by par. 2 of Article 1462 of the Code of 1889."

The Court further observed that Liguez does not seek specific performance of the donation; the latter has been already completely executed, and no further action is required. Said the Court:

> "The basis of appellant's complaint is not an executory contract to convey, but the ownership resulting from the completed conveyance; and that ownership carries with it the right to possession (jus possidendi) that the appellees seek to withhold. To retain possession of the thing donated, appellees must defeat the donation; to defeat the donation they invoke its illegality, and this Court has ruled that they cannot do so, because their predecessor was barred by law from so doing."

The debarring of the appellees, *qua* successors and privies of the deceased donor, Lopez, was not predicated on the technical rules of estoppel; clearly, the heir or successor, in his quality as such, cannot have a better right than the predecessor whom he replaces.

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[4] Art. 1305, old Civil Code, provides: "When the nullity arises from the illegality of the cause or the subject matter of the contract, if the fact constitutes a felony or misdemeanor common to both contracting parties, they shall have no action against each other, and proceedings shall be instituted against them, and furthermore, the things or the amount which may have been the subject matter of the contract shall be disposed of as prescribed in the Penal Code with regard to effects or instruments of a felony or misdemeanor.

"This provision is applicable to a case in which there is a felony or misdemeanor on the part of only one of the contracting parties, but the person not guilty may recover what he may have given, and shall not be bound to fulfill what he may have promised."

[5] Art. 1306, old Civil Code, provides: "If the fact of which the vicious cause consists does not constitute either a felony or a misdemeanor, the following rules shall be observed:

1. When both parties are guilty, neither of them may recover what he has given by virtue of the contract, nor demand fulfillment of what the other party has offered.

2. When only one of the contracting parties is guilty, he may not recover what he has given by virtue of the contract, nor demand the fulfillment of what has been offered him. The other party who is a stranger to the vicious cause may demand what he has given without obligation to fulfill what he has offered."

[6] Being the law applicable to the case since the donation was made in 1943.

[7] The Court cited the legal maxim: *Nemo auditor propriam tupitudinem allegans.* Repugnant as immoral bargains are, the law deems it more repugnant that a party should invoke his own guilt as a reason for relief from a situation he deliberately entered.

[8] In a footnote to the decision, the Court noted that the rigor of the rule has been tempered by the new Civil Code in favor of the weaker one of the guilty parties. See articles 1414-1419, new Civil Code.

[9] The Court argued that since art. 609 prescribes that "ownership and rights therein are acquired and transmitted . . . by donation, succession . . . and in consequence of certain contracts by tradition," there is the implication that donation is not one of the contracts requiring tradition.

Further, in the Court's opinion, the contention that the *pari delicto* rule should have been applied was also not well taken. Justice Reyes went so far as to state that "the point is unimportant" because the donation having been fully executed, even if the parties were held to be in *pari delicto*, the action of the donor or his privies to recover the conveyed property and return to the *status quo* would remain barred by articles 1305 and 1306.[10]

It is difficult for the student of law to understand the basis of the decision. There is already considerable misunderstanding over the proper meaning of the *pari delicto* rule. From the main decision and the instant disposition of the motion for reconsideration, it is not clear whether the rule was applied or not. Certainly, the Court stated that it was compelled to apply Articles 1305 and 1306 of the old Civil Code. In almost the same breath, however, Justice Reyes argued that the *pari delicto* rule did not apply. The application of the rule is fraught with difficulty and the instant case can only be said to have made it more so.

Teodoro D. Regala

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Civil Law—*Where there is no proof in the record as to the total property of the husband at the time he made a donation* propter nuptias *to his future wife, it cannot be held that said donation is inofficious.*

MAYOR v. MILLAN, et al.
G.R. No. L-10947, March 8, 1958

One of the ancient institutions in the Philippines today is the practice of the prospective groom to make a donation to the future bride. In recognition of the necessity of preserving and encouraging this custom,[1] the Code Commission adopted the provision of the old Civil Code[2] on the matter. As it now appears in the new Civil Code, the provision reads:

> "Art. 130. The future spouses may give each other in their marriage settlements as much as one-fifth of their present property, and with respect to their future property, only in the event of death, to the extent laid down by the provisions of this Code referring to testamentary succession."

Thus, the law limits the donation to one-fifth of the *present* property of the husband. Present property is defined as that which the donor can dispose of at the time of the donation.[3] In order, therefore, to recover property in excess of one-fifth in donation *propter nuptias*, the party claiming a right thereto must prove that the donor had no other property at the time of the donation. This principle of law which was established in a former case[4] is reiterated in the case at bar.

The plaintiff-appellant in this case, Jose Mayor, is the only surviving brother of Severino Mayor. The latter, in consideration of his marriage to

[10] Considerable weight was placed on the fact that the appellant Liguez was a minor of sixteen at the time the contract was made, while Lopez was of mature years and experience. The guilt of a minor, the Court pointed out, has never been judged with severity equal to the guilt of an adult.

[11] It is noteworthy to mention here that the Court of Appeals applied art. 1306 (now article 1412 of the new Civil Code) and found in favor of the heirs and successors to Lopez.

[1] REPORT OF THE CODE COMMISSION 11.

[2] Art. 1331.

[3] I CAPISTRANO, CIVIL CODE OF THE PHILIPPINES WITH COMMENTS AND ANNOTATIONS 132 (1950 ed.).

[4] Adapon v. Maralit, 74 Phil. 292 (1943).

Iluminada Miraflor, donated to her the land in controversy. Severino Mayor died on January 30, 1929, leaving Candida Mayor, his daughter, as heir. On September 25, 1929, Candida Mayor also died. Much later, Iluminada Miraflor sold the land in question to the defendants herein.

Upon learning of this transfer, the herein appellant brought an action to recover nine-tenths (9/10) of the parcel of land. The theory of the appellant is predicated on Article 1331 [5] of the old Civil Code of 1889, in force in 1927 when the donation was made.

Appellant argues that under this article the donation by Severino Mayor in favor of his then prospective bride (who later became his wife) was valid only as to one-tenth (1/10) of the lot in question; that the donor retained ownership of nine-tenths (9/10) thereof; that upon Severino's death this interest was transmitted to his daughter Candida Mayor, who died in 1929 and was succeeded by her mother, Iluminada Miraflor; that the latter inherited the property from her daughter but subject to *reserva troncal* [6] in favor of the plaintiff herein who, as an uncle of Candida, was within the third degree of relationship from her. Hence, appellant concludes, upon the death of the *reservista* Iluminada Miraflor, appellant became entitled to nine-tenths of the property as a reversioner, and the alienation made by the aforesaid reservista, as well as all subsequent alienations of the property in favor of other parties, became coid.

In dismissing the appeal, the Supreme Court said that there is no proof that the value of the entire lot donated exceeded one-tenth [7] of the property owned by the donor at the time of the donation. Article 1331 of the then old Civil Code did not restrict the donor to a tenth of each and every item of property he owns; the limit of one-tenth must be computed on the value of his entire patrimony, just as the free part is computed on the value of a testator's net assets as a whole, in order to determine whether or not his donations are inofficious.[8]

Under the facts stipulated, there remains two alternatives, either of which suffices to destroy the basic assumption upon which appellant's case rests: (1) that Severino Mayor had other lands elsewhere than in Zambales; (2) that, assuming he held no immovable property other than the lot now in question, he might possess personal property worth nine times the value of the controverted land. Being the one who contests the validity of the donation, it was incumbent upon appellant to produce satisfactory proof to exclude both alternatives, that is, to show that the donor had no other property besides the disputed lot; and his duty to do so is all the more imperative because the land in question is now in the hands of innocent parties. Not having satisfied the *onus probandi,* appellant's cause of action was rightly rejected by the court below.

Ruben G. Bala

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[5] Art. 1331 provides: "Affianced persons may give to one another by their antenuptial contract not to exceed one tenth of their present property; with respect to their future property they may make donations to each other to take effect only in case of the donor's death, within the limits established by this code with respect to testamentary successions."

[6] Art. 891 of the CIVIL CODE OF THE PHILIPPINES provides: "The ascendant who inherits from his descendant any property which the latter may have acquired by gratitious title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came."

[7] One-fifth under the new Civil Code.

[8] See art. 771 of the new Civil Code.

Civil Law—*Easements; a right of way cannot be acquired by prescription.*

RONQUILLO, et al. v. ROCO, et al.

G.R. No. L-10619, February 28, 1958

The question of whether or not an easement of right of way may be acquired by prescription is controversial.

The new Civil Code provides: "Continuous nonapparent easements, and discontinuous ones, whether apparent or not, may be acquired *only* [1] by virtue of a title." [2] It further states: "Discontinuous easements are those which are used at intervals and depend upon the acts of man." [3] Tested by this statutory definition, a right of way would clearly appear to be a discontinuous easement.[4] It may not be amiss, therefore, to say that under the present law, an easement of right of way can not be acquired by prescription.[5]

However, under the *Partidas,* an easement of right of way may be acquired through user from time immemorial.[6] This rule, nevertheless, was changed by the Spanish Civil Code which was extended to the Philippines and which took effect therein on December 8, 1889.[7] Under the latter, a discontinuous easement, such as a right of way, cannot be acquired by prescription.[8] In the meantime, on October 1, 1901,[9] the Code of Civil Procedure also took effect. Section 41 [10] thereof provides that ten years actual and adverse posses-

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[1] Underscoring supplied.

[2] Rep. Act No. 386 (Civil Code of the Philippines: enacted June 18, 1949; effective Aug. 30, 1950), art. 622.

"Continuous and apparent easements are acquired by virtue of a title or by prescription of ten years." Art. 620, new Civil Code.

[3] Art. 615, new Civil Code.

[4] IV MANRESA, CODIGO CIVIL ESPAÑOL 576-577 (4th ed. 1910): "En cambio, las servidumbres dincontinuas se ejercitan por un hecho del hombre, y precisamente por esa son y tienen que ser discontinuas, porque no es posible fisiamente que su uso sea incesante. Asi, la servidumbre de paso es discontinua, porque no es posible que el hombre esté pasando continuamente por el camino, vereda ó senda de que se trato."

[5] Tolentino, however, maintains that even under the Civil Code, old and new, an easement of right of way may be acquired by prescription. He argues thus: "We must admit that as a general principle, the right of way being discontinuous, it can not be acquired by prescription. To permit its acquisition by prescription, the owner of a tenement would be obliged to disregard the considerations imposed by neighborliness; he would have to prevent passage over his tenement because he may wake up some day to find that the easement has already been established. But if the right of way is permanent and has an apparent sign, such as a road, we see no reason why it can not be acquired by prescription. If the land itself occupied by the road can be acquired in ownership by prescription, why can't a servitude, which is less than ownership, be so acquired . . . If there is a permanent road, the easement, or at least its possession, should be regarded as continuous, because the existence of the road is a continuing assertion of right against the exclusive dominion of the owner. The right of way under these circumstances should, therefore, be acquired by prescription, so long as the exercise thereof is not by mere tolerance of the owner of the tenement over which the road has been built." II TOLENTINO, COMMENTS AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 310-311 (1954 ed.). See also 3 VERA 297; 2-II COLIN AND CAPITAN 913; I RUGGIERO 839-840; 9 SALVAT 352-354, all cited in I TOLENTINO, *op. cit. supra.*

Capistrano disagrees; he opines: "Continuous and apparent easements can be acquired by prescription because they are the only ones the possession of which fulfills two important requisites required by the law for prescription; to wit, that the possession be *public* and *continuous.* Discontinuous easements, whether apparent or not, cannot be possessed publicly; hence, these easements may not be acquired by prescription." I CAPISTRANO, CIVIL CODE OF THE PHILIPPINES WITH COMMENTS AND ANNOTATIONS 554 (1950 ed.).

[6] *Partida* III, Title 31, Law 15. See also I TOLENTINO, *op. cit. supra* note 5, at 308.

[7] AQUINO, THE LAW OF PERSONS AND FAMILY RELATIONS 3 (1956 ed.).

[8] Art. 539 of the Spanish Civil Code provides: "Continuous nonapparent easements and intermittent easements, whether apparent or not, can only be acquired by virtue of a title." English translation taken from FISHER, CIVIL CODE OF SPAIN WITH PHILIPPINE NOTES AND REFERENCES 217 (5th ed. 1947).

[9] CODE OF CIVIL PROCEDURE, sec. 796.

[10] Sec. 41 provides: "Title to Land by Prescription.—Ten years actual and adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy, may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the persons under or through whom

sion by any person claiming to be the owner for that time of any land or *interest in land* shall vest in that person a full and complete title. Since an easement of right of way is an interest in land, the problem has arisen as to whether or not it may be acquired by prescription when the user commenced on October 1, 1901 or thereafter, but before August 30, 1950.[11] Stated in a different manner, the question is whether or not the Code of Civil Procedure repealed the prohibition contained in the Spanish Civil Code against the acquisition of discontinuous easements by mere lapse of time.

The instant case, although it does not give a categorical and clear answer, may throw some light on the controversy.

For more than twenty years prior to 1953, the plaintiffs, Ronquillo, *et al.*, had been in the continuous and uninterrupted use of a road or passage way which traversed the land of the defendants, Roco, *et al.*, and their predecessors in interest, in going to Igualdad Street and the market place of Naga City and back. On May 12, 1953, the defendants started constructing a chapel in the middle of the road and on July 10, 1954, they planted wooden posts, fenced with barbed wire and closed the road passage against the protest and opposition of the plaintiffs, thereby preventing the latter from going to or coming from their homes to Igualdad Street and the public market of Naga City. Claiming to have acquired an easement of right of way over the land of the defendants, plaintiffs brought the present action.

Justice Montemayor who penned the majority, and at the same time the dissenting, opinion said:

> "The minority, of which the writer of this opinion is a part, believes that the easement (of right of way), at least, since the introduction into this jurisdiction of the special law on prescription through the Old Code of Civil Procedure, may be acquired by prescription. Said law, particularly section 41 thereof, makes no distinction as to the real rights which may be acquired by prescription, and there would appear to be no valid reason, at least to the writer of this opinion, why the continued use of a path or a road or right of way by a party, especially by the public, for ten years or more, not by mere tolerance of the owner of the land but through adverse use, cannot give said party a vested right to such right of way through prescription.[12]

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he claims, must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war."

[11] Prescription already running before the effectivity of the new Civil Code shall be governed by laws previously in force. Art. 1116, new Civil Code. See also Art. 2253, new Civil Code.

[12] To support his view, Justice Montemayor cites the cases of Dumangas v. Bishop of Jaro, 34 Phil. 541 (1916) and Cuaycong v. Benedicto, 37 Phil. 781 (1918).

These two cases, however, are not exactly in point. In the Dumangas case, while the Court made a statement to the effect that the defendant church acquired an easement of right of way by prescription over the property of the plaintiff municipality which lies adjacent to the property of the former, the fact is that in the final analysis the Court recognized the easement of right of way in favor of the defendant, not so much because of prescription, as it is because the right of way is necessarily imposed on the property of the plaintiff when the State made a grant of two adjacent parcels of land to the plaintiff and defendant. On this point the Court said: "There are good grounds for presuming that in apportioning lands at the time of the establishment of the pueblo of Dumangas and in designating the land adjacent to the church as a public square, this latter was impliedly encumbered with the easement of right of way to allow the public to enter and leave the church." Dumangas v. Bishop of Jaro, *supra* at 546. See Law 1, Title 12, Book 4 of the *Recopilacion de las Leyes de Indias*, cited in VENTURA, LAND TITLES AND DEEDS 9-10 (1955 ed.); Art. 567, Spanish Civil Code; Art. 652, new Civil Code.

In the Cuaycong case, the user of the right of way commenced in 1891 but said user was merely by permission or tolerance of the owner. The Court held that acquisitive prescription cannot be availed of if the user is by mere tolerance or permission of the owner of the tenement. On the possible effect of the Code of Civil Procedure on the Spanish Civil Code on

"However, the opinion of the majority must prevail, and it is held that under the present law, particularly the provisions of the Civil Code, old and new,[12] unless and until the same is changed or clarified, the easement of right of way may not be acquired through prescription."

As may be seen, therefore, the Court has not squarely resolved the issue. If at all it has, it would merely be by implication.

Salvador J. Valdez, Jr.

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Civil Law—*Article 27; refusal of a provincial fiscal to prosecute is justified if, after an investigation, he finds no sufficient evidence to establish a* prima facie *case.*

ZULUETA v. NICOLAS

G.R. No. L-8252, January 31, 1958

With the evident purpose of giving more teeth to the time-honored injunction that a public office is a public trust, the Code Commission has incorporated into the new Civil Code a provision[1] which renders a public servant or employee liable for damages when he refuses or neglecte, without just cause, to perform his official duty. Any person who suffers material or moral loss on account of such refusal or neglect may bring the action for damages.[2] But before such action can prosper certain requisites must be satisfied. First, the defendant must be a public official or employee charged with performance of an official duty;[3] second, there must be a refusal or neglect to perform[4]

prescription, the Court only made an assumption in *arguendo*. It said: "Assuming without deciding that this rule (Art. 539, Spanish Civil Code) has been changed by the provisions of the present Code of Civil Procedure relating to prescription, and that since its enactment discontinuous easement may be acquired by prescription, it is clear that this would not avail plaintiffs. The Code of Civil Procedure went into effect on October 1, 1901. The term of prescription for the acquisition of rights in real estate is fixed by the Code (Sec. 41) at ten years. The evidence shows that in February, 1911, before the expiration of ten years since the time the Code of Civil Procedure took effect, the defendants interrupted the use of the road by constructing and maintaining a toll gate on it and collecting toll from persons making use of it with carts and continued to do so until they were enjoined by the granting of the preliminary injunction." Cuaycong v. Benedicto, *supra* at 796.

[12] This statement of the Court is not accurate. The new Civil Code has nothing to do with the case. See note 11.

[1] Rep. Act No. 386 (Civil Code of the Philippines: enacted June 18, 1949; effective Aug. 30, 1950), art. 27.

[2] Art. 27 states that the action for damages provided for therein is without prejudice to any disciplinary administrative action that may be taken against the public servant or employee.

[3] I TOLENTINO, COMMENTS AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 109-110 (1953 ed.)

Commenting on art. 27, Tolentino says:

"In order that a public official may be held liable under this article, it is necessary that the act which the law or legal authority perform be something which the law or legal authority absolutely requires him to do. American authorities distinguish between ministerial and discretionary duties, holding that there is liability for nonfeasance in case of the former and none in case of the latter. It is submitted, however, that this distinction should not be followed literally. An act may involve discretion, but at the same time it may be mandatory; therefore, a refusal or neglect to do it should give rise to liability. For instance: the decision of a case before a judge involves discretion, because he may decide one way or the other; but his duty to decide whatever the decision may be, is certainly mandatory. If after the case has been submitted to him for decision, he keeps it unacted upon for an unreasonable length of time, without just cause, he would be guilty of non-performance of official duty, and may be held liable for damages. But if the discretion is in whether an official should act or not, then his failure to act, even without reason, cannot be a ground for damages. For instance: it is discretionary for the chief of the Constabulary to grant a permit for firearmes. If he refuses or neglects to act upon an application for such permit, he cannot be held liable for damages. This, of course, is without prejudice to the application of Article 19."

[4] Art. 27 does not cover all cases of official wrongs. It is limited to refusal or neglect to perform official duties. It creates a cause of action, not for wrongful official action, but for unjustifiable official inaction. This article, therefore, does not cover malfeasance and misfeasance, but only nonfeasance. This does not mean, however, that the public servant or employee can get away from the consequences of his malfeasance or misfeasance scot free. An action against him by the injured party may be maintained under arts. 19, 20 or 21. I TOLENTINO *op. cit. supra* note 3, at 109.

such official duty; third, such refusal or neglect must be without just cause;[5] and fourth, the plaintiff must have suffered material or moral loss as a result of such refusal or neglect.[6]

The third requisite is the concern of the instant case.

Jose C. Zulueta instituted an action for damages against Nicanor Nicolas, the provincial fiscal of Rizal. The complaint in substance alleges that on May 6, 1954 the defendant fiscal conducted an investigation of a charge of libel filed by Zulueta against the provincial governor of Rizal and the staff members of the *Philippine Free Press;* that after said investigation, the fiscal rendered an opinion that there was no *prima facie* case, the alleged libelous statements having been made in good faith and for the sole purpose of serving the best interests of the public; and that in consequence the fiscal absolved the said governor and staff members from the crime of libel thereby causing material and moral loss on the part of the plaintiff, Zulueta. The trial court dismissed the action. Hence, this appeal.

Citing as precedent the earlier case of *Bagalay v. Ursal,*[7] the Supreme Court, in affirming the decision of the trial court, said that Article 27 of the new Civil Code on which the action is based contemplates a refusal or neglect *without just cause* by a public servant or employee to perform his official duty. Going to the core of the case, the Court observed:

> "Refusal of the fiscal to prosecute when after an investigation he finds no sufficient evidence to establish a *prima facie* case is not a refusal, *without just cause,* to perform an official duty. The fiscal has, for sure, the legal duty to prosecute crimes where there is enough evidence to justify such action. But it is equally his duty not to prosecute when after an investigation he has become convinced that the evidence available is not enough to establish a *prima facie* case. The fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a *prima facie* case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify t hefiling of the corresponding information and having control of the prosecution of a criminal case, the fiscal cannot be subject to dictation from the offended party.[8] Having the legal cause to refrain from filing an information against the persons whom the herein plaintiff wants him to charge with libel, the defendant fiscal cannot be said to have refused or neglected, without just cause to perform his official duty. On the contrary, it would appear that he performed it."

Salvador J. Valdez, Jr.

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[5] American decisions which may illustrate a justified refusal or neglect to perform an official duty:

(1) Impossibility of performance, such as when there are no funds provided, with which an official could obey an ordinance requiring the removal or refuse from a private property. Consolidated, etc. v. Baltimore 131 Md. 523, 102 Atl. 920 (1917).

(2) Contributory negligence of the plaintiff, except where after plaintiff's negligence, the injury could have been prevented had the official performed his legal duty. Rogers v. Marshall, I Wall. (U.S.) 644, 17 L.ed. 714 (1864); Howley v. Scott, 123 Minn. 159, 143 N.W. 257 (1913).

[6] The general rule in American law is that if a duty which is imposed upon an officer is a duty to the public, a failure to perform it is regarded as an injury to the public and not as one to the individual; hence, it is to be redressed in some form of public prosecution, and not by a private person who conceives himself as specially injured. The duty must be direct and the cause of action must accrue to the party injured. Each case must be resolved on its merits to determine the extent to which official duty exists in favor of an individual, that is, an official duty which is not due only to the State or to the government. 43 AM. JUR. sec. 272; McPhee v. U.S. Fidelity Co., 52 Wash. 154, 100 Pac. 174 (1909).

It is indisputable that an official duty is in favor of an individual when there is remedy or a right of appeal against the official act, as well as when the act prejudices the interests of third persons. I TOLENTINO, *op. cit. supra* note 3, at 110.

[7] 50 O.G. 4231 (1954).

[8] People v. Liggayu, G.R. No. L-8224, Oct. 31, 1955; People v. Natoza, G.R. No. L-8917, Dec. 24, 1956.

Civil Procedure—*As between the same parties with the same subject matter and cause of action, a final judgment on the merits is conclusive not only on questions actually contested and determined but also upon all matters that might have been litigated and decided in the former suit.*

JALANDONI v. GUANZON

G.R. No. L-10423, January 21, 1958

It is a fundamental rule of procedure that a former judgment shall include only those matters which appear upon its face to have been adjudged and also those which were actually and necessarily included therein or necessary thereto.[1] Otherwise referred to as the principle of "res judicata,"[2] it means that the former judgment shall become a bar to any other decision respecting not only matters offered and received in evidence but also to any other admissible matters which might have been offered.[3] Can this rule be expanded to include also matters that *might have been* litigated in the former suit?

Yes, answers this case. Here, the plaintiff's claim for damages filed in the Court of First Instance of Occidental Negros was denied because of the failure to state a cause of action and also by reason of the inability to prove the "exact and actual damages suffered by him." In his appeal, the plaintiff's claim for damages was substantiated by proof of his share in the product of the property under dispute. But just the same, the Supreme Court, in affirming the decision of the lower court, ruled that the recovery of the plaintiff's share is now barred by the previous judgment. These damages, according to the Court, should have been claimed in the first action filed. To allow them to be received by subsequent suit would be a violation of the rule against multiplicity of suit and splitting causes of action,[4] since the claims spring from the same cause of action that was pleaded in the former case No. 573 between the same parties.

In disposing off the plaintiff's contention, the Supreme Court aptly held:

> "The fact that the former judgment did not touch upon these damages is not material to its conclusive effect. As between the same parties with the same subject matetr and cause of action, a final judgment on the merits is conclusive not only on questions actually contested and determined, but also upon all matters that might have been litigated and decided in the former suit."

The order or judgment of a court therefore as between the same parties, referring to the same subject matter and cause of action, is conclusive not only on the matters directly adjudged but also upon those which might have been adjudged.

Alfonso C. Bince, Jr.

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[1] RULES OF COURT Rule 39, sec. 45.

[2] In San Diego v. Cardona, 70 Phil. 281, the Court laid down the following requisites for the doctrine to apply:
(a) The former judgment must be final;
(b) It must have been rendered by a court having jurisdiction over the subject-matter and of the parties;
(c) It must be a judgment on the merits; and
(d) There must be between the first and second actions identity of parties, of subject-matter, and of cause of action.

[3] MORAN, COMMENTS ON THE RULES OF COURT 874 (3rd ed. 1952).

[4] RULES OF COURT Rule 2, secs. 2 and 3.

Civil Procedure—*Where issues of the counterclaim are so inseparable from those of the complaint and answer that such counterclaim partakes of the nature of a special defense, it is deemed controverted even if not specifically challenged by plaintiffs in a reply.*

NAVARRO, et al. v. BELLO, et al.

G.R. No. L-11647, January 31, 1958

This is a petition for certiorari and mandamus with preliminary injunction. Petitioners Florentino Navarro and Beatriz Vinoya seek the annulment of a decision of the Court of First Instance of Pangasinan dated July 30, 1956, dismissing the complaint in Civil Case No. 13099, adjudging respondents-defendants Juan Cabuang and Florentina Bautista owners of two parcels of land described in the complaint and awarding damages to the latter for the unlawful usurpation of the disputed lots by the petitioners.

On September 30, 1954, the petitioners (plaintiffs in the lower court) filed a complaint praying for the annulment of TCT 15967 and 15968, and the corresponding deeds of sale executed by Florencio Galicia and Consolacion Bautista in favor of Juan Cabuang and Florentina Bautista. Plaintiffs claimed ownership and alleged actual possession of the two lots.

On November 24, 1954, the answer to the amended complaint was filed, defendants claiming ownership and alleging actual possession of the land in question, with a counterclaim for damages allegedly arising out of the unlawful usurpation of possession of the land by plaintiffs through force and intimidation.[1]

No answer was filed within the time prescribed by the Rules of Court by the plaintiffs to the counterclaim.[2]

On petition of the defendants, the plaintiffs were declared in default by an order of the lower court dated February 2, 1955.[3] This same order commissioned the deputy clerk of court to receive the evidence of the defendants.[4]

No notice of this order declaring them to be in default was furnished the petitioners or their counsel.[5]

On February 8, 1955, evidence was received and the trial court rendered a decision adjudicating the defendants' counterclaim for damages, declaring that the defendants were owners of the land, and dismissing the complaint.

The plaintiffs received a copy of the decision on August 7, 1956.

September 3, 1956—plaintiffs filed a motion for reconsideration to set aside the decision and order of default.[6]

October 1, 1956—notice of denial of motion was received by the plaintiffs.

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[1] RULES OF COURT Rule 10, sec. 1.
[2] *Ibid.*, sec. 7
[3] RULES OF COURT Rule 35, sec. 6.
[4] See Rule 34 of the RULES OF COURT.
[5] RULES OF COURT Rule 27, sec. 9
[6] RULES OF COURT Rule 37, sec. 1.
"There is now no distinction between a motion for reconsideration and a motion for new trial because a motion for reconsideration can have no basis except the grounds for new trial under Rule 37, sec. 1. However, a motion for reconsideration is properly based on the third ground of a motion for new trial." FERIA, CIVIL PROCEDURE 490 (1956 ed.).

October 5, 1956—notice of denial of motion was received. Notice of appeal was filed [7] and a fifteen day extension was asked within which to file the record on appeal and appeal bond. Granted.[8]

October 26, 1956—on objection intervened by the defendants, a court order was issued denying approval of the record on appeal on the ground that the decision sought to be reviewed has become final—plaintiffs having been declared in default, they have no right to appeal unless and until the order of default is revoked and set aside.

The Supreme Court held that there was no need for the plaintiffs to answer the defendants' counterclaim, considering that the plaintiffs in their own complaint, claimed not only the ownership of, but the right to possess the parcels in question, alleging that some time in May, 1954, the defendants through force and intimidation wrested possession thereof from their tenants, and that it was on a writ of possession issued by the Court of First Instance that they were placed back in possession by the provincial sheriff.

The defendants denied the plaintiffs' averments in their answer, asserting ownership and illegal deprivation of possession, and as a counterclaim prayed for damages allegedly suffered because of the plaintiffs' alleged usurpation of the premises.

Thus it appears that the issues in the counterclaim are the very issues raised in the complaint and in the answer, and that the counterclaim is based on the very defenses raised in the answer. To answer such counterclaim would require the plaintiffs to replead the very facts alleged in the complaint.

Whether or not the plaintiffs have answered the defendants' counterclaim, the plaintiffs have the right to prove the averements of their own complaint, including the claim that it was by court order that they secured possession of the parcels from the defendants. If the plaintiffs are able to prove such allegations, the court must dismiss the defendants' counterclaim for damages since illegal usurpation (which is the basis of the counterclaim) would not have been proved.

The issues of the counterclaim are so inseparable from those of the complaint and the answer that such counterclaim partakes of the nature of a special defense which, even if not specifically challenged by the plaintiffs in a reply is deemed controverted.[9]

There was, therefore, no occasion for the plaintiffs' default on the defendants' counterclaim, and the order of the lower court declaring plaintiffs in default, as well as the judgment on default, is improper and void.

The complaint and answer have not yet been set for trial in the lower court. Only after the issues set out in the complaint and the answer are tried and the parties heard may the court resolve the defendants' counterclaim for damages.

Until and unless the whole case is heard on the merits, the court *a quo* cannot decide on the defendants' counterclaim without depriving the plaintiffs of their day in court.

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[7] RULES OF COURT Rule 41, sec. 3.

[8] The court may extend the period for filing the record on appeal provided the motion for extension is filed before the expiration of th reglamentaery period. Moya v. Carton, 76 Phil. 831 (1946); Santiago v. Valenzuela, 78 Phil. 397 (1947).

[9] RULES OF COURT Rule 9, sec. 9 and Rule 11, sec. 1.

Similar cases on this point are: Rosario v. J. Martinez, G.R. No. L-4473, Sept. 30, 1952; Lama v. Apacible, 79 Phil. 68 (1947).

Furthermore, even if the plaintiffs really defaulted on the counterclaim, the court was bound to limit its decision to the specific reliefs prayed for.[10] Since the counterclaim was set to recovery damages, the lower court, in adjudging defendants Juan Cabuang and Florentina Baustista owners of the two parcels of land described in the complaint, when what was tried was the counterclaim, exceeded its jurisdiction.[11]

Since the ownership of the disputed land was put in issue by the allegations of the complaint and the special defenses in the answer, the correct procedure, assuming that the declaration of default was properly entered, should have been for the trial court to set the complaint and answer for hearing.

The lower court, even in a case of true default on the counterclaim, could not deny the plaintiffs the right to be heard and produce evidence in support of their complaint, as that pleading plaintiffs, was valid and had not been stricken from the records. Plaintiffs having defaulted on the counterclaim, if they did so at all, did not operate to deprive them of any standing or remedy in court in conection with their complaint.

The plaintiffs' timely mations for reconsideration and new trial were denied by the lower court on the following grounds:

1. The plaintiffs had lost their standing in court in view of the order of default; and

2. The plaintiffs' motions were not accompanied by affidavits of merit.

The first argument, in view of what has been said above, is invalid and untenable.

As to the second argument, affidavits of merit are not necessary when the granting of the motion is not discretionary upon the court but is demandable as of right, as where the movant has been deprived of his day in court through no negligence of his own.[12] This rule is applicable in this case since the plaintiffs have been deprived of their day in court through the illegal order of default.

The writ of certiorari is granted, the decision of July 30, 1956, of the Court of First Instance of Pangasinan is set aside and the said court is directed to proceed with the trial of the entire case on its merits.

Maria Asuncion Sy-Quia

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Constitutional Law—*Republic Act No. 1180, otherwise known as "An Act to Regulate the Retail Business," is constitutional; furthermore, the penal provisions of the act are not in the nature of an ex post facto law.*

PEOPLE v. YU BAO

G.R. No. L-11324, March 29, 1958

In the celebrated case of *Ichong v. Hernandez, et al.*,[1] decided last year, questions of due process, police power and equal protection of the laws were

[10] RULES OF COURT Rule 35, sec. 9.
[11] *See* Lim v. Go Fay, 80 Phil. 166 (1948).
[12] Valeria v. Tan, *et al.*, G.R. No. L-6446, Sept. 19, 1955.

[1] G.R. No. L-7995, May 31, 1957.

considered in connection with Republic Act No. 1180, otherwise known as "An Act to Regulate the Retail Business." The Supreme Court, in a detailed and incisive decision, held the law constitutional. In the instant case, the constitutionality of the law was again challenged; more particularly, the question raised was the alleged unconstitutionality of the penal provisions [2] of the Act when applied to defendant's case.

The following facts were established: Prior to May 15, 1954,[3] Yu Bao, an alien, was not actually engaged in the retail business. On May 22, 1954, prior to the approval of the Act on June 19, 1954, he was issued a license to engage therein. After being required by the City Treasurer of Quezon City to surrender his permit and to desist from actually engaging in the retail business, however, Yu Bao persisted in continuing and refused to surrender said permit. Defendant was therefore charged with a violation of R.A. No. 1180. Upon conviction by the lower court, Yu Bao appealed to the Court of Appeals, which certified the case to the Supreme Court because it raises a constitutional question.

The attack on the constitutionality of the law as a whole was easily dismissed, the Court merely citing the main part of its decision in the *Ichong* case.

The allegation that the penal provisions of the Act would be in the nature of an *ex post facto* law if applied to defendant's case was also held untenable. Appellant argued that although he was not yet engaged in the retail business on May 15, 1954, yet he was issued a license to engage therein on May 22, 1954, prior to the approval of R.A. No. 1180. He claimed, therefore, that his engaging in the retail business, although legal at its inception, has been penalized and made criminal by the law.

The Court answered: inasmuch as an *ex post facto* law is one that "makes an act done before the passage of a law, innocent when done, criminal, and pun ishes such act",[4] R.A. No. 1180 cannot be said to be such a law when applied to defendant's cases, since he is not being penalized for having engaged in the retail trade prior to its approval; what the law penalizes is his having done so thereafter.[5]

It is clear from the records [6] that defendant Yu Bao continued to engage in the retail trade after the law had been approved. The law operated to revoke all existing licenses to aliens, except those issued on or before May

[2] Section 6 of R.A. 1180 provides: "Any violation of this Act shall be punished by imprisonment for not less than three years and not more than five years and by a fine of not less than three thousand pesos and not more than five thousand pesos. In the case of associations, partnerships or corporations, the penalty shall be imposed upon its partners, president, directors, manager, and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after service of sentence. If the offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, be dismissed from the public service, perpetually disinfranchised, and perpetually disqualified from holding any public office."

[3] Section 1 of the law allows an exception in favor of aliens actually engaged in the retail business on May 15, 1954, who are allowed to continue to engage therein, unless their licenses are forfeited in accordance with the law, until their death or voluntary retirement in case of natural persons, and for ten years after the approval of the Act or until the expiration of term in case of juridical persons.

[4] Mekin v. Wolfe, 2 Phil. 74 (1903).

[5] It is noteworthy that in the case of *Ichiong, supra,* note 1, Justice Labrador observed that "the law is made prospective and recognizes the right and privilege of those already engaged in the occupation to continue therein during the rest of their lives; and similar recognition of the right to continue is accorded associations of aliens."

[6] From the evidence presented at the trial and the testimony of witnesses, it appears that, notwithstanding the notice given by an official of the Treasurer's Office of Quezon City, defendant was found to have his store still open for business on October 12, 1954. The notice had been given in August. Thus, from August 8 till October 2, 1954 (when the information was filed) defendant had defied the order of the treasury official and persisted in his violation of R.A. No. 1180.

15, 1954. According to the Court, "the latter date was obviously selected in order to forestall any possibility of the law being rendered ineffective through a last-minute rush by aliens to engage in the retail business."

The Court also noted that the accused had never pleaded or proved that his staying in business after the approval of the law was due to the exigencies of the liquidation of his commercial affairs. Clearly, therefore, the appellant chose to challenge the constitutionality of the law. As Justice Reyes stated, "x x he must now abide by the result of his gamble and suffer the corresponding penalty." The decision appealed from was therefore affirmed.

Jose-Benjamin V. Pedrosa

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Criminal Law—*Three-fold rule; not taken into account in the imposition of penalty but in connection with the service of the sentence.*

PEOPLE v. ESCARES
G.R. No. L-11559, January 29, 1958

The maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of these imposed equals the said maximum period.[1]

The proper application of this provision has been discussed in the above-cited case. The ruling of the Supreme Court here is one of first impression in this jurisdiction.

In this case, the defendant Escares pleaded guilty to the seven separate information for robbery. The trial court found him guilty and sentenced him to 12 years, 6 months and 1 day in all the cases with all accessories of the law and to pay the costs.

In arriving at the penalty above-mentioned, the trial court took into account the three-fold rule in paragraph 4 of Article 70 of the Revised Penal Code.

In this particular case, none of the circumstances mentioned in paragraphs 1-4 in Article 294[2] are present, so that the penalty provided for in paragraph 5 of the same provision applies. The imposable penalty in each of the seven cases, therefore, is prision correccional in its maximum period to prision mayor in its medium period.

In view of the mitigating circumstance of plea of guilty not offset by any aggravating circumstance[3] the minimum period of the penalty which is from 4 years, 2 months and 1 day to 6 years, 1 month and 1 day should be prescribed.

The Indeterminate Sentence Law[4] is applicable in this case. Applying it, the appellant should be sentenced for each crime an indeterminate penalty,

[1] Article 70, par. 4, Revised Penal Code.

[2] Circumstances mentioned are: (1) robbery with homicide; (2) robbery with rape or intentional mutilation or physical injuries under Art. 263, par. 1; (3) robbery with physical injuries under Art. 253, par, 2; (4) robbery with unnecessary violence or with physical injuries under Art. 263, pars. 3 and 4.

[3] See Article 3 Revised Penal Code on Mitigating Circumstances. See Article 4 Revised Penal Code on Aggravating Circumstances.

[4] Act No. 4103 sec. 2 as amended by Act No. 4225: "This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisinment; to those convicted of treason, conspiracy, or proposal to commit treason; to those convicted of misprison of treason,

the minimum not less than 4 months and 1 day of arresto mayor nor more than 4 years and 2 months of prision correccional and the maximum shall not be less than 4 years, 2 months and 1 day of prision correccional nor more than 6 years, 2 months and 1 day of prision mayor.

The conflict in the penalty to be imposed arose when the trial court applied the threefold rule provided for in paragraph 4 in Article 70 of the Revised Penal Code.

Justice Angelo Bautista speaking for the court said:

> "But in applying the proper penalty the trial court imposed upon appellant the 3-fold rule provided for in paragraph 4 of Article 70 of the Revised Penalty Code. This is an error for said Article can only be taken into account not in the imposition of the penalty, but in connection with the service imposed."

Appellant should suffer in each of the seven cases an indeterminate penalty [5] of not less than 4 months and 1 day of arresto mayor and not more than 4 years, 2 months and 1 day of prision correccional plus the corresponding accessory penalties provided with the limitations prescribed in paragraph 4 of the Article 70 of the Revised Penal Code.

Nelly A. Favis

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Criminal Law—*Duty of courts in cases of excessive penalties; applicability of Article 5 of the Revised Penal Code.*

PEOPLE v. SALAZAR

G.R. No. L-7490, January 21, 1958

It is the duty of the court to impose the penalty prescribed by law [1] unless it clearly appears that that given penalty falls within the prohibited class of excessive fines or cruel and unusual punishments.[2] The court cannot suspend the execution of the sentence on the ground that a strict enforcement of the provisions of the Revised Penal Code would result in the imposition of a clearly excessive penalty,[3] but in such a case, the court, considering the degree of malice of the offender and the injury caused by the offense, shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper.[4] This remedy is intended for those small transgressors for

rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having escaped from cinfinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisinment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in section five hereof." See also People v. Umali, G.R. No. L-7197, July 27, 1955, where by the mitigating circumstance of plea of guilty the penalty is reduced to its minimum and the court applied the Indeterminate Sentence Law. But see People v. Dimalanta, G.R. No. L-5196, Nov. 13, 1952 where there is only one mitigating and no aggravating circumstance and accused was not entitled to the benefits of the Indeterminate Sentence Law.

[5] In People v. Ducosin, 59 Phil. 109-118 (1933). The court said: "The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of the destructive individuals but also in redeeming the individual for economic usefulness and other social ends. . . ."

[1] People v. Molijon, G.R. No. L-7031, May 14, 1956; People v. Limaco, G.R. No. L-3090, Jan. 9, 1951; People v. Valera Ang Y, 26 Phil. 598 (1914).

[2] "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted." PHIL. CONST. Art. III, sec. 1 (19).

[3] GUEVARRA, COMMENTARIES ON THE REVISED PENAL CODE 11 (5th ed.).

[4] "In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense." REVISED PENAL CODE Art. 5, par. 2.

The Court may suggest that the offender be extended the benefit of executive clemency, or

whom the heavy net was not spread, but who, like small fishes, are bound to be caught.[5] Its basis may be both the degree of malice and the injury caused, or the degree of malice or injury caused alone.[6]

During the past years, Article 5 of the Revised Penal Code had time and again been applied to acts penalized by special laws.[7] Said Article 5 has not been applied in this case.

Jesus Salazar was accused of the crime of illegal possession of a submachinegun committed in December, 1953. He pleaded guilty to the information in the Court of First Instance of Manila. He was accordingly sentenced to five years' imprisonment.[8] On appeal to the Supreme Court, he contended that the lower court erred in not recommending executive clemency inasmuch as the weapon had already been forfeited to the Government, and no showing was made that he was a hardened criminal, impliedly invoking for this purpose Article 5 of the Revised Penal Code.[9]

"But such article has no application, because it refers to penalties provided by the *Revised Penal Code;* whereas the legal provision violated by herein appellant is another piece of legislation,"[10] held the Court through Justice Bengzon.[11] Besides, according to the Court, no questioning was made at the hearing and no manifestations whatsoever were uttered either by the accused or by his counsel to explain the circumstances surrounding the case. Consequently, there was no way for the Court by which it could appreciate the degree of malice and/or injury caused. The Court therefore refused to consider whether the penalty was excessive in such a situation, as it would then enter the area reserved for the Legislative and Executive Departments that approved the statute with its specified punishments.[12]

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may recommend for an amendment or modification of the legal provision which it believes to be harsh, or may petition for a reduction or commutation of the sentence. I PADILLA, REVISED PENAL CODE ANNOTATED 63 (1955 ed.); GUEVARRA, *op. cit. supra* note 4, at 11.

[5] *See* People v. Estoista, 49 O.G. 8, 3330, 3334 (1953).

[6] I REYES, THE REVISED PENAL CODE 54 (3rd ed.).

Thus, after an appreciation of both the degree of malice and the injury caused, the courts, on different occasions, applied art. 5. United States v. Apostol, 14 Phil. 92 (1909); United States v. Alegado, 1 Phil. 33 (1903); People v. Montano and Cabagsang, 57 Phil. 598, 600 (1932) (concurring). Sometimes, degree of malice alone was the basis. People v. Estoista, *supra;* People v. Castañeda, 60 Phil. 604 (1934). In one case, in addition to both the degree of malice and the injury caused, the Court also considered the special circumstances of the case in the application of art. 5. People v. Gumban, 39 Phil. 76 (1918). In another, degree of malice was coupled with moral turpitude. People v. Castañeda, *supra.* And in others, factors other than degree of malice and injury caused were taken into account. People v. Melgar, G.R. No. L-9123, Nov. 7, 1956 (fact that accused did not try to hide weapon; voluntary admissions); People v. Orifon, 57 Phil. 594 (1932) (horrible wrong suffered; depressed state of mind and of body); U.S. v. Clarayall, 31 Phil. 652 (1915) (insufficient evidence); United States v. Luciano, 2 Phil. 96 (1903) (circumstances under which crime was committed; cause of crime; pathological condition); People v. Canja, G.R. No. L-2800, May 30, 1950 (pent-up anger and rebellion against years of abuse, insult, and tyranny) (concurring).

[7] People v. Estoista, *supra* (illegal possession of firearms); People v. Valera Ang Y, *supra* (violation of Opium Law); People v. De la Cruz, G.R. No. L-5790, April 17, 1953 (profiteering) (implication).

[8] "If the article illegally possessed is a . . . submachinegun . . . such period of imprisonment shall not be less than five years nor more than ten years." REVISED ADMINITRATIVE CODE Sec. 2692, as amended by Com. Act No. 56 (Oct. 17, 1936) and Rep. Act No. 4 (July 19, 1946). The penalty imposed by the lower court is thus the lowest prescribed by law.

[9] It seems that the appellant did not categorically cite this provision.

[10] See secs. 878 and 2692 of the REVISED ADMINITRATIVE CODE, as amended by Com. Act No. 56 (Oct. 17, 1936) and Rep. Act No. 4 (July 19, 1946) for the law governing illegal possession of firearms.

[11] *Contra*: Cases cited note 7 *supra.*

[12] There was no allegation that the penalty was cruel and unusual.

Criminal Procedure—*Double Jeopardy; a subsequent prosecution for the same offense: Quashal of information not a dismissal of the case but the latter is an adjudication on the merits: Dismissal equivalent to acquittal if based on the merits of the issue.*

PEOPLE v. CABARLES

G.R. No. L-10702, January 29, 1958

In every system of jurisprudence, the principle of double jeopardy [1] is recognized. It is embodied in our Constitution as one of the fundamental rights of the citizens. Thus: No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.[2] From this provision, a distinction is made between "same offense" and "same act." The phrases are not the same because an act may result in more than one offense.

Supplementing this constitutional provision is Section 9, Rule 113 of the Rules of Court which states: When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[3] Under the Rules of Court, therefore, the conditions of trial by which the defendant may be said to have been in former jeopardy are the following: (a) court of competent jurisdiction; (b) valid complaint or information; (c) arraignment of the accused; and (d) plea to the complaint or information.[4]

In the case above-cited, a carabao of the accused, allegedly destroyed the plants of one Cabrieto. The carabao had been impounded for eleven days in the municipal pound. Cabarles was prosecuted in the justice of the peace court for failure to pay the impounding fee of ₱5.00 per day or a total of ₱55.00 for the eleven-day period.

Cabarles pleaded not guilty and after a proper trial on valid information the justice of the peace court dismissed the case saying that the failure and

[1] Ballantine, Law Dictionary with Pronunciations (1948). Double Jeopardy—The second jeopardy of a person who has been in jeopardy for the same offense. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.

See 2 Moran 780 (1957), where it was also held that: ". . . the protection afforded by the constitutional prohibition against double jeopardy is effective not only against the peril of a second punishment but also against a second trial for the same offense."

[2] PHIL. CONST. Art. III, sec. 1 par. (20).

See Navarro, Criminal Procedure 267 (1952). ". . . Thus where two jurisdictions are involved, the inquiry is not directed towards the same act.

[3] This section defines the phrase "same offence" mentioned in the Constitution.

[4] People v. Ylagan, 58 Phil. 851: 852-3 (1933).

But see Kapunan, Criminal Procedure 259 (1954), where there are two more conditions mentioned. (1) He must have been aiquitted or convicted or the case dismissed without his consent. tioned. (1) He must have been acquitted or convicted or the case dismissed to commit the same or frustration thereof, or for any offense which is necessarily included or necessarily includes the offense charged in the first complaint or information.

See also 2 Moran 780 (1957). ". . . When all of these conditions are shown to exist the subsequent acquittal or conviction of the accused, or the dismissal or termination of the case without his express consent constitutes res judicata and, therefore, a bar to another prosecution for the offense charged, or for any offense which necessarily includes or is included therein."

refusal to pay the fee as charged in the information did not constitute a violation of the municipal ordinance involved. The contention of the accused that what is penalized by the aforementioned ordinance is the act of letting loose every large cattle as specified therein was upheld.

Thereupon, the provincial fiscal appealed to the Court of First Instance of Iloilo. But the trial court granted the motion to dismiss based on (1) lack of authority of prosecution to appeal from judgment of the justice of the peace court and (2) that defendant had been previously placed in jeopardy of being convicted or acquitted of the offense charged.

Hence, this appeal to the Supreme Court.

The question is: May the present appeal be entertained?

The Court said: No, because the dismissal of the case by the justice of the peace was an acquittal or discharge of the defendant after the prosecution had presented the evidence at a proper trial, before a competent court, on a valid information, from which acquittal the fiscal cannot certainly appeal without doing violence to the constitutional provision on double jeopardy.[5] It was a dismissal upon the merits of the case which cannot be appealed from.[6]

Justice Endencia, speaking for the Court said:

> ". . . It is true that the court made no expressed finding as to whether the defendant did or did not commit the specific acts set out in the information, and that the dismissal of the information was based on the court's conclusion of law in force in these Islands, the acts which it is alleged were committed by the defendant do not constitute any other offense defined and penalized by law. But the reasoning and authority of the opinion if the Supreme Court of the United States in the case of Kepner vs. United States *supra*, is conclusively against the rights of appeal from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was *acquitted on the merits os whether defendant's discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish the guilt of the defendant as charged.*"

The Solicitor General contends that there had only been a quashal of information and not a dismissal of the case so that the provincial fiscal had the right to appeal from the decision rendered by the justice of the peace. However, the record of the case clearly discloses that said information was *dismissed* by reason of insufficiency of evidence in that the facts averred in the amended information and proved by the prosecution to wit, the refusal and failure to pay the fee, are not punished by the ordinance in question which is tantamount to saying that the accused did not commit any violation of said municipal ordinance and should be discharged. A dismissal like this one, after complete presentation of evidence by the prosecution is unappealable.[7]

The Court proceeded to differentiate this case from *People v. Reyes, et al.*, G.R. No. L-7390, April 30, 1955. In the *Reyes case* the defendants were charged as accessories after the fact, being brothers and sisters of the principal defendant who pleaded guilty. They filed a motion to quash on the ground

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[5] Navarro, Criminal Procedure 246-7 (1952). The case of U.S. v. Colley was cited, where the Supreme Court spoke of the prohibition against double jeopardy as follows: "It is fundamental. It is founded on reason and justice..."

[6] Kapunan, Criminal Procedure 287 (1954). The author said: "The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same cannot be reopened because of the doctrine that no person can be put twice in jeopardy for the same offense, except where the judgment of acquittal is invalid by reason of involuntariness."

[7] Sec. 2, Rule 118 of the Rules of Court: Section 8: Who may appeal. "The People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy. In all other cases either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant."

that they were exempt from criminal responsibility.[8] Permission was granted to the fiscal to amend the information by inserting therein that the accused profited from the effects of the crime. Thereafter, counsel for the accused moved to withdraw his motion to quash but the court denied it. After a new information against them was filed, the defendant pleaded double jeopardy. The Supreme Court overruled the lower court's holding that double jeopardy existed. The Supreme Court held that the first information could not be said to have been terminated without the express consent of the accused, and because the defendants themselves showed that the first information was insufficient to charge them with any criminal offense by reason of their relationship with the principal defendant.

The present case is different from the *Reyes* case because in the former, there had already been an arraignment, plea and presentation of complete evidence by the prosecution. This dismissal of information is an adjudication on the merits and operates as an acquittal, from which the prosecution cannot appeal.

Nelly A. Favis

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Criminal Procedure—*Withdrawal of appeal from judgment of inferior court; when improper.*

PEOPLE v. RAPIRAP
G.R. No. L-11000, January 21, 1948

From the judgment of the justice of the peace or municipal court in a criminal cause, the convicted party may appeal either orally or in writing to the Court of First Instance.[1] After such notice of appeal, all the proceedings and judgment of the inferior court are vacated,[2] and the justice of the peace or judge of the municipal court is enjoined to forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause.[3] However, before the aforementioned papers and transcript have been forwarded to the Court of First Instance, the justice of the peace or judge of the municipal court may allow the appellant to withdraw his appeal, in which case the judgment of the inferior court shall be revived and become final.[4] Likewise, the Court of First Instance may, in its discretion, allow the appellant to withdraw his appeal, provided a motion to that effect is filed before the trial of the case on appeal, and in such an eventuality, the judgment appealed from shall also become final.[5] There are thus two kinds of withdrawal of an appeal from the judgment of an inferior court: (1) withdrawal may be petitioned in the inferior court itself before the records have been forwarded to the superior court; and (2) withdrawal may be petitioned in the superior court after the records have been forwarded to it but before the trial.[6] The instant case involves the second kind of withdrawal.

Alicia Rapirap was accused of the crime of physical injuries in the municipal court of Naga. She was convicted and accordingly sentenced to pay a fine of ₱25.00. Not satisfied with said decision, she appealed to the

[8] See Article 20, Revised Penal Code.

[1] RULES OF COURT, Rule 119, sec 8.
[2] *Ibid.*, sec. 8.
[3] *Ibid.* sec. 7
[4] *Ibid.*, sec. 9.
[5] RULES OF COURT Rule 118, sec. 12.
[6] NAVARRO, A TREATISE ON THE LAW OF CRIMINAL PROCEDURE 354 (1952 ed.).

Court of First Instance of Camarines Sur. Upon arraignment anew, the accused voluntarily pleaded guilty to the crime described in the information in the following manner: ". . . the accused . . . did . . . attack, assault and use personal violence upon the herein complainant . . . by hitting the latter with a piece of wood, thereby inflicting upon her physical injuries . . . which . . . have required and may require medical attendance for a period of 3 to 7 days and have incapacitated and may incapacitate said (complainant) from performing her customary labor for the same period of time. . . ."[7] Thereafter, the accused asked the court to impose penalty of ₱20.00, in consideration of her plea of guilty. When the petitioned was denied, the appellant then asked permission to withdraw her appeal, which was also denied. She was finally sentenced to suffer the penalty of 11 days *arresto menor* and to pay the damages in the amount of ₱200.00 to the offended party. From this judgment, the accused appealed to the Court of Appeals, which in turn certified the case to the Supreme Court, as the issue involved was purely a question of law. She contended that the refusal of the lower court to permit the withdrawal of the appeal from said court was not proper under the circumstances, invoking Section 12, Rule 118, of the Rules of Court.

In affirming the judgment appealed from, the Supreme Court advanced the following reasons:

1. It is clear from the provision invoked that the withdrawal of the appeal should be allowed only before the trial of the case on appeal, and not during or after it. In the present case, the accused had already been brought to trial when he invoked his right to withdraw the appeal.[8]

2. It should be noted that the withdrawal of an appeal under this section rests within the sound discretion of the court. In not allowing the withdrawal of the appeal by the accused, the court did not abuse its discretion. The move to withdraw the appeal was made only at a time when the court appeared disposed to impose a higher penalty. Said the Court through Justice J. B. L. Reyes:

> "No one would be allowed to trifle with the solemn judicial procedure as by permitting parties to a case to take appeals and withdraw them at pleasure, after they become certain that the forthcoming judgment would work adversely to them. Parties and attorneys should realize that the ethics of the market place are not those of courts of justice."[9]

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[7] The crime charged in the information is actually slight physical injuries. See art. 266, par. 1, of the REVISED PENAL CODE. The Supreme Court stated that the accused was convicted by the Municipal Court of Naga for less serious physical injuries. However, upon appeal to the C.F.I. the crime as described in the information was—and the penalty imposed by the C.F.I. and as affirmed by the Supreme Court, was for—slight physical injuries. *Cf.* People v. Aquino, 71 Phil. 143 (1940); People v. Co Hiok, 62 Phil. 501 (1935); Andres v. Wolfe, 5 Phil. 60 (1905).

[8] If a plea of not guilty properly joins the issues, and the accused is then deemed to have been brought to trial, People v. Ylagan, 58 Phil. 851 (1933) (implication), *a fortiori*, a plea of guilty does not merely join the issues but amounts to an admission of guilt and of the material facts alleged in the complaint or information. People v. Buco, G.R. No. L-2633, Feb. 28, 1950. The Court said that, in this sense, a plea of guilty takes the place of the trial itself and removes the necessity of presenting further evidence. For all intents and purposes, the case is deemed tried on its merits and submitted for decision. Such a plea leaves the court with no alternative but to impose the penalty prescribed by law. People v. Ng Pek, 46 O.G. Supp. to 1, 360 (1950).

Cf. Dee See Choon v. Stanley, 38 Phil. 208 (1918); United States v. Sotto, 38 Phil. 666 (1918); People v. De la Cruz, (CA) 49 O.G. 9, 3930 (1953). See rule 118, sec. 12, par. 2, and rule 52, sec. 4, of the RULES OF COURT.

[9] *Cf.* People v. Pangilinan, 74 Phil. 451 (1943).

Election Law—*The power of the Commission on Elections to adjudicate is limited to administrative questions; determining the eligibility of candidates is not within its power.*

ABCEDE v. HON. IMPERIAL, *et al.*

G.R. No. L-13001, March 18, 1858

Suffrage or the right to vote is one of the basic features which distinguish a democracy from other types of government. It is imperative, therefore, that the use of this right "is effectively protected by law and governmental authority if it is to secure a real rather than merely a formal democratic system." [1] As a recognition of this necessity, no less than our Constitution itself provided for the creation of a Commission on Elections [2] which was conferred "the exclusive charge of the enforcement and administration of all laws relative to the conduct of elections." [3]

The Commission is primarily an administrative office. While its powers over the enforcement of election laws are broad, they are, however, subject to certain limitations. One of these limitations is that its authority to administer and enforce laws applies only to those which relate to the *conduct* of elections. Another limitation on the Commission's authority is that its adjudications may not go beyond administrative questions. The Commission may not, therefore, hear and determine cases involving the eligibility of candidates to elective offices and similar matters.[4] The instant case illustrates these limitations on the power of the Commisison on Elections.

The petitioner herein, Alfredo Abcede, filed with the Commission on Elections his certificate of candidacy for the Office of President of the Philippines in connection with the elections held on November 12, 1957. On September 7, 1957, the Commission summoned the petitioner to appear before it "to show cause why his certificate of candidacy should be considered as filed in good faith and to be given due course." After due hearing, the Commission issued a resolution ordering that the certificate of candidacy of the petitioner "shall not be given due course." The reason given by the Commission for this action is that it "is convinced that the certificate of candidacy of Alfredo Abcede was filed for motives other than a *bona fide* desire to obtain a substantial number of votes of the electorate." The Commission based this conclusion on the following findings of facts:

> "Alfredo Abcede was a candidate for senator in 1953, again in 1955, in both of which his votes were nil. In this election he presents his candidacy for President, with the redemption of the Japanese war notes as his main program of government. It is of record that the Bureau of Posts, by Fraud Order No. 2, dated November 2, 1955, banned from the use of the Philippine mail all matters of whatever class mailed by, or addressed to, the Japanese War Notes Claims Association of the Philippines, Inc., and its agents and representatives, including Alfredo Abcede and Marciana Mesena-Abcede, which order was based on the findings of the Securities and Exchange Commission, confirmed by the Secretary of Justice, that said entity and its agents and representatives, including Abcede, are engaged in a scheme to obtain money from the public by means of false or fraudulent pretenses."

The Commission on Elections, in holding that it has the power not to give due course to petitioner's certificate of candidacy, gave the following reasons:

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[1] SINCO, PHILIPPINE POLITITAL LAW, 402 (10th ed.).
[2] PHIL. CONST. Art. X
[3] PHIL. CONST. Art. X, Sec. 2.
[4] SINCO, *op. cit.*, 410.

> "The Commission believes that while Section 37 of the Revised Election Code[5] imposes upon the Commission the ministerial duty to receive and acknowledge certificates of candidacy, the law leaves to the Commission a measure of discretion on whether to give due course to a particular certificate of candidacy should it find said certificate to have been filed not *bona fide* We also believe that a certificate is not *bona fide* when it is filed, as a matter of caprice or fancy, by a person who is incapable of understanding the full meaning of his acts and the true significance of election and without any political organization or visible supporters behind him so that he has not even the tiniest chance to obtain the favorable indorsement of a substantial portion of the electorate, or when the one who files the same exerts no tangible effort, shown by overt acts, to pursue to a semblance of success his candidacy."

In refuting this claim of the Commission, the Supreme Court reasoned that as the branch of the *executive* department—although independent of the President—to which the Constitution has given the "exclusive charge" of the "*enforcement* and administration of all laws relative to the conduct of elections," the power of decision of the Commission is limited to purely "*administrative* questions." It has no authority to decide matters "involving the right to vote.[6] It may not even pass upon the legality of a given vote.[7] The Court continued by saying that it does not see, therefore, how it could assert the *greater and more far reaching* authority to determine who—among those possessing the qualifications prescribed by the Constitution, who have complied with the procedural requirements relative to the filing of certificates of candidacy—would be *allowed* to enjoy the full benefits intended by law therefore. The question whether—in order to enjoy those benefits—a candidate must be capable of "understanding the full meaning of his acts and the true significance of election," and must have—*over a month prior to the elections* (when the resolution complained of was issued)—"the tiniest chance to obtain the favorable indorsement of a substantial portion of the electorate, is a matter of *policy*, not of *administration* and *enforcement* of the law, which policy must be determined by *Congress* in the exercise of its legislative functions. Apart from the absence of specific statutory grant of such general, broad power as the Commission claims to have, it is dubious whether, if so granted—in the vague, abstract, indeterminate and undefined manner necessary in order that it could pass upon the factors relied upon in said resolution the legislative enactment would not amount to undue delegation of legislative power.[8]

The Court further reasoned out that the Constitution fixes the qualifications[9] for the office of the highest magistrate of he land. All possessors of such qualifications are, therefore, deemed legally fit, at least, to aspire to such office and to run therefor, provided that they file their respective certificates of candidacy within the time, at the place and in the manner provided by law, and petitioner herein has done so.

Moreover, in the words of Section 37[10] of the Revised Election Code, the Court noted that the Commission "shall immediately send copies" of said certificates to the secretaries of the provincial boards. The compulsory nature of this requirement, evinced by the imperative character generally attached to the term "shall" is stressed by the peremptory connotation of the adverb "immediately." From this, the Court concluded that the Commission has the *ministerial* duty to receive said certificate of candidacy.

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[5] Rep. Act No. 180.
[6] PHIL. CONST. Art. X, Sec. 2.
[7] Nacionalista Party v. Commission, 47 OG 6, 2851 (1949).
[8] Schecter v. U.S., 295 US 495 (1935).
[9] PHIL. CONST. Art. VII, Sec. 3.
[10] Sec. 37 provides: "The Commission on Elections, the secretary of the provincial board, and the municipal secretary, in their respective cases, shall have the ministerial duty to receive the certificates of candidacy referred to in the preceding section and to immediately acknowledge receipt thereof."

This case should be distinguished from the case of Ciriaco S. Garcia v. Hon. Imperial.[11] That case referred to the certificates of candidacy of Ciriaco S. Garcia of San Simon, Pampanga, Carlos C. Garcia of Iloilo City, and Eulogio Palma Garcia of Butuan City, all for the Office of the President. In this case, the Commission found the following facts:

> "Ciriaco S. Garcia admitted that he had not up to date of the hearing held any public meeting relative to his candidacy; had not posted any handbills or posters or banners announcing his candidacy; had not established any national headquarters; and had no line-up for vice-president, enators, or members of Congress. Thus, the Commision found out that he had not shown any active interest in his candidacy. Relative to the case of Carlos S. Garcia, counsel for intervenor presented a witness who testified to the effect that he knows personally said Carlos S. Garcia as a former dress-maker and now maintains a bar in the city of Iloilo; that he has not done anything to promote his supposed candidacy. And as regards Eulogio Palma Garcia, the intervenor likewise submitted a telegram of the provincial commander of Agusan to the effect that said Eulogio Palma Garcia is an unknown person in Agusan. He further pointed out that the address of said Eulogio Palma Garcia, as appearing in the certificate of candidacy, is c/o Tranquilino O. Calo, Jr., a nephew of ex-congressman Calo, an official candidate of the Liberal Party for Senator."

The Commission ruled in this case that these persons are not actually interested in the outcome of their pretended candidacy, but simply to prejudice a legitimate and *bona fide* candidate, President Carlos P. Garcia. Our Supreme Court in sustaining this ruling said that "the objective was, evidently, to prevent a faithful determination of the true will of the electorate." It can be presently seen that had the certificates of candidacy in question been given due course, there would have been a confusion in the minds of the election inspectors, who would be at a loss as to whom to credit the votes cast for "Carlos Garcia," "C. Garcia," "P. Garcia" and "Garcia," or whether said votes should be counted, as stray votes. Thus, an opportunity would be created to subject the election officers throughout the Philippines to complaints. What is more, this could have led to, or given an excuse for, public disorders which may not have been altogether unlikely, in the light of the conditions then existing. Worse still, there would have been no means, under the law, to ascertain whether the aforementioned votes were intended for the incumbent Prsident or for the petitioners. The action of the Commission therein tended, therefore, to insure free, orderly and honest elections—an act which clearly relates to the *conduct* of elections.

On the other hand, in the case of Abcede, no such need for denying the certificate of the petitioner was shown in order to safeguard the orderly *conduct* of elections.

Ruben G. Bala

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Labor Law—*The Industrial Peace Act, Republic Act No. 875, particularly that portion thereof regarding labor disputes and unfair labor practice, does not apply to civic and benevolent institutions, such as the Boy Scouts of the Philippines; and, consequently, the Court of Industrial Relations has no jurisdiction to entertain and decide the action or petition of a dismissed employee for unfair labor practice.*

BOY SCOUTS OF THE PHILIPPINES v. ARAOS

G.R. No. L-10091, January 29, 1958

[11] G.R. No. L-12930, October 22, 1957.

In determining the scope of our labor legislations, the Supreme Court has consistently held, in a series of cases, that non-profit enterprises are exempt therefrom. Thus, the Court declared that the Santo Tomas University Hospital [1] did not come under the Eight Hour Labor Law,[2] nor did the Philippine National Red Cross;[3] and the Quezon Institute [4] is not an "industrial employment" within the meaning of the Workmen's Compensation Act;[5] and San Beda College [6] is not within the sphere of the Court of Industrial Relations Act.[7] The rule definitely set down in these cases is that the above-mentioned labor legislations have no application to organizations and entities which are organized, operated, and maintained not for profit or gain, but for such lofty purposes as charity, social service, education and instruction, and hospital and medical service.

In the case at bar, the Court passed on the scope of the Industrial Peace Act [8] and, maintaining its consistency, read the same exemption into the Act, this time in favor of the Boy Scouts of the Philippines, which the Court described as "a public corporation created under Commonwealth Act 111," "a civic and benevolent institution engaged in the promotion and development of character, patriotism, courage, self-reliance, and kindred virtues in the boys of the country," and "organized and operated not for profit or gain."

Briefly stated, the facts of the case are as follows: Respondent Araos worked with petitioner Boy Scouts of the Philippines as scout executive from 1948 up to June 1, 1954, when she was dismissed because of her "censurable conduct against the best interests of the Boy Scouts of the Philippines." Respondent filed charges against the Boy Scouts of the Philippines for unfair labor practice, alleging that her dismissal was in violation of the Industrial Peace Act, in that she had been dismissed due to her union activities. The Court of Industrial Relations took cognizance of the case, and, after trial, ordered the reinstatement of the respondent. The Boy Scouts of the Philippines petitioned for review on certiorari.

In reversing the decision of the Court of Industrial Relations, the Supreme Court, speaking through Mr. Justice Montemayor, found and held: "that Republic Act No. 875, particularly that portion thereof regarding labor disputes and unfair labor practice, does not apply to the Boy Scouts of the Philippines, and consequently, the Court of Industrial Relations had no jurisdiction to entertain and decide the action or petition filed by respondent Araos."

Justice Montemayor admits that the Court arrived at this conclusion by analogy, in that, being a labor law, the Industrial Peace Act should be given the same application as the Court of Industrial Relations Act, the Eight-Hour Labor Law, and the Workmen's Compensation Act. But the going was not as smooth as it may seem, for the Court had to contend with the adverse interpretation and application by the federal courts, including the United States Supreme Court, of the Wagner Act [9] after which our Industrial Peace is partly modelled,

[1] University of Sto. Tomas Hospital Employees v. Santo Tomas University Hospital, G.R. No. L-6988, May 24, 1954
[2] Com. Act No. 444 (June 8, 1939), as amended by Rep. Act No. 1993 (Nov. 30, 1957).
[3] Marcelo, *et al.* v. Philippine National Red Cross, G.R. No. L-9448, May 23, 1957.
[4] Quezon Institute v. Velasco, 51 O.G. No. 12, 6175 (1955); Quezon Institute v. Paraso, 51 O.G. No. 12, 6175 (1955).
[5] Act No. 3428 (Dec. 10, 1927), as amended by Act No. 3812 (Dec. 8, 1953) and Rep. Act No. 772 (Aug., 1952).
[6] San Beda College v. National Labor Union, *et al.*, 51 O.G. No. 11, 5636 (1955).
[7] Com. Act No. 103 (Oct. 29, 1936).
[8] Rep. Act No. 875 (June 17, 1953), as amended by Rep. Act No. 1941 (Nov. 15, 1957).
[9] 49 Stat. 449 (1947).

and which contains similar definitions of the terms "employer" and "employee",[10] consistently and uniformly holding that non-profit organizations and charitable institution fall within the scope of the term "employer" within the meaning of the Wagner Act.

But our Supreme Court cautioned that the cases decided by the United States federal courts, interpreting the Wagner Act as regards employer and employee, are not applicable. In the first place, while the Wagner Act's definitions expressly enumerates those exempted or excepted threfrom, such as the United States or any state or political subdivision thereof, or any person subject to the Railway Labor Act from the term "employer"; and the individual employed in the domestic service, or any person employed by his parent or spouse from the term "employee"; our Industrial Peace Act's definitions contain no such express exemptions, "and yet those exempted under the Wagner Act are obviously and clearly entitled to exception or exemptions under our own Industrial Peace Act . . . From this, we can logically conclude that our Legislature, in drafting the law, particularly the portion defining employer and employee, did not deem it necessary or advisable to make the obvious and necessary exemptions or exceptions, but left it to the courts for interpretation and application."

Secondly, the main concern of the United States Congress in promulgating the Wagner Act, a federal legislation, was to eliminate the causes of the interruption or obstruction to the free flow of interstate or foreign commerce,[11] so that any entity, regardless of the purpose of its organization and the objective of its operation, whether for profit, or whether charitable, benevolent, philanthropic, as long as its activities cross state boundaries, and labor dispute involving it affect, obstruct, or interrupt interstate commerce or foreign commerce, must necessarily be considered as an employer within the meaning of the Wagner Act.[12] On the other hand, in our jurisdiction, there is no interstate commerce to be considered, the Industrial Peact Act being concerned only with regulating relations between management and labor, not commerce or the flow of commerce.

The Court, thus, felt "free to interpret the term 'employer' in accordance with the ruling spirit that pervades the whole Industrial Peace Act." Basking in his "freedom," Justice Montemayor observed:

> "We are convinced that this Act refers only to organizations and entities created and operated for profit, engaged in a profitable trade, occupation, or *industry*. The law itself is called 'An Act to Promote *Industrial* Peace and for Other Purposes,' and Section 1, paragraph (a) declares the policy of the Act to eliminate the causes

[10] Wagner Act, Sec. 2 (2): "The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization other than when acting as an employer, or anyone acting in the capacity of office or agent of such labor organization."

Sec. 2 (3): "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestice service of any family or persons at his home, or any individual employer by his parent or spouse."

Rep. Act 875, Sec. 2(c): "The term 'employer' includes any person acting in the interest of an employer, directly or indirectly but shall not include any labor organization otherwise than when acting as an employer or anyone acting in the capacity of officer or agent of such labor organization."

Sec. 2(d): "The term 'employee' shall include any employee and shall not be limited to the employee of a particular employer unless the Act xplicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice ond who has not obtained any other substantially equivalent and regular employment."

[11] Sec. 1, pars. 1, 2, 3, 4; Sec. 2, par. 6, Wagner Act.

[12] The Polish National Alliance v. N.L.R.B., 322 U.S. 643 (1944); N.L.R.B. v. Central Dispensary Emergency Hospital, 135 F 2d 852 (1944).

> of *industrial* unrest, and paragraph (b), to promote sound stable *industrial* peace. Then Section 10 entitled 'labor Disputes in *Industries* Indispensable to the National Interest,' provides that when in the opinion of the President, there exists a labor dispute in an *industry* indispensable to the national interest, he may certify the case to the Court of Industrial Relations. From these, it is obvious that what the Legislature had in mind and what it intended the law to govern were industries, whose meaning is too obvious to need explanation. Surely, institutions like hospitals, the National Red Cross, Boy Scouts of the Philippines, Gota de Leche, Philippine Tuberculosis Society, and other organizations whose purpose is not to make profit or gain, but to aid in alleviating the sufferings of humanity and in developing character in the youth of the land, in furnishing milk to babies of the indigent, etc., can hardly be considered industries."

To the foregoing legal considerations, Justice Montemayor added social and economic reasons, which may have all along been the underlying motive of the Courts for its observation that "there is every reason to believe that our labor legislation from Commonwealth Act No. 103, creating the Court of Industrial Relations, down through the Eight-Hour Labor Law, to the Industrial Peace Act, was intended by the Legislature to apply only to industrial employment and to govern the relations between employers engaged in industry and occupations for purposes of profit and gain, and their industrial employees, but not to organizations and entities which are organized, operated, and maintained not for profit or gain, but for elevated and lofty purposes, such as, charity, social service, education and instruction, hospital and medical service, the encouragement and promotion of character, patriotism and kindred virtues in the youth of the nation, etc." These socio-economic considerations, embodied in Justice Montemayor's "concept or some of the reasons for the promulgation of labor relations laws," may be briefly summarized, thus: that the intention of business or industry organized for purposes of gain is to make as much profits as possible, oftentimes at the expense of the helpless employees or laborers; that, recognizing this evil and the disadvantageous position of unorganized labor, the State, through labor relations acts, allowed and even encouraged, organization of labor unions through which the laborers may collectively bargain, or even resort to such coercive measures as strike and picketing, to force the capitalists to share the profits with them; but that in the case of entities or instituions organized no for profit but for humanitarian, charitable, benevolent, and kindred purposes, the reason for the promulgation and operation of these labor relations acts to aid laborers and employees in general is absent, since there are no profits in which labor may demand a share in the form of higher wages; and that the application of these statutes to charitable institutions might prove disastrous in some cases, as when nurses, attendants and laborers of charity hospitals tage a strike during an epidemic, or when employees and laborers of the Red Cross refuse to work on the occasion of a calamity.

Nicodemo T. Ferrer

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Labor Law—*A prior collective bargaining history is not a decisive factor in the determination of a collective bargaining agent; the test is community or mutuality of interest.*

DEMOCRATIC LABOR ASS. v. CEBU STEVEDORING CO.

G.R. No. L-10321, February 28, 1958

A collective bargaining representative is the exclusive agent of all the workers and employees of a given company for the purpose of collective bar-

gainnig in respect to rates of pay, wages, hours of employment, or other conditions of employment.[1] That is why a majority of the employees of the appropriate unit select that agent which could bargain for them the best wages and working conditions.[2]

As has been said, it is the *majority* of the employees that select the representative. As to what constitutes a "majority", the Court, applying the "political principle of majority" interpretation, has consistently held that it is the one designated by a majority of the *eligible* employees voting in the election, regardless of whether or not a majority of those eligible have participated in the election, provided the election is open and fairly representative of the sentiment of the employees.[3] The reason for the interpretation is to "prevent an indifferent minority from stopping the resolution of a certification election.[4] As regards the problem of who are the eligible employees, the Court [5] takes into account the payroll period immediately preceding the issuance of its order.

The real problem, however, in the selection of the bargaining representative is the determination of the appropriate collective bargaining unit—the group that will ultimately choose the agent. The National Labor Relations Board, counterpart of our Court of Industrial Relations, laid down several factors which should be considered, namely: (1) a prior collective bargaining history; (2) the Globe doctrine;[6] and (3) substantial similarity of work, duties compensation and working conditions.[7]

It must be borne in mind however, that the CIR, by virtue of its power of certification under Section 12(b) of the IPA,[8] has the primary responsibility of determining the appropriate unit for collective bargaining purposes. The factors named above are merely the guidepost utilized by the Court in its selection. This power has been held to be discretionary,[9] but once exercised, it is entitled to almost complete finality unless its action is arbitrary or capricious.[10]

In the case at bar, the Cebu Stevedoring Co. employed in its business two sets of workers, namely, the regular and permanent on one hand, and the daily or casual on the other. A problem arose as to whether there should be a single collective bargaining agent to represent the two sets or whether each set should have its own bargaining representative. It appeared that most of the permanent workers were affiliated with the petitioner labor association while the majority of the temporary laborers belonged to the Cebu Stevedores Association.

The petitioner claimed that it had a previous collective bargaining history with the employer and should therefore be the sole representative of the latter's laborers both permanent and casual.

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[1] Rep. Act No. 875 (The Industrial Peace Act, June 17, 1953), Sec. 12(a).
[2] NLRB, Tenth Annual Report 27 (1945).
[3] NLRB v. Standard Lime & Sonte Co., 149 F,2d (1945).
[4] Virginian Railway Co. v. System Federation No. 40, 300 U.S. 515.
[5] The Court of Industrial Relations created by Com. Act No. 103.
[6] This doctrine considers the will of the employees, irrespective of their employment status, the controlling factor in the determination of the bargaining agent. Whatever is chosen by them shall be their representative.
[7] ROTHERNBERG, LABOR RELATIONS 659
[8] Sec. 12(b) of the Industrial Peace Act provides: "Whenever a question arises concerning the representation of employees, the Court may investigate such controversy and certify to the parties in writing the name of the labor organization that has been designated or selected for the appropriate bargaining unit. . . . if there is any reasonable doubt as to whom the employees have chosen as their representative . . ., the Court shall order a secret ballot election to be conducted by the Department of Labor, to ascertain who is the freely chosen representative . . . Such ballotingshall be known as a 'certification election' . . . The organization receiving the majority of votes cast in such election shall be certified as the exclusive bargaining representative of such employees."
[9] NLRB v. May Dept. Store Co. U.S.
[10] Marshall Field & Co. v. N.L.R.B., 135 F.2d. 391

In rejecting this contention, the Court ruled that a prior collective bargaining history is not a decisive factor in the determination of a collective bargaining agency. Where the circumstances had been so altered or where the reciprocal relationship of the employer and the particular bargaining unit has been so changed that the past mutual experience cannot be considered as a reliable guide to the present determination of the bargaining unit, then the prior collective bargaining history should be brushed aside and only the prevailing facts and factors should control the determination.

The Supreme Court further elucidated on the matter when it held:

> "The test of the grouping is community or mutuality of interest. And this is so because the basic test of an asserted bargaining units' acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights."

Thus, the most efficacious bargaining unit is one which is comprised of constituents enjoying a community of interest and economic or occupational unit. The Democratic Labor Association should therefore be the representative of the permanent employees only. The defendant should be the agent of the other set of workers, the daily or casual employees.

Alfonso C. Bince, Jr.

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Land Registration Law—*Sale of homestead by applicant within five-year prohibitory period void, and contract deemed inexistent; the principle of* in pari delicto *is not applicable to a homestead which has been illegally sold in violation of the homestead law, action for the declaration of the inexistence of a contract imprescriptible.*

ANGELES, et al. v. COURT OF APPEALS, et al.
G.R. No. L-11024, January 31, 1958

Many cases have been decided by the Supreme Court[1] ruling that the conveyance or sale of a homestead by the applicant within five-year prohibitory period is null and void from its inception, and ordering that the land conveyed be returned to the applicant upon the return to the purchaser of the amount of the purchase price or consideration, applying Section 119 of Commonwealth Act No. 141. This principle was reiterated in the instant case.

The relevant facts are: On March 12, 1935, Homestead Patent No. 31618 was issued in the name of Juan Angeles. On May 28, 1937, Juan Angeles sold the homestead to the defendants Gregorio Santa Ines and Anastacia Divino, who thereupon took possession thereof. Juan Angeles died in 1938, and thereafter his heirs, petitioners herein, sought to recover the land from the defendants on the ground that the sale was null and void. The defendants refused to return the land; so said heirs, petitioners herein, brought this action in the

[1] Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955; Acierto v. De los Santos, G.R. No. L-5828, Sept. 29, 1954; De los Santos v. Roman Catholic Church of Midsayap, 50 O.G. 4, 1588 (1955); Register of Deeds v. Director of Lands, 72 Phil. 313 (1941); Villanueva v. Paras, 69 Phil. 384 (1940); Labrador v. De los Santos, 66 Phil. 479 (1938); Sabas v. Garma, 66 Phil. 471 (1938).

[2] Sec. 118 of Com. Act No. 141 provide: "Except in favor of the Government or any of its branches, units, or institution, or legally constituted banking corporations, land acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of approval of the application and for a term of five years from and after the date of the issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. . . ."

Court of First Instance of Nueva Ecija. The Court of First Instance held that the sale was void, because it was executed within five years from the issuance of the patent; but, since both the vendor and the vendee acted in bad faith, they should be considered as having acted in good faith, pursuant to Article 364 of the Civil Code of Spain,[3] and that the defendants are entitled to the fruits of the land. It further held that the right of action of plaintiffs had prescribed before the complaint was filed on June 12, 1950, in acordance with Section 40 of Act No. 190[4]

On appeal, the Court of Appeals reversed the lower court's ruling on the ground that the principle of *in pari delicto* found in Paragraph of Article 1306 of the Spanish Civil Code[5] is applicable in this case. Hence, the value of the products gathered from the land by the defendants the expenses incurred in the building of a dike and the useful maintenance of the land by the defendants should be returned to the plaintiffs.

The plaintiffs presented this petition for review, and raised the following issues: (1) whether the doctrine of *in pari delicto* is applicable to sale or homesteads; and (2) whether the defense of prescription can be raised, it appearing that when the action was brought in 1950, about 13 years has elapsed since the date of the sale.

Our Supreme Court reversed the Court of Appeals and held that the sale of the homestead is null and void, and ordered the defandants to return the same to the plaintiffs upon the payment by the latter to them of the sum of ₱2,500, representing the original purchase price. The claim of plaintiffs for the value of the products of the land and that of the defendants for the expenses in the construction of the dike were both dismissed.

Speaking through Justice Labrador, the Supreme Court disposed of the first issue by quoting from a case:[6]

> "But we doubt if these principles cannot be invoked considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed policy or public interest."

As to whether the defense of prescription can be sustained, the Supreme Court answered in the negative. Said the Court, quoting the case of *Eugenio, et al. v. Pertido, et al.*, G.R. No. L-7083, May 19, 1955:

> "There is no question that the sale in March, 1932 having been made within five years from 'the date of the issuance of the patent' was 'unlawful and null and void from its execution'. . . ."
>
> "Under the existing classification, such would be 'inexistent' and 'the action or defense for declaration' of such inexistence 'does not prescribe.' (Art. 1410, New Civil Code).[7] 'While it is true that this is a new provision of the Civil Code, it is nevertheless a principle recognized since Tipton v. Velasco, 6 Phil. 67 (1906)

[3] Art. 364 of the Civil Code of Spain provides: "When there has been bad faith, not only on the part of the possessor who built, sowed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith."

[4] Sec. 40 of Act No. 190 provides: "*Period of Prescription as to Real Estate.*—An action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues."

[5] Art. 1306, par. 1, of the Spanish Code provides: "When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, or enforce the performance of the undertaking of the other party."

[6] Rellosa v. Gaw Chee Hun, G.R. No. L-1411, Sept. 29, 1953.

[7] Art. 1410 of the Civil Code provides: "The action or defense for the declaration of the existence of a contract does not prescribe."

that 'mere lapse of time cannot give efficacy to contracts that are null and void.' " [8]

With respect to the price that the defendants paid for the land, in view of the rule that no one should enrich himself at the expense of another,[9] the Supreme Court decreed that said amount should first be returned by the plaintiffs to the defendants before the plaintiffs may be allowed to recover back the possession of the homestead, subject of the present action.

Aurelio V. Cabral, Jr.

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Land Registration Law—*Sale of homestead by applicant within five-year prohibitory period void, and the contract deemed null and void from its inception.*

SANTANDER, et al. v. VILLANUEVA AND ASUNCION
G.R. No. L-6184, February 28, 1958

It has been the consistent ruling of our Supreme Court that the conveyance or sale of a homestead by the applicant within the five-year prohibitory period is null and void from its inception, and the land conveyed should be returned to the applicant upon the return to the purchaser of the amount of the purchase price or consideration.[1] This ruling was reiterated in the present case, applying Section 119 of Commonwealth Act No. 141.[2]

It appears that Vicente Santander, one of the plaintiffs herein, acquired a homestead patent over six hectares of land on July 29, 1937, and on July 8, 1938, Original Certificate of Title No. 1497 was issued to Santander. On February 26, 1942, Santander signed a document purporting to be an absolute sale of a two-hectare portion of his homestead to Celedonia Asuncion for ₱480,000.00. It was expressly stipulated in the deed that the conveyance was to become effective only after the approval of the authorities concerned. Seven years later, on November 2, 1948, the heirs of Santander commenced this action to recover the land on the claim that the contract was a mere mortgage of the homestead, and that the plaintiffs attempted to repay the debt but was refused by the defendants. The Court of First Instance held that the contract was a deed of sale, but which was void, because it was executed within five years from the issuance of the patent, pursuant to Section 119 of Commonwealth Act No. 141.[3] It likewise held that, since the value of the land in question had increased, the plaintiffs could repurchase the land in question from the defendants

[8] There is an express provision in the Land Registration Act which the writer believes is also applicable. Said provision is Sec. 46 of Act No. 496, which provides that "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."

[9] This principle was adopted by Civil Code. Art. 22 now provides: "Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[1] Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955; Acierto v. De los Santos, G.R. No. L-5828, Sept. 29, 1954; De los Santos v. Roman Catholic Church of Midsayap, 50 O.G. 4, 1588 (1955)r Register of Deeds v. Director of Lands, 72 Phil. 313 (1941); Villanueva v. Paras, 69 Phil. 384 (1940); Labrador v. De los Santos, 66 Phil. 479 (1938); Sabas v. Garma, 66 Phil. 471 (1938).

[2] Said sec. 118 of Com. Act No. 141 provides: "Except in favor of the Government or any of its branches, units, or institution, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period . . ."

[3] *Ibid.*

but at its present value of ₱60,000.00. The plaintiffs appealed, alleging that they should pay only ₱480,000.00, the original purchase price, and not ₱60,000.00.

> "There is no question that the sale was made within five years from the issuance of appellant Santander's homestead patent on July 29, 1957. It has been the consistent ruling of this Court that conveyances of homestead of this nature are null and void from inception . . .;[4] and in line with this precedent, the document Exh. 1 must be declared null and void, and the land conveyed ordered returned to appellants upon their return to appellees of the purchase price of ₱480,000."

As to the issue of whether the Court of First Instance erred in ordering the appellants to repurchase the land from the appellees for ₱60,000.00, the Supreme Court held that the lower court erred on this point. The Court reasoned out by saying that it could not find any legal sanction for the judgment of the lower court.

Our Supreme Court further opined that the subsequent approval of the conveyance by the Secretary of Agriculture and Natural Resources[5] on August 2, 1947 could not have validated a sale that was void from its inception. The Court said:

> "As we have held in the cases of De los Santos v. Roman Catholic Church of Midsayap, *supra*, and Pascua v. Talens, 45 O.G. No. 9 (Supp.) 413, the provision of law which prohibits the sale or encumbrance of the homestead within five years after the grant of the patent is mandatory, and can not be obviated even if official approval is granted beyond the expiration of the period. Besides, the approval of the Secretary of Agriculture and Commerce . . . appears to have been given upon the eroneous assumption that the patent was issued in 1936, in which case said sale would have been executed after five years from the date of Santander's patent and no longer prohibited by law. The truth, however, is that Santander's patent was issued on July 29, 1942, or within five years from the date of the patent. The approval of the Secretary was, therefore, based on a mistake of fact, and as such is likewise void and of not effect whatsoever."

The Court refused to give any other relief to the appelles in this case, except the return of the sum of ₱480,000.00,[6] the original purchase price, for they were themselves in *pari delicto* with homesteader Santander.

Aurelio V. Cabral, Jr.

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Legal Ethics—*Conviction for estafa involves moral turpitude. By acts of the second respondent he has shown that he is unworthy to continue as a member of the Bar and is therefore disbarred from the practice of law.*

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[4] In the opinion of the writer, the Supreme Court meant to say that the contract in question falls under art. 1409 of the Civil Code. Said article provides:

"The following contracts are inexistent and void from the beginning:

x x x x x

"(7) Those expressly prohibited or declared void by law. These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

Granting that the contract in question falls under the category of an inexistent contract and the fact that the action was brought only after seven years from the death of the applicant (a point not touched upon by the Supreme Court), I submit that the doctrine in the case of Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955, should be applied in this case. Said case held that the contract being void, it falls under the category of inexistent contracts. And under art. 1410 of the Civil Code, "the action or defense for the declaration of the inexistence of a contract does not prescribe." While this is a new provision, it is a principle recognized since Tipton v. Velasco, 6 Phil. 67, that "mere lapse of time cannot give efficacy to contracts that are null and void."

[5] Sec. 118, par. 2 of Com. Act No. 141, as amended, provides:

"However, no alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds."

[6] This is a Latin phrase, and it simply means equally at fault.

IN THE MATTER OF EDUARDO A. ABESAMIS
Adm. Case No. 277, January 17, 1958

IN RE ATTORNEY JESUS T. QUIAMBAO
Adm. Case No. 195, January 31, 1958

One of the grounds for which a member of the bar may be removed from his office as an attorney in his conviction of a crime involving moral turpitude.[1] What constitutes moral turpitude, or what will be held such, is not entirely clear. A contract to promote public wrong, short of crime, may or may not involve it. If parties intend such wrong, as where they conspire against the public interest by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude. When no wrong is committed, through error of judgment, it is otherwise.[2]

In an attempt to define the limits of the term moral turpitude, our Supreme Court, in the case of *In Re Basa*,[3] quoted with approval the definition set forth in the case of *In Re Hopkins*:[4] Moral turpitude, as used in the statute providing for conviction of crime involving moral turpitude, includes everything done contrary to justice, honesty, modesty or good morals.

With this definition as a basis, the Supreme Court enunciated the principle that conviction for the complex crime of estafa through falsification of a document by a public officer involves moral turpitude and is a cause for disbarment.

In the first case of *In Re Abesamis*, the Solicitor General seeks the disbarment of the respondent on the ground that he was convicted of the complex crime of estafa through the falsification of a document by a public officer. The facts on which his conviction was based are as follows: The respondent was appointed justice of the peace for the circuit comprising the municipalities of Echague and Angandanan, province of Isabela, with a monthly salary of ₱220.00. As justice of the peace, he collected as his salary for the month of December, 1948 from the municipal treasurer of Echague, the sum of ₱220.00 less ₱6.60 as insurance premiums, and again collected a like sum as his salary for the same month from the municipal treaurer of Angandanan. In the succeeding month of January, he reapted the same acts. To accomplish the collection of the sums of money in excess of what he was entitled to, he falsified the corresponding vouchers. The Court held that conviction for estafa involves moral turpitude and since conviction of a crime involving moral turpitude is a ground for disbarment, Atty. Abesamis was removed from the roll of attorneys.

In the second case of *In Re Quiambao*, the respondent was likewise disbarred from the law practice. The acts which constituted sufficient ground for his disbarment are as follows: Atty. Jesus Quiambao, through his brother Manuel, engineered a scheme to induce Pedro to purchase a parcel of land, knowing fully well that it was not for sale because Yek Tong Lin Fire and Marine Insurance Co., the purported seller, was just a mortgagee and not in a position to sell it. In that way, he succeeded in taking from Peralta ₱12,000.00 which he appropriated for his own use and benefit. He fraudulently and maliciously induced Peralta to sign a document reciting that the sum of

[1] RULES OF COURT Rule 127, sec. 25.
[2] Pullman's Palace Car Co. v. Central Transportation Co., 65 Fed. 158, as cited in 27 CYC. 912.
[3] 41 Phil. 276 (1920).
[4] 54 Wash. 569, 103 Pac. 805 (1909).

₱12,000.00 now in the custody of Atty. Quiambao, was periodically withdrawn from him by Manuel Quiambao at the behest and/or with the knowledge and consent of Peralta, and at the same time caused Peralta to execute another document wherein Peralta undertook to collect from Manuel Quiambao the whole sum of ₱12,000.00 and released Atty. Quiambao from liability. The Court held that by his acts, the respondent has shown that he is unworthy to continue as a member of the bar.

In the United States, crimes similar to estafa have been considered as involving moral turpitude. In one case,[5] it was held that everything done contrary to justice, honesty, modesty or good morals is done with turpitude, so that embezzlement involves turpitude. Again, in the case of *In Re McCarthy*,[6] the Court opined that moral turpitude extends to cases of obtaining money under false pretenses. The Court also expressed that same view with respect to extortion.[7]

Cherry-Lynn M. Sunico

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Naturalization Law—*Making false statements on material matters in the declaration of intention or in the petition for citizenship indicates that petitioner's character has not been irreproachable and reflects against his moral conduct; defective affidavit of character witness is fatal to the petition.*

SY CHUT v. REPUBLIC

G.R. No. L-10202, January 8, 1958

The unrippled current of authority is to the effect that naturalization laws should be rigidly enforced and strictly construed in favor of the government and against an application for citizenship.[1] This necessarily stems from the fact that naturalization as a process of adopting a foreigner and clothing him with the privileges of a native citizen,[2] is an act of grace, not a right,[3] and is purely statutory.[4]

An alien who seeks political rights as a member of a nation can rightfully obtain them only upon terms and conditions specified by Congress.[5] It is therefore incumbent upon the applicant for naturalization to show by competent proof that he possesses all the qualifications and none of the disqualifications provided by law.[6]

Under our Revised Naturalization Law [7] one of the qualifications required of the applicant is that he must be of good moral character and must have conducted himself in a proper and irreproachable manner.[8] There are no fixed

[5] In Re Kirby, 73 N.W. 92 (1897).
[6] 42 Mich. 71, 51 N.W. 963 (1897).
[7] In Re Coffry, 56 Pac. 448 (1899).

[1] 3 C.J.S. 833.
[2] BALLENTINE'S LAW DICTIONARY.
[3] Citizenship in this republic, be it so small and weak, is always a privilege. Ng Sin v. Republic, G.R. No. L-7590, Sept. 20, 1955.
[4] 2 AM. JUR. 562.
[5] Ng v. Republic, 50 O.G. 4, 1599 (1954); AQUINO, LAW OF PERSONS AND FAMILY RELATIONS 85 (1956)
[6] Te Chao Ling v. Republic, G.R. No. L-7346, Nov. 25, 1955; Ang Ke Choan v. Republic, G.R. No. L-6330, Aug. 25, 1954; Bell v. Atty. General, 56 Phil. 667 (1932).
[7] Com. Act No. 473 (June 17, 1939).
[8] Sec. 2, par. 3 provides: "He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living."

rules by which to gauge the character and conduct of the applicant,[9] for what constitutes a good moral character is not a constant quantity susceptible of definition.[10] The court should consider each case in the light of the circumstances surrounding it.

Is the making of false statements on material matters in the declaration of intention [11] or in the petition for citizenship,[12] both of which are sworn to, sufficient reason for denying his petition on the ground that it indicates that applicant's character has not been irreproachable and reflects against his moral conduct?

In the above-mentioned case, our Supreme Court answered this querry in the affirmative. In this case, the petitioner stated in his declaration of intention and in the petition for citizenship that he had not been convicted of any crime and that he had conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines. However, the record shows that the petitioner has ordered the construction of a two-story building in the city of Manila without securing the building permit required by a municipal ordinance, for which reason he was charged criminally, convicted therefore and was sentenced to pay a fine of ten pesos. The proper Court of First Instance denied the petition. On appeal, the Supreme Court affirmed [13] the judgment, stating:

> "Hence, he made in the declaration of intention and the petition for naturalization, both of which are sworn to, false statements on material matters. Apart from thus indicating that appellant's character has not been irreproachable, the foregoing reflects against his moral conduct." [14]

The other ground for the rejection of the petition was that it was fatally defective since the affidavit of one of the witnesses did not state that the affiant personally knows [15] the petitioner to be a resident of the Philippines for the period of time required by the law.[16] The affidavit merely states that the affiant had known the applicant since 1946 or less than ten years [17] prior to February 13, 1954 when the petition was filed. Hense, it did not comply with the requirement. Noncompliance with the provision of the law relative to the contents of the petition and of its annexes renders the petition void.[18]

Hilario G. Davide, Jr.

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[9] SINCO, PHILIPPINE POLITICAL LAW 508 (10th ed. 1954).
[10] 2 AM. JUR. 568.
[11] Com. Act No. 473, sec. 5.
[12] *Ibid.*, sec. 7.
[13] Petitioner tried to prove that said false statements were unintentional for he was unaware of his prosecution and conviction. However, the Court easily dismissed this contention by saying that the appellant, being the defendant in the criminal case, is presumed to have been served with the corresponding notice. Besides, on the witness stand, he did not deny the receipt thereof, and he admitted his prosecution and conviction.
[14] The fact of conviction itself for violating the ordinance is enough reason for denying the petition. The holding of the courts is practically universal that the commission of a crime by an applicant is sufficient reason for rejecting his citizenship on the ground that he has not behaved as a man of good moral character. 2 AM. JUR. 568.
[15] This requirement and the other qualifications of the witness are matters of more than ordinary significance because the witness who appears before the court is in a way an insurer of the character of the applicant concerned, and on his testimony, the court is compelled to rely. Cu v. Republic, G.R. No. L-3018, July 18, 1951; SINCO, *op. cit.*, supra note 9, at 512.
[16] Com. Act No. 473, sec. 7 provides: ". . . The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two creditable persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this act . . .."
This period of time has been interpreted to mean ten years before the petition under sec. 2 and five years under sec. 3 of the Revised Naturalization Law. Lay Kock v. Republic, G.R. No. L-9646, Dec. 21, 1957; Awad v. Republic, G.R. No. L-7685, Sept. 23, 1955; I PADILLA, CIVIL LAW ANNOTATED 155 (1956 ed.).
[17] This is the period required since applicant does not possess any of the special qualifications provided for in sec. 3 of the Revised Naturalization Law.
[18] Cu v. Republic, G.R. No. L-3018, July 18, 1951; AQUINO, *op. cit. supra* note 5, at 85.

Naturalization Law—*Witness is not required to have an uninterrupted or continuous acquaintance with applicant for the period of time required by law and it is sufficient that the resultant period of acquaintance at least equals the period so required; sarcastic utterances against the Nationalization Law are not anti-Filipino as to be a ground for denying an application.*

YAP SUBIENG v. REPUBLIC OF THE PHILIPPINES
G.R. No. L-10234, January 24, 1958

The question affecting the qualifications of a witness in a naturalization case is a matter of utmost importance, for upon his testimony greatly depends the success or failure of a petition for naturalization. And because it is the only evidence on which the court can rely to determine the fitness of the petitioner to acquire the citizenship he wants to embrace, a high degree of credibility is demanded from the witness, since he is regarded as the insurer of the character of the petitioner.[1]

One of the qualifications of a witness is that he must state in his affidavit that he personally knows the petitioner to be a resident of the Philippines for the required period of time.[2] This is specifically required by law to ascertain how far the petitioner has conducted himself during the period, whether he has conducted himself in a proper and irreproachable manner and whether he has mingled socially with the Filipinos and has evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos.[3]

A witness who fails to have this qualification is incompetent to testify on behalf of the applicant and on this ground alone the petition shall be rejected. Thus a petition was denied simply because the witnesses declared under oath that they personally knew and were acquainted with the petitioner in he Philitppines "since more than five years." [4] An application was likewise denied where the witness merely stated that he had known the petitioner since 1946 or less than ten years prior to February 13, 1954, when the petition was filed.[5]

Bearing in mind the provision of law on this matter [6] and the decisions of our Supreme Court construing the same, an interesting question may be propounded: Is it necessary that the witness, in order that he can be said to have personally known the petitioner to be a resident of the Philippines for the required period, should have an uninterrupted or continuous acquaintance with the petitioner for the same period?

The decision of the Supreme Court in the above-entitled case is singularly significant.

Victoriano Yap Subieng filed his petition for naturalization in the proper Court of First Instance. At the hearing sometime in 1955, he introduced Verallo as one of his character witnesses.[7] Verallo admitted that while he came

[1] Chan Pong v. Republic, G.R. No. L-9153, May 17, 1957.
[2] Com. Act No. 473 (June 17, 1939), sec. 7 of which provides: "The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act . . ."
This period of time means ten years before the petition under sec. 2 and five years under sec. 3 of the Act. Lay Kock v. Republic, G.R. No. L-9646, Dec. 21, 1957; I PADILLA, CIVIL LAW ANNOTATED 155 (1956 ed.).
[3] Dy Suat Hong v. Republic, 54 O.G. 7, 2160 (1958).
[4] Tian v. Republic, G.R. No. L-6029, April 12, 1954.
[5] Sy Chut v. Republic, G.R. No. L-10202, Jan. 8, 1958.
[6] *Supra*, note 2.
[7] The petitioner must present the very witnesses who signed the joint affidavit supporting his petition. If no valid or legitimate excuse for not presenting any of them is given, he may

to know of the applicant in 1939, he however lost contact of him in 1941, and only met him again in 1952. The lower court granted the petition. On appeal, the Government contended, among others, that the lower court erred in not declaring Verallo incompetent to testify because from his admission it is clear that he has not satisfied the requirement of the law that he must have at least known the petitioner continuously for five years.[8] The Supreme Court, speaking through Justice Angelo Bautista, ruled the contention as untenable and in support thereto went on to say:

> "It appears however that this witness has known petitioner from 1939 to 1941 when he lost contact of him and from 1952 to 1955 when he actually testified which give a resultant period of acquaintance of around six years. This period is more than sufficient to satisfy the requirement of the law, for undoubtedly one cannot exact a more stringent interpretation considering the well known rule that laws regulating citizenship should receive a liberal construction in favor of the claimant. Roa v. Collector of Customs, 23 Phil. 315; See also U.S. v. Ong Tianse, 29 Phil. 333." [9]

In this same case, the Government also contends that the petition should have been denied on the ground that applicant was anti-Filipino in his behavior. The oppositor tried to draw this conclusion from the testimony of two witnesses who signed a petition opposing the grant of citizenshp to the eiffect that at one time and in the presence of several persons, the applicant sarcastically uttered the following: "The Philippine Government has nationalized almost everything including labor, agriculture, professional practice and the only thing that the Philippine Government cannot nationalize is Nationalist China." This remark was directed against the Nationalization Law.[10]

Evidently, there is no clear-cut rule to determine whether or not an act or utterance is anti-Filipino. Each case should be decided in the light of the circumstances surrounding it.

Nor is the sarcastic remark of the petitioner indicative of an anti-Filipino behavior as to be a good ground for a denial of the petition?

Our Supreme Court gave a strong negative answer. It reasoned out that said sarcastic remarks "cannot be given much importance considering that at that time conflicting opinions had been expressed as regards the propriety of its (The Nationalization Law) enactment to the extent that there were even Filipinos who manifested their disapproval of the law."

Hilario G. Davide, Jr.

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Special Proceedings—*In the case of a person declared by a final judgment or order to be an incompetent, the manifestation by a husband cannot be interpreted as depriving her of her right to appeal in the absence of an express consent.*

ESPINOSA v. AQUINO and ESPINOSA

G.R. No. L-11721, March 26, 1958

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not change nor substitute other persons for said affiants, otherwise the proceeding should be declared void. Singh v. Republic, 51 O.G. 10, 5172 (1955); Cu v. Republic, 51 O.G. 11, 5625 (1955).

[8] Since the petitioner in this case has the special qualification under sec. 3, par. 5, thereby reducing the ten-year period under sec. 2 to five years. See also note 2, *supra*.

[9] The rule is rather erroneously invoked. What is involved here is a naturalization law. Naturalization laws should be strictly enforced. Ng v. Republic, 50 O.G. 4, 1599 (1954), *citing* the ruling in United States v. Ginsberg, 243 U.S. 472 (1916) to the effect that "courts are without authority to sanction changes and modifications; their duty is rigidly to enforce the legislative will in respect of the matters so vital to the welfare"; 3 C.J.S. 833.

[10] Rep. Act No. 1180 (June 19, 1954), entitled: An Act to Regulate the Retail Business.

It is settled doctrine in our jurisdiction that a person declared by a final judgment or order to be an incompetent has the right to appeal therefrom.[1] Of course, just like any other right, his right to appeal[2] may be waived, as when the incompetent consents thereto in writing. In the case at bar, the question was raised whether the acceptance by the husband of his appointment as guardian of his wife's paraphernal properties has the effect of waiver on the part of the latter of her right to perfect an appeal.

Special proceedings was instituted by Julia Espinosa seeking to declare her sister Inocencia Espinosa an incompetent and to have the latter's properties placed under guardianship.[3] It appears from the records that in 1955 Inocencia was 99 years old, that she was legally married in 1950 to Vicente Figueroa, about 40 years of age, and that the properties owned by Inocencia were worth ₱65,000 to ₱75,000. Figueroa, in turn, opposed the petition on several grounds, but said motion to dismiss was denied for lack of merit.

Following an order to amend her petition, petitioner filed a second amended petition, praying that a person other than Figueroa be appointed over the person and properties of Inocencia. The spouses Figueroa and Espinosa filed an opposition to this amended petition, praying that the petition be dismissed and in the event that the court would find Inocencia an incompetent, to appoint Figueroa as guardian over her person and properties.

After an examination, an order was issued declaring Inocencia an incompetent based on the finding that said oppositor was actually in the state of senility on account of her advanced age and that she was already physically and mentally infirm. As petitioner apparently withdrew her opposition to the appointment of Figueroa as guardian of the incompetent, the court appointed him as such guardian over the properties of his wife.

However, on October 10, 1956, Inocencia, through counsel, filed a notice of appeal from the court's order of September 27, 1955, denying oppositor's motion to dismiss, the order of November 23, 1955, denying oppositor's motion for reconsideration and from the order of September 25, 1956, declaring her an incompetent.

The lower court held that an appeal could not be taken from the orders of September 27 and November 23, 1955, both being interlocutory, neither from the order of September 25, 1956, declaring her an incompetent, for the reason that while an incompetent may appeal from an order declaring her as such,[4] that right could no longer be invoked where the incompetent waived the same in writing. The court maintained that the manifestation made by Figueroa, husband of the movant and who was actively opposing the petition, gave the impression that Inocencia must have consented to her being declared as incompetent and to her husband's appointment as guardian of her paraphernal properties.

The instant petition for mandamus was thus filed, with a prayer for the issuance of a writ of preliminary injunction to restrain the respondent Judge

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[1] Garcia v. Sweeney, 5 Phil. 344 (1905).

[2] It should be noted that the procedure of appeal is the same in special proceedings as in civil actions. Thus, there is no special provision regarding the manner of perfecting an appeal in special proceedings.

[3] See Rule 94, RULES OF COURT.

[4] The rule in American jurisprudence, followed here, is that an appeal from the decision on an application for the appointment of a guardian usually may be taken by any person who has an interest in the proceedings and is aggrieved by the decision. Scott v. Boyce, 110 S.W. 2d 497, 194 Ark. 1165.

from enforcing his aforementioned order of October 11, 1956, ordering Figueroa to qualify as guardian of her properties.

The Supreme Court granted the petition. In the instant case, said the Court, while it is true that the spouses Espinosa and Figueroa were the oppositors to the petition filed with the court below and that the latter were mos active in sustaining the competency of the wife, considering he nature of the action, there could have been no privity of interest between the husband and the wife. The husband's subsequent acquiescence, therefore, to the order declaring her an incompetent cannot be taken to prejudice her right to appeal therefrom. Furthermore, the subsequent filing of a notice of appeal with prayer for the approval of the appeal bond and record on appeal by Inocencia unmistakably leads to the conclusion that she does not share her husband's view or stand. As the Court concluded:

> "W have to recognize the fact that no one could be more interested in sustaining his competency to manage his properties than that person himself, and as the manifestation of a husband cannot be given effect as to wrest from the wife her right to appeal in the absence of an express consent thereto in writing or evidence of her amenability to an order declaring her an incompetent . . ."

there is no reason why Inocencia cannot be allowed to perfect her appeal.

Teodoro D. Regala

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Special Proceedings—*The one-month period allowed to late creditors for claims against an estate should be counted only from the order authorizing the claim.*

PAULIN v. AQUINO, *et al.*

G.R. No. L-11267, March 20, 1958

Under our Rules of Court, it is provided that the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of court immediately after granting letters testamentary.[1] The time for the filing of claims is fixed by the court, but it "shall not be more than twelve months nor less than six months after the date of the first publication of the notice."[2] Such a period is required in order to insure a speedy settlement of the affairs of the deceased person and the early delivery of the property to the persons entitled to receive the same.[3]

Nevertheless, it is also realized that there may be occasions when a claim should in all justice and fairness be allowed against the estate even after the expiration of the period fixed by the court. This is made manifest in the second sentence of Section 2 of Rule 87:

> "However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one month."

The meaning of the phrase "within a time not exceding one month" was clarified in the instant case.

[1] Rule 87, sec. 1, Rules of Court.
[2] Rule 87, sec. 2, Rules of Court.
[3] MORAN, RULES OF COURT, II, 421-422.

Alfredo Aquino, Sr., died on February 12, 1953. On June 24, 1953, an order for the issuance of letters of administration to his widow, Matilde Aquino, was issued, fixing a period of six months within which claims against the estate may be filed. Teodoro Paulin, the claimant in this case, filed a claim for ₱18,950 on April 30, 1954. It appears, however, that on March 30, 1955, considerable time after the period for filing claims had already expired, the court made a finding that the administratrix had fraudulently omitted certain assets amounting to around ₱320,000 and a parcel of land in her inventory. On May 5, 1955, Paulin filed a motion to extend the period for filing of claims from 6 months to 12 months, but the motion was denied. Again, on June 30, 1955, Paulin moved for permission to file a claim against the estate, on the ground that the fraudulent omission by the administratrix in her inventory had induced him not to file his petition or his claim. This petition was again denied by the lower court, Judge Yatco holding that inasmuch as the last day to file claims expired on January 2, 1954,[4] even if the same were extended for one month, the motion made in June, 1955 would be far beyond the expiration of the period to file claims.

The Supreme Court held that the lower court was in error. It seems that the lower court was under the impression that the one-month extension period allowed for filing of claims should start from the expiration of the period previously fixed for the filing of claims, which in this case was January 2, 1954. This is a mistaken belief, according to Justice Labrador, since the one-month period should begin only from the order authorizing the claim. In the case at bar, the order of final distribution had not yet been entered. Further, the fraudulent manipulations by the administratrix should be considered as a sufficient justification for allowing an extension.[5] The order appealed from was therefore reversed.

The position taken by the Supreme Court in this case [6] is a wise one, in consonance with reason and logic. To hold that the one-month period mentioned in Section 2, Rule 87 should begin from the expiration of the original time fixed by the court would bar many claimants who might, with some measure of justification, be able to show that they could not have filed their claims any earlier. At any rate, the allowance of a one-month extension, assuming that the order of distribution has not yet been entered, is always left to the court's discretion [7] and it should be open to a creditor, who has shown good cause and deserves merit, to file a late claim.

Teodoro D. Regala

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Taxation—*A joint venture may be treated as a corporation for purposes of the National Internal Revenue Code.*

[4] Six months after the notice was first published on January 2, 1954.

[5] In re Estate of Reyes, 17 Phil. 188 (1910), the Supreme Court stated: "Claimants against an estate have a right to rely upon the correctness of the inventory presented by the administrator, etc., and if the administrator knowingly and wilfully omits to include property in the inventory which should be included and thus induces claimants not to present their claims within the period prescribed by law, the probate court, being a court of equity, should, upon proof of that fact, extend the time for the presentation of claims."

[6] Under the old rule, section 690 of the Code of Civil Procedure, an application to file a belated claim could be presented even after the final settlement of the estate, provided said application is filed within six months from the time fixed by said Code. In the case of Syyap and Quisumbing v. Guison, G.R. No. L-49022, May 31, 1946, the Supreme Court made the pronouncement that sec. 2 of Rule 87 of the Rules of Court was a more liberal provision regarding the time for the filing of a claim by a creditor who has failed to file his claim within the time previously limited.

[7] Whether or not the reasons are sufficient rests upon the discretion of the court. Reguera v. Tanodra, 81 Phil. 404 (1948).

COLLECTOR OF INTERNAL REVENUE v. BATANGAS TRANSPORTATION AND LAGUNA-TAYABAS BUS COMPANIES

G.R. No. L-9692, January 6, 1958

Under the National Internal Revenue Code,[1] a corporate tax may be imposed not only on corporations proper,[2] but upon any partnership, no matter how organized, joint stock companies, joint accounts, associations or insurance companies.[3]

This legal provision was interpreted by the Supreme Court in the case of Evangelista v. Collector of Internal Revenue.[4] Subsequently, the case at bar, with similar facts and legal issues arose again before the same Court. The highest tribunal confirmed the doctrine laid down in the first case and completely applied the reasoning there in the resolution of the present controversy.

The respondent companies, the Batangas Transportation Co. and the Laguna-Tayabas Bus Company are distinct and separate corporations engaged in the business of land transportation by means of motor buses and operating distinct and separate lines.

The war put an abrupt stop to their operations. After liberation somehow, both companies reacquired 56 autobuses from the United States Army and divided said equipment equally between them but registering said property separately in their names. Under the present set-up, the two companies had one head office and were under the sole management of one presidnt. This joint management was called the Joint Emergency Operation. At the end of each year, all gross receipts and expenses of both companies were determined and net profits were divided fifty-fifty,[5] and transferred to the books of accounts of each company and each company then prepared its own income tax returns from this fifty per centum of the gross receipts, and expenditures, assets and liabilities thus transferred to it from the Joint Emergency Operation and paid the corresponding income taxes thereon separately.

The Collector of Internal Revenue believing that the two companies had pooled their resources into the Joint Emergency Operation thereby forming a joint venture,[6] informed the bus companies of the deficiency income tax for the years 1946-1949 inclusive. After going over his assessment, the Collector wrote again the respondents about the reduction of the deficiency. The respondents appealed from said assessment to the Court of Tax Appeals but before the filing of the answer, the Collector once set aside his assessment and re-

[1] NIRC, sec. 84(b). The term "corporation" includes partnerships, no matter how created or organized, joint accounts (cuentas en participacion), associations or insurance companies, but does not include duly registered general copartnerships (companias colectivas).

[2] Act 1459 enumerates the formal requisites for the formation of a corporation.

[3] Aranas, Annotations and Jurisprudence on the NIRC as amended, Vol. 1, pp. 63-64 (1958) comments: that duly registered general copartnerships are exempt from income tax but partners are liable thereof in their individual capacities for any dividend or share of the profit that they derive from the partnership.

[4] G.R. No. L-9996, Oct. 15, 1957. The three Evangelista sisters bought real properties with money borrowed from their father and subsequently assigned their brother to lease, collect and receive rents, sign all letters and all contracts respecting said properties. They were deemed to have formed a joint venture, hence liable under sec. 24 of the NIRC.

[5] Merten,s Law of Federal Income Taxation, sec. 4008 lays down the primary test of taxability thus: "It is the purpose, the intention motivating a course of conduct, which is controlling, by the very words of the law. Unless the purpose is to prevent the imposition of the tax, the tax may not be imposed. Admittedly, circumstances may evidence a purpose and justify the finding of the prohibited purpose at which these provisions are aimed."

[6] 40 Am. Jur. sec. 3, pp. 127-128 states: "A joint venture relates to a single transaction although it may comprehend a business to be continued over several years."

[7] NIRC, sec. 51 provides: All assessments shall be made by the Collector of Internal Revenue and all persons and corporations subject to tax shall be notified of the amount for which they are respectively liable on or before the first day of May of each successive year."

assessed the alleged income liability of the respondent, this time increasing it by almost three times its amount.

In deciding whether the Joint Emergency Operation was a joint venture and taxable under Sec. 24 [8] of the Tax Code, the Court cited the decision of the case of Evangelista v. Collector of Internal Revenue, thus:

> ". . . To begin with the tax in question is one imposed upon "corporations" which strictly speaking, are distinct and different from partnerships.[9] When our Internal Revenue Code includes partnerships among the entities subject to the tax on corporations not necessarily "partnerships" in the technical sense of the term."

Further, the Court explained:

> "Thus for instance section 24 of said Code exempts from the aforementioned tax only registered partnerships which constitute precisely one of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in section 84(b) of said Code the term need not be undertaken in any of the standard forms in conformity with the usual requirements of the law on partnerships in order one could be deemed constituted for purposes of the tax on corporation.
>
> "Again pursuant to said section 84(b) the term corporation includes among others joint accounts, and associations none of which has a legal personality of its own, independent of its members.
>
> "Again, the lawmaker could not have regarded personality as a condition essential to the existence of the partnerships therein referred to. Accordingly, for purposes of the tax on corporations, National Internal Revenue Code includes partnerships with the exception only of duly registered general partnerships, as within the purview of the term corporation."

The Court found that under the facts and circumstances of the incumbent case, the Joint Emergency Operation was a joint venture of the two respondent companies. It may be said that since the Court intimated that the corporate tax is imposed upon any type of partnership, whether organized in conformity with the formal requirements of the law on partnership or not, then a joint venture being essentially a kind of partnership, is taxable as a single entity under section 24 of the National Internal Revenue Code. Though the Court failed to set out in explicit terms whether a joint venture is equivalent to a partnership, such distinction is of no moment as far as taxation laws are involved. When two or more persons, natural,[10] or legal join efforts for common gain and profit results, the joint enterprise may upon an examination of the factual background of the scheme, be considered a corporation, in order to bring it within the operation of section 24 of the Tax Code.

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[8] NIRC, sec. 24 states: There shall be levied, assessed, collected and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized, in or existing under the laws of the Philippines, no matter how created or organized but not including duly registered general copartnerships (companias colectivas) a tax upon such income equal to the sum of the following:——

Twenty per centum upon the amount by which such total net income does not exceed one hundred thousand pesos and

Twenty-eight per centum, upon the amount by which such total net income exceeds one hundred thousand pesos and a like tax shall be levied, assessed, collected and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation, organized, authorized, or existing under the laws of any foreign country.

[9] NCC, Art. 1767 states: By the contract of partnership two or more persons bind themselves to contribute money, property or industry to a common fund with the intention of diving the profits among themselves. In the case of Fernandez v. De la Rosa, 1 Phil. 671, the Court pointed out the essential elements of a contract of partnership, to wit: (a) mutual contribution to a common fund and (b) a joint interest in the profits.

[10] Gatchalian v. Collector of Internal Revenue, 67 Phil. 666: Here the plaintiffs organized a partnership of a civil nature because each of them put up money to bay a sweepstake ticket for the sole purpose of dividing the amount of P50,000. The Court ruled that the combination was liable as a corporation for the imposition of the corporate tax.