RECENT DECISIONS

Administrative Law—*Republic Act 1125, section 7 (1) construed; jurisdiction of the Court of Tax Appeals.*

BLAQUERA v. JUDGE RODRIGUEZ

G.R. No. L-11192, April 16, 1958

The jurisdiction of the Court of Tax Appeals has constantly come up for definition, notwithstanding the clear terms of section 7 of Republic Act 1125, which enumerates the matters over which it has exclusive appellate jurisdiction. The reason lies in the failure of parties-litigant in making the proper distinction between those matters which can be taken cognizance of by the Court of First Instance, and those properly coming within the scope of section 7 of said Act, which provides:

> "The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Collector on Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of a law administered by the Bureau of Internal Revenue; x x x x"

Supreme Court decisions have sustained the appellate jurisdiction of the Court of Tax Appeals under the above paragraph as including (1) the power to restrain the Collector of Internal Revenue from collecting deficiency taxes thru summary administrative methods of levy and distraint after the lapse of three years from the date of filing of the income tax return;[1] and (2) the power to take cognizance of actions for refund brought by taxpayers who paid under protest and after they have first filed a claim of refund with the Collector.[2]

In this case, the Supreme Court once more upheld the jurisdiction of the Court of Tax Appeals. It appears that the Cebu Olympian Co. filed a petition in the Court of First Instance to enjoin the Collector of Internal Revenue from collecting deficiency percentage taxes which allegedly have been paid, and incidentally, to recover consequential and moral damages as a result of defendant's act in levying on its business and goodwill.

The Supreme Court, holding that this case was within the jurisdiction of the Court of Tax Appeals and not of ordinary courts, based its decision on the following grounds:

1. The subject-matter of the case comes within the purview of the words "disputed assessments", or at any rate, "of other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.[3] The case is an indirect appeal from the

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[1] Collector of Internal Revenue v. Avelino, G.R. L-9202, November 18, 1956; Collector of Internal Revenue v. Cuenco, G.R. L-9117, April 20, 1957; Collector v. Zulueta, G.R. L-8840, February 8, 1957

[2] Johnston Lumber Co., Inc. v. Court of Tax Appeals, G.R. L-9292, April 23, 1957.

[3] With respect to this latter ground, Chapter II, Sections 315-330 of the National Internal Revenue Code, may be cited as the pertinent provisions in support thereof. These sections empower the Collector to institute administrative remedies to collect taxes by means of distraint and levy on the delinquent's taxpayer's property.

decision of the Collector of Internal Revnue on the assessment made by him with regard to certain deficiency percentage taxes, as well as from his decision to collect the same by the coercive summary measures provided by law.

2. The fact that plaintiff claims that said deficiency taxes have already been paid cannot take this case out of the Court's jurisdiction for the subject-matter remains to be in the nature of a *disputed assessment;* nor can the demand for consequential and moral damages remove the case from such jurisdiction since the Court itself can pass upon the same if and when the evidence so warrants.

Following its own ruling in the case of *Millares v. Judge Amparo,*[4] the Supreme Court declared "that Republic Act 1125 has taken away the power of ordinary courts to review decisions of the customs authorities" and those of the Collector of Internal Revenue.

Remedios Catungal

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Administrative Law—*Propriety of mandamus against city officials; non-joinder of city government as party-respondent; existence of a specific legal duty.*

SUBIDO, et al. v. LACSON, et al.
G.R. No. L-9957, April 25, 1958

Mandamus is ordinarily a remedy for official inaction. It lies to compel an officer to perform a ministerial duty—one which is so clear and so specific as to leave no room for the exercise of discretion in its performance.[1] In such case, it is no longer necessary to include the city government or body of which said respondents are officials; the real parties in interest now being the officials or officers alone, who refuse to perform their ministerial acts and duties, to the prejudice of petitioners.

Thus, in the above case, it was held that mandamus lies to compel the proper officials of the City Government of Manila in a claim for refund of fees charged under an ultra vires ordinance. It appears that the city of Manila collected from petitioners meat inspection fees under an ordinance which was later declared ultra vires, from the year 1946 to 1951. On the basis of such decision, petitioners made a formal claim for refund which was favorably passed upon by the Auditor-General, and affirmed by the President of the Philippines on appeal. A list of claims having been filed with the Municipal Board of Manila, an appropriation for the payment thereof was set aside, with part of the claims actually satisfied from such appropriation. Payments thereunder had been ordered suspended by the Mayor of Manila in view of alleged irregularities committed in connection with such refunds involving other persons similarly situated as the petitioners. The alleged irregularities however, were discounted by the report of the Chief of the General Investigation Section of the Manila Police Department. But notwithstanding such finding, the suspension was never lifted.

[4] 51 Off. Gaz. 3464 (1955).
[1] Hoey v. Baldwin, 1 Phil. 551 (1902); Zobel v. City of Manila, 47 Phil. 169 (1925); Lamb v. Phipps, 22 Phil. 456 (1912); Suanes V, Chief Accountant of the Senate, et al., 81 Phil. 818 (1948).

Holding that the facts warranted the existence of a specific legal duty imposed upon respondents to satisfy the claims over which the City of Manila not only does not disclaim liability, but in fact, set aside the necessary funds for its satisfaction, the Court granted the petition for mandamus.

Remedios Catungal

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Civil Law—*Contracts; breach thereof; liquidated damages may be equitably reduced if it is iniquitous or unconscionable.*

ALBERT v. UNIVERSITY PUBLISHING CO., INC.

G.R. No. L-19300, April 18, 1958

In reciprocal obligations, in case one of the obligors should not comply with what is incumbent upon him, the injured party may choose between specific performance and rescission.[1] These remedies are alternative and not cumulative.[2] And should the injured party elect to bring an action [3] for rescission he should show that the breach on the part of the other party is so substantial or fundamental as to defeat the very object of the agreement.[4] The courts, as a matter of policy, frown upon attempts to rescind a contract on the ground merely of slight or casual breaches.[5] In any event, that is, whether the remedy chosen be specific performance or rescission, the injured party may claim damages.[6] The amount of damages may either be the subject of a previous stipulation [7] between the parties or not. If it is not, then the complainant is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved;[8] if it is, then the amount agreed upon shall be awarded without the necessity of proving any pecuniary loss,[9] unless it turns out to be iniquitous or unconscionable in the light of the circumstances of the case, in which event it shall be equitably reduced regardless of whether it is intended as a penalty [10] or an indemity.[11]

In the instant case the Court found the amount of damages stipulated by the parties as unconscionable; and accordingly it ordered its reduction.

On July 19, 1948 the plaintiff, Mariano Albert, and the defendant, University Publishing Co., Inc., entered into a contract whereby the former granted to the latter the exclusive right to publish or cause to be published, for a period of five years, a certain manuscript which is the former's revised commentaries of the "Revised Penal Code of the Philippines," with the specific

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[1] Art. 1191, par. 2, Civil Code.

[2] Magdalena Estate Inc. v. Myrick, 71 Phil. 344 (1941); Osorio v. Bennet, 41 Phil. 301 (1920); Juan v. Go Tay, 26 Phil. 328 (1913); Yap Unki v. Chua Jamco, 14 Phil. 602 (1909).

[3] The right to rescind must be invoked judicially, except when the right is expressly granted in the contract. Escueta v. Pando, 76 Phil. 256 (1946); Guevara v. Pascual, 12 Phil. 311 (1908); Republic v. Hospital de San Juan de Dios, 47 OG 4, 1833 (1949); De la Rama Steamship Co., Inc. v. Tan, et al., G.R. No. L-8784, May 21, 1956; Taylor v. Uy Tieng Piao, 43 Phil. 873 (1922).

[4] Joaquin Castro & Co. v. Maersk Line, 62 Phil. 318 (1935); Biagran v. Vda. de Oller, 62 Phil. 933 (1936).

[5] Song Fo & Co. v. Hawaiian-Philippine Co., 47 Phil. 821 (1925).

[6] Art. 1191, par. 2, Civil Code.

[7] Damages which are stipulated by the parties to a contract to be paid in case of a breach thereof are called liquidated damages. Art. 2226, *id.*

[8] Art. 2199, *id.*

[9] Art. 2216, *id.*

[10] Penal clause and clause for liquidated damages are the same in this jurisdiction. Navarro v. Mallari, 45 Phil. 242 (1923); Lembert v. Fox, 26 Phil. 588 (1914).

[11] Arts. 2227 and 1229, Civil Code. See also Avecilla v. Santos, *et al.*, G.R. No. L-6343, April 29, 1954; Ibarra v. Aveyco, 37 Phil. 273 (1917).

undertaking of delivering the manuscript in its final form on or before December 31, 1948 to the latter. For his part, the defendant agreed, among others, to pay to the plaintiff the sum of ₱30,000 which is to represent the liquidated balance due the plaintiff as his share in the sale of 1,000 copies of the reprinted copies of the first edition of the book as per contract between both parties dated May 21, 1946 and the liquidated share due the plaintiff in the sale of another 1,500 reprinted copies in 1948 of the same book, now in the press. The said amount according to the contract is payable in eight quarters at the rate of ₱3,750 a quarter, the first quarter to begin from July 15, 1948 with the specific condition that should the defendant fail to pay any one of the eight installments when due, the rest of the installments shall be deemed due and payable, whether or not there is a judicial or extrajudicial demand made by the plaintiff.

It appears that the defendant corporation made the following payments:

For the first quarter:

July 31, 1948 —₱1,000
September 10, 1948 —₱1,000.

For the second quarter:

November 10, 1948 —₱2,000
November 29, 1948 —₱2,000
December 24, 1948 —₱1,000.

In the present action, plaintiff claims that the defendant breached the contract when it failed to pay the full amount of the installment for the first quarter on or before October 15, 1948, the last day within which to pay it and pursuant to the contract, he is now entitled to the full amount of ₱30,000 minus the payments already received by him, or the unpaid balance of ₱23,000.

The defendant admits the claim of the plaintiff, but by way of affirmative defense it alleges that the latter failed to deliver the manuscript in its final form on or before December 31, 1948 as stipulated in the contract and that none of the 1,000 reprinted copies of the first edition of the book was sold.

The trial court found that, contrary to the allegation of the defendant, the plaintiff delivered the manuscript on time and that 800 of the 1,000 reprinted copies of the first edition of the book were sold. It then ordered the defendant to pay to the plaintiff the unpaid balance of ₱23,000. From this decision, defendant interposed the present appeal.

On the question of whether or not there is such a breach of the contract as to justify its rescission, the Court ruled:

> "When the defendant corporation paid ₱2,000 on 10 November 1948, it was after the last day fixed for the payment of the first installment. But that delay in the payment of the first quarterly installment may not amount to a breach to justify (the rescission) of the contract because the plaintiff accepted payment of ₱2,000 on November 1948, which completed and paid the full amount of the first installment due and left a balance of ₱250 to be credited to the second installment due on 15 January 1949. On this last mentioned date the total amount paid by defendant corporation, including the sum of ₱250 in excess of the amount paid for the first quarterly installment, was ₱3,250 or ₱500 short of the total amount due on such date. As the defendant corporation has made no further payment, (rescission of the contract is justified)."

It then proceeded to conclude that the amount of ₱30,000 which defendant agreed to pay to the plaintiff in the contract is to be considered as liquidated damages. Thereafter, it held:

> "Although the defendant breached the contract, x x x yet we believe that in the absence of evidence to show the amount that should accrue to the plaintiff as his share in the proceeds of the sale of 800 copies of the book and 1,500 copies of the reprinted book that were in the press when the contract of 19 July 1948 was entered into, and the amount of the profits that the plaintiff would derive from the sale of the books to be reprinted as agreed upon in the contract of July 19, 1948, the amount of liquidated damages is rather excessive because even if the books were sold at P40, ₱35 or ₱30 x x x the cost of paper, printing, binding, advertising, sales and promotion and other incidental disbursements should be deducted from the gross preceeds. For that reason and in accordance with the provision of Art. 2227 of the new Civil Code, the reasonable amount of liquidated damages that must be awarded to the plaintiff as a result of the breach of the contract by the defendant corporation is equitably reduced to ₱15,000."

Salvador J. Valdez, Jr.

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Civil Law—*Novation; effect on original debtor; extent of liability of new or substituted debtor.*

HODGES v. REPOSPOLO, et al.

G.R. No. L-10878, April 16, 1958

As a mode of extinguishing[1] obligations, novation[2] may be effected by the substitution of the person of the debtor.[3] This substitution, in turn, may take either the form of *delegacion* or *expromision*.[4] In *delegacion*, the debtor offers and the creditor accepts a third person who consents to the substitution.[5] In *expromision*, the initiative for the change does not emanate from the debtor and may be made even without his knowledge since it consists in a third person assuming the obligation.[6] In both cases, the consent of the creditor is an indispensable requisite,[7] and it may be given either expressly[8] or impliedly.[9] In both cases also, the original debtor is discharged from any liability to the creditor.[10] Hence, the new or substituted debtor alone is answerable for the obligation of the original debtor to its full extent, unless only a partial novation is agreed upon by the parties.

The above principles were applied in the present case.

On October 29, 1947, in the City of Iloilo, William and Alejandro Repospolo purchased from Hodges a Chevrolet truck for ₱5,000 of which ₱1,500 was paid on the same date, the balance payable in installments. The Repospolos executed

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[1] Art. 1231 (6), Civil Code

[2] Novation is the substitution or change of an obligation by a later one, either by changing the object or principal conditions or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor. 8 MANRESA, CODIGO CIVIL ESPAÑOL 427 (4th ed.).

[3] Art. 1291, (2), Civil Code.

[4] 8 MANRESA, *op. cit., supra* note 2 at 436-437.

[5] Art. 1295, Civil Code.

[6] Art. 1293, *id*

[7] Garcia v. Khu Yek Chiong, 65 Phil. 466 (1938); Adiarte v. Court of Appeals, 49 OG 4, 1421 (1953).

[8] Estate of Mota v. Serra, 47 Phil. 464 (1925).

[9] Asia Banking Corp. v. Elser, 54 Phil. 994 (1929). See also McCullough & Co. v. Veloso, 46 Phil. 1 (1924).

[10] Arts. 1294 and 1295, Civil Code. Barreto v. Albo, 62 Phil. 598 (1935); Santisimo Rosario v. Gemperle (CA) 39 OG 1410 (1941).

a deed, Exh. A, which incorporated this agreement and therein provided also that the obligation would draw interest at the rate of 1% a month and that, in case of default, they would pay an additional sum of ₱500 by way of attorney's fees and costs of collection.

On September 7, 1948, the balance outstanding in favor of Hodges, after deducting the payments made by the Repospolos, was ₱1,810. On said date, the Repospolos sold the truck to Andres Arenga, Alfredo Suello and Mauricio La-anan for ₱1,000, one-half of which was paid in cash. The buyers signed a promissory note for the balance and to guarantee the same, a real estate belonging to Arenga was given as security. The "Contract of Sale with Guaranty," Exh. 3, was executed for this purpose. It further provides:

> "That the above described Chevrolet truck has an outstanding obligation with C. N. Hodges, x x x, in the sum of One Thousand Eight Hundred Ten (₱1,810.00) Pesos x x x plus interest of 1 per centum per month as of 8 August 1948, which is hereby agreed by the parties that the Party of the Second Part (buyers) shall assume full responsibility to said obligation by paying faithfully to said Mr. C. N. Hodges the monthly obligations until fully paid plus the interest due;
>
> "That with this sale, the Party of the Second Part shall be the true and lawful owners of the said truck and shall assume full control of the same subject, of course, to the rights of the said Mr. C. N. Hodges until and after the obligations are fully paid."

Thereafter, the buyers secured Hodges' approval of the transaction. On this occasion, Arenga signed at the foot of Exh. A, the original contract between Hodges and the Repospolos. Moreover, he wrote his name on Exh. 2—which is a page of the book of accounts of Hodges in connection with Exh. A—in lieu of the name of William Repospolo which originally appeared thereon and was then crossed out. Subsequently, Hodges received payments made by Arenga aggregating ₱410, thereby leaving a balance of ₱1,400 due on the truck in question. In addition thereto, Arenga had, on several occasions, obtained from Hodges goods worth ₱887.49. Neither sum having been paid, Hodges instituted the present action in the Court of First Instance of Iloilo against the Repospolos and Andres Arenga.

After due hearing the trial court rendered judgment sentencing Arenga to pay to Hodges the sums of ₱1,400, ₱887.49, and ₱500 as attorney's fees and costs. The Repospolos were absolved on the ground that they had been substituted by Arenga as debtors to Hodges, with the latter's consent, and that the credit of Hodges against them had been extinguished thereby.

From the above decision, Arenga interposed an appeal contending: (1) that the CFI of Iloilo has no jurisdiction over the case; and (2) that he is not alone liable for the indebtedness because under the contract of sale with guaranty, Exh. 3, he had assumed, not alone, but together with Suello and La-anan, the obligation to pay the sum of ₱1,810 plus interest and no more; and that Exh. 3 contains no stipulation relative to the payment of attorney's fees.

On the issue of jurisdiction the Supreme Court said that courts of first instance have original jurisdiction over cases in which the amount of the demand, exclusive of interests and costs, is more than ₱2,000,[11] and that the demand in the instant case is the sum total of the amounts claimed in the three

[11] Sec. 44(c), Rep. Act No. 296 (Judiciary Act of 1948: approved and effective June 17, 1948).

causes of action—which is over ₱2,000—and not in each cause of action considered separately from the others.[12]

In overruling the second contention, the Court held:

> "Exh. 3 specifically stipulates that the buyers under said deed 'shall be the true and lawful owners' of the truck in question, 'and shall assume control of the same *subject, of course, to the rights of said Mr. C. N. Hodges,*' which rights are defined in Exh. A, pursuant to which Hodges is entitled, in case of default, to attorney's fees with interest thereon. That Arenga had, likewise, agreed to, and did, assume this obligation is clearly evinced by the fact that he affixed his signature at the foot of said Exh. A."

Then the Court went further to hold that since Arenga signed Exh. A without the occurrence of Suello and La-anan, he alone agreed, insofar as Hodges is concerned, to assume the obligation.

Salvador J. Valdez, Jr.

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Civil Law—*Compulsory recognition of natural children; action must be filed within the prescription period.*

PAREJA, et al. v. PAREJA

G.R. No. L-10419, April 16, 1958

Acknowledgment of a natural child [1] may either be voluntary or compulsory. It is voluntary when it is made in the record of birth, in a will, a statement before a court, or in any authentic writing.[2] And it is compulsory when the child himself brings an action against his parents to compel either or both of them to recognize him as a natural child.[3]

Generally, an action for compulsory acknowledgment should be instituted during the lifetime of the presumed parents [4] in order that said parents may be given an opportunity to be heard and rebut whatever evidence may be presented against them.[5] This rule, however, is not absolute for the law allows such action to be filed even after the death of the putative parents, provided that: (1) the father or mother died during the minority of the child,[6] or (2) after the death of the father or of the mother a document [7] should appear of which

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[12] Soriano v. Omila, 51 OG 7, 3465 (1955); Campos Rueda Corp. v. Sta. Cruz Lumber Co., Inc. 52 OG 3, 1388 (1956).

[1] Natural children are defined thus: "Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural." Art. 269, Civil Code.

[2] Art. 278, Civil Code. Compare with the corresponding article (Art. 131) in the old Civil Code which provides: "The acknowledgment of natural child must be made in the record of birth, in a will, or in some other public document." See note 7, *infra*.

[3] Art. 285, Civil Code.

[4] Art. 285, par. 1, *id.*

[5] Villalon v. Villalon, 71 Phil. 98 (1940).

[6] Art. 285, par. 1, no. 1, Civil Code.

[7] Art. 285, par. 1, no. 2, *id.*

For the discovery of a document to justify the filing of an action for acknowledgment after the death of the putative parents, said document must be unknown to the child before the parents' death, and must not be one which was known during the latter's lifetime and only *rediscovered* after their death. Mendoza v. Cayas, 52 OG 200 (1955).

A *certifico de confirmacion* taken from the church records and purporting to show the filiation of a natural child can not be regarded as a document discovered only after the death of the child's father because everyone in this Catholic and Christian country is supposed to be cognizant of the existence of such church records. Neither are the letters of the alleged father to the child be regarded as discovered only after his death as to justify the bringing of an action for compulsory recognition after the father's death. Molanda v. Molanda, 81 Phil. 149 (1948).

Commenting on this Article Tolentino says:

nothing has been heard and in which either or both parents recognize the child.[8] In the first case, the action should be commenced before the expiration of four years[9] from the attainment of the child's majority; and in the second, within four years from the finding of the document.[10] But if the action is still governed by the provisions of the old Civil Code,[11] the failure to file it within six months from the finding of the document would be fatal,[12] or, as was held in the instant case, the claimant must prove that he has had no knowledge of the document for more than six months prior to its alleged discovery.

Natividad Pareja died on April 6, 1943. Prior thereto, he and Eulogia Fernandez lived together as husband and wife without being married although both had no impediment to contract marriage, and out of their relationship, Julio, Regina, Paz and Jose, all surnamed Pareja, were born.

On May 21, 1945, Paz Pareja filed a petition for the administration of the intestate estate of the deceased. To this petition, Julio, Regina, Jose, and one, Soledad Pareja Marcial interposed an opposition in which they sought for a court's order declaring them as acknowledged natural children of the Intestate. In the trial which took place on December 10, 1949, Julio, Regina and Jose presented as evidence, to corroborate their claim, a document entitled "Information for Membership Insurance" signed by the Intestate in his capacity as an employee insured under the Government Service Insurance System. This document appears to have been secured from the GSIS on December 2, 1949, and it bears and designates the following as beneficiaries: "Julio Pareja—Son; Regina Pareja—Daughter; Jose Pareja—Son; Paz Pareja—Daughter." They then argued that this document is a public document within the meaning of Article 131[13] of the Spanish Civil Code which prescribes the manner by which voluntary acknowledgment may be made. Soledad Pareja Marcial, on the other hand, based her claim for acknowledgment on a previous judgment of the Supreme Court in which the Intestate was found guilty of the seduction of Timotea Patria, as a result of which crime Soledad was begotten.[14]

In a decision promulgated on May 31, 1945[15] the Court declared Soledad an acknowledged natural child of the Intestate. As to Julio, Regina and Jose, the Court held that the "Information for Membership Insurance" is not a public document within the meaning of Article 131 of the Spanish Civil Code, but it may, nonetheless, be considered as an "indubitable writing" within the meaning of Article 135, par. 1, no. 1, in relation to Article 137, par. 1, no. 2 of the same

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"The second exception under this article (Art. 285) permits an action for recognition to be brought by the child, if after the death of the supposed parent a document should be discovered in which such parent recognizes the child. This is an exact reproduction of the provisions of paragraph 2 of article 137 of the old Civil Code. We doubt seriously the propriety of the retention of this exception in the present Code. This exception was perfectly logical under the old Civil Code. because an "indubitable writing" in whnch the parent expressly recognized paternity or maternity, was then a ground for compelling a recognition; it was not in itself a recognition, and, therefore, an action even after the death of the parent should be permitted. But under the present Code, "any authentic writing" is not just a ground for compulsory rcognition; it is in itself a voluntary recognition and does not require an action to compel recognition. We believe, therefore. that if a document, in which the parent expressly recognizes his (child) paternity or maternity, is discovered after his death, the child can immediately claim his right as an heir, without any action for recognition, against the other heirs of the deceased parent, because he is already an acknowledged natural child." I TOLENTINO, COMMENTS AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 562-563 (1953 ed.).

[8] Art. 285, par. 1, no. 2, Civil Code.

[9] Art. 285, par. 1, no. 1, *id.* See also Art. 137, par. 1, no. 1, old Civil Code.

[10] Art. 285, par. 2, *id.*

[11] As to what cases may still be governed by the old Civil Code see Art. 2253 of the new Civil Code

[12] Art. 137, par. 2, old Civil Code

[13] See note 2, *supra.*

[14] Art. 283, Civil Code; Art. 345, Revised Penal Code.

[15] Pareja v. Pareja, *et al.*, G.R. No. L-5824, May 31, 1954.

Code, which allows the filing of an action for compulsory recognition after the death of the parents. Accordingly, the latter were advised to submit evidence that they have had no knowledge of the existence of the said document more than six months prior to December 2, 1949, the date of its alleged discovery.

The present action is brought in pursuance to said previous judgment. The plaintiffs, Julio, Regina and Jose, allege that they came to know of the application for insurance of the Intestate only after the latter's death and in the month of November, 1949. Soledad Pareja Marcial denies allegation, stating that plaintiffs have had knowledge of the document and took no steps to secure their acknowledgment as natural children during the lifetime of the decedent.

The trial court sustained the allegation of Soledad; hence this appeal.

The Supreme Court, speaking through Justice Labrador, affirmed the decision of the trial court, reiterating its previous ruling that unless the appellants can prove that they had no knowledge of the document more than six months prior to December 2, 1949, they cannot be declared acknowledged natural children of the deceased, Natividad Pareja.

Salvador J. Valdez, Jr.

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Civil Law—*Ejection; non-payment of rentals due; sublessee can invoke no right superior to that of the sublessor.*

PHIL. CONSOLIDATED FREIGHT LINES, INC. v. AJON, et al.
G.R. No. L-10206, April 16, 1958

PHIL. CONSOLIDATED FREIGHT LINES, INC. v. NAVARRO
G.R. No. L-10207, April 16, 1958

PHIL. CONSOLIDATED FREIGHT LINES, INC. v. PADERNAL
G.R. No. L-10208, April 16, 1958

These three cases were originally filed in the Municipal Court of Manila [1] by the same plaintiff, the Phil. Consolidated Freight Lines, Inc., to eject the several defendants from a building constructed by said plaintiff on Lot No. 79 of the San Lazaro Estate belonging to the government and under the administration, supervision and control of the Bureau of Lands.

On March 10, 1945, the plaintiff, without obtaining previous authority from the Director of Lands, occupied Lot No. 79 and built thereon a garage which it leased to a certain Zacarias de Guzman who, in turn, subleased [2] it to the defendants. As occupant of the lot, plaintiff paid to the Director of Lands occupation fees totalling ₱2,332.50.

Subsequently, the Committee on Appraisal of the Department of Agriculture and Natural Resources made an increased assessment [3] of the value of the lot at ₱300 per square meter, and the annual rental payable thereon at 5%

[1] Ejectment cases are cognizable by justice of the peace and municipal courts. Sec. 44(b), Rep. Act No. 296 (Judiciary Act of 1948: approved and effective June 17, 1948).

[2] When in the contract of lease of things there is no express prohibition, the lessee may sublet the thing leased, in whole or in part, without prejudice to his responsibility for the performance of the contract toward the lessor. Art. 1650, Civil Code.

[3] A lessor has the right to increase the rent from and after the expiration of the period of lease, and the lessee is bound to pay the rents as increased. Iturralde v. Garduno, 9 Phil. 605 (1908); Mayoralgo v. Jason, 46 Phil. 868 (1923).

of its value. Plaintiff objected to said assessment [4] of the land, but the same was denied by the Bureau of Lands. Because of plaintiff's failure to pay [5] the occupation fees at the new assessment rate, the Director of Lands wrote to it on April 21, 1952 to the effect that whatever rights it had over the land in question were considered forfeited. On the same date, the Bureau also addressed letters to the defendants, who had before been paying the rentals to plaintiff's lessee,[6] Zacarias de Guzman, to pay the rentals for the portion of Lot No. 79 occupied by them directly to the Bureau.[7] From the time they received said letters, defendants had refused to pay any further rentals to plaintiff, either for the land in question or for plaintiff's building thereon. Hence, the present actions for ejectment.[8]

The plaintiff contends that as possessor of the land by virtue of an implied lease with the Bureau of Lands and as owner of the building standing thereon and occupied by the defendants, it has the right to eject the latter from the premises on the ground of non-payment of rentals.

The defendants, on the other hand, claim that plaintiff is merely a squatter on, and has no legal right to possess the land in question, or that assuming that it had an implied lease over the same, said lease was terminated when the Director of Lands notified and ordered them to pay the rentals for the land directly to the Bureau.

The trial court was for the defendants; hence, an appeal.

The Supreme Court, speaking through Justice J. B. L. Reyes, reversed the decision of the trial court adducing the following reasons to support its conclusion:

First. The defendants are occupying not only the land of the government, but the building of plaintiff as well. If defendants are in possession of the land, it is only because plaintiff's building stands thereon. Their possession of the land is, therefore, dependent on and cannot be dissociated from their possession of the building. As the building admittedly belongs to the plaintiff, defendants cannot assert any superior right to possess the same as against the plaintiff; therefore, they can not likewise assert any better right to possess the land on which the building stands.

Second. As plaintiff claims to be in the possession of the land in question through an implied contract of lease with the government that has collected occupation fees from it, the former cannot be deprived of its possession without the proper court action.[9]

Third. The notice sent by the Director of Lands to the defendants to pay the rentals of the land in question directly to the Bureau can not legally constitute termination of the plaintiff's possession of the premises. In sending this notice to the defendants, the Director merely availed himself of the remedy granted by law to collect from the sublessee, in case of failure of the lessee to pay, the rents due;[10] so much so that in the Director's letters to all the defend-

[4] The lessee may object to the increased rentals if it is exhorbitant. Archbishop v. Ver, 73 Phil. 363 (1941).
[5] Lack of payment of the stipulated rentals is one of grounds for the judicial ejectment of the lessee. Art. 1673, Civil Code.
[6] Art. 1652, *id.*
[7] *Id.*
[8] Rule 72, secs. 1 and 2, Rules of Court.
[9] Art. 536, Civil Code.
[10] See note 6, *supra*

ants, he stated that the monthly rentals demanded by him from them do not include the rentals of the building which appears to belong to the plaintiff.

And finally, defendants, being merely sublessees, can invoke no right superior to that of their sublessor.[11]

Salvador J. Valdez, Jr.

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Civil Law—*When an action is based on fraud or deceit, it must be brought within four years from the discovery of the fraud or deceit; otherwise it is forever barred.*

RAYMUNDO v. AFABLE
G.R. No. L-10548, April 25, 1958

One of the ways of losing an otherwise valid legal right is the doctrine of prescription of actions.[1] This means that unless an action is instituted within the period provided by the Statute of Limitations, the action is forever barred.

The Civil Code,[2] provides that "an action upon an injury to the right of the plaintiff must be instituted within four years;" otherwise, the right of action is lost. This particular provision was lifted from par. 3, section 43 of Act No. 190 [3] otherwise known as the Code of Civil Procedure. Of particular interest to us is the last part of the section referred to which states that " x x x an action for relief on ground of fraud must be instituted within four years after the right of action accrues. The right of action in such cases shall not be deemed to have accrued until the discovery of the fraud." It is doubly clear that the action accrues not from the date of execution of the contract but from the *discovery of the fraud.*[4]

In relation to this provision of Act No. 190, section 40 [5] of the same Act should be read. It seems at first blush that the provision is incompatible with section 43. But after careful analysis, we note that section 40 is a general provision, relating to "actions for recovery of title to, or possession of, real property, or an interest therein x x x." Section 43 on the other hand, especially par. 3, is a special provision, relating to actions "upon an injury to the right of the plaintiff," among which is fraud or deit. This is to say that if the action is *not* based on fraud or deceit, although the purpose is to recover title or possession of real property, the right of action may be instituted within *ten* years from the time the action accrues. However, if it is based on fraud, the action should be instituted within *four* years from the discovery of the deceit.

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[11] Sipin v. Court, 74 Phil. 649 (1944); Madrigal v. Ang Sam To, 46 OG 5, 2173 (1948).

[1] Arts. 1139-1159, *Civil Code of the Philippines*, (R.A. 386).

[2] Art. 1146.

[3] Sec. 43—"Civil Actions rather than for the recovery of real property can only be brought: (3) "Within four years: An action for an injury to or trespass upon real estate. An action for the recovery of personal property. An action for the recovery of damages for taking, retaining, or injuring personal property. An action for injury to the person other than injuries resulting from assault, battery, or false imprisonment. An action for an injury to the right of the plaintiff not arising on contract and not hereinafter enumerated. *An action for relief on the ground of fraud, but the right of action on such cases shall not be deemed to have accrued until the discovery of the fraud.*"

[4] Villanueva v. Villanueva, G.R. No. L-4594, March 26, 1952.

[5] Sec. 40—"Period of Prescription as to real estate—An action for recovery of title to, possession of, real property or an interest therein, can only be brought within 10 years after the cause of such action accrues."

The fraud contemplated under section 43 is actual fraud.[6] It is one of intentional deception, downright dishonesty of some sort.

The question as to whether or not the period of prescription in cases of action based on fraud should be *ten* or *four* years from the discovery of fraud was clearly and vividly clarified by the Supreme Court in the present case.

The plaintiffs in our case, are the registered owners of a house and lot in Rizal. This property was mortgaged to Macondary & Co. to guarantee the payment of a debt, the outstanding balance of which, as of August 9, 1931, was ₱3,000.00.

On August 11, 1931, an agreement was reached between plaintiffs, Mrs. Afable and Macondray Co., the defendant to be subrogated into the right of Macrondray by paying the sum of ₱3,000 due to the company.

From Sept. 1913 to April 1945, plaintiffs kept on paying Mrs. Afable the the interest on said mortgage indebtedness at the rate of ₱30.00 a month.

On June 1945, when plaintiffs tried to redeem the property, they learned for the first time that defendant had already received a T.C.T. No. 20666 in her name.

On October 28, 1945, defendant sold the property to Braulio Santos who died March 27, 1953. Santos received his own T.C.T. by virtue of the sale.

On December 31, 1948, the CFI of Rizal dismissed the ejectment proceedings instituted by Santos against plaintiff in the justice of the peace court of Pasig, Rizal. The Court of Appeals rendered judgment in favor of Santos.

On June 30, 1953, the Supreme Court reversed decision of C.A. and affirmed the CFI.

On August 29, 1953, plaintiffs brought action to cancel the certificate of title of Santos on ground of fraud allegedly committed by defendant. A motion to dismiss was filed by defendant on ground that plaintiff's cause of action had accrued in June, 1945, when the fraud was discovered; that they had four years only to secure relief against such fraud. The plaintiffs, however, aver that the period should be ten years inasmuch as their action is for the recovery of title to, or possession of real property.

The Supreme Court, in upholding the contention of the defendant, held:

> "There being no allegation of bad faith against Santos his purchase of the duly registered title of Afable may not be revoked even if Afable, as alleged in the complaint obtained it through fraud. Consequently, plaintiff's action for annulment of the deed of sale will necessarily fail. Plaintiff's remedy if any, is an action for damages against Afable by reason of fraud, and that remedy may only be demanded judicially within four years after discovery of the deception."

In disposing of the contention of the plaintiff that their action is for the recovery of title to, or possession of, real property and should therefore be within ten years, the Court quoted with approval the case of *Rone v. Claro & Baguring*.[7]

> "It may be said that the recovery of title and possession of the lot was the ultimate objective of plaintiff, but to attain that goal they must need first travel over the road of relief on ground of fraud; otherwise, even if the present action were

[6] VENTURA, LAND TITLES & DEEDS, 218 (1955 ed.).

to be regarded as a direct action to recover title and possession, it would nevertheless be futile and would not prosper for the reason that defendant could always defeat it by merely presenting the deed of sale, which is good and valid until annulled by the Court. And of course, it cannot be annulled unless action to annul had been filed within four years after discovery of the fraud or deceit."

Eight years have already elapsed from 1945, the time when the act of fraud committed by Mrs. Afable was discovered. Such being the case, the plaintiff's cause of action is already barred.

Alfonso C. Bince, Jr.

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Civil Law—*Partial payments of an obligation do not constitute a novation of the original obligation.*

MANILA SURETY & FIDELITY CO. v. TEODULO M. CRUZ
G.R. No. L-10414, April 18, 1958

One of the modes of extinguishing or modifying an obligation is by novation.[1] When the parties to an obligation change its object or its principal conditions, novation takes place.[2] It is imperative, however, that novation should be made in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.[3] Where the nature of the obligation is not in any manner altered, as when partial payment is made by the obligor, there is no novation.

This is a replevin case instituted by plaintiff against the defendant to recover possession of certain personal properties. Defendant executed on November 10, 1949 a deed of chattel mortgage in favor of plaintiff in consideration of the latter having posted two bonds in behalf of Herminia Cruz and Felicisima Policarpio in favor of NARIC. These bonds were issued pursuant to certain indemnity agreements executed by Cruz, Policarpio, and defendant in favor of plaintiff on the same date. From the indemnity agreements appear the following clause: "Said indemity shall be paid to the company as soon as it has become liable for the payment of any amount, under the above-mentioned bond, whether or not it shall have paid such sum or sums of money or any part thereof."

On October 20, 1950, the Price Stabilization Corporation as legal successor of NARIC filed a civil case in the CFI of Manila seeking to make the Manila Surety & Fidelity Co., Inc. liable on the bond it has posted on behalf of Policarpio in the sum of ₱2,472.75 and on November 8, 1950 it filed another action seeking to make the same company liable on the bond of Cruz.

However, on May 23, 1952 the personal properties mortgaged to plaintiff were levied on by virtue of a writ of execution issued in a civil case in the CFI of Rizal. Plaintiff learned of said levy of execution and he presented a third-party claim based on the deed of chattel mortgage executed in its favor by defendant. Plaintiff in the civil case in CFI of Rizal failed to file indemnity bond so the properties were released. Defendant bound himself, meanwhile,

[1] Arts. 1231 & 1291, CIVIL CODE OF THE PHILIPPINES.
[2] Art. 1291, CIVIL CODE OF THE PHILIPPINES, provides:
"Obligations may be modified by:
(1) Changing their object or principal conditions;
(2) Substituting the person of the debtor;
(3) Subrogating a third person in the rights of the creditor."
[3] Art. 1292, CIVIL CODE OF THE PHILIPPINES.

to settle the case with NARIC with express stipulation that plaintiff may take possession of the mortgaged properties should he fail. He failed and on January 11, 1952, plaintiff requested sheriff to effect delivery of the properties covered by the mortgage. On Jan. 13, 1952, the Court ordered seizure of the properties. On April 27, 1954 NARIC demanded payment of unsettled accounts of Policarpio and Cruz, followed by a reminder from the Insurance Commissioner to plaintiff to pay the amount of the NARIC bonds. Plaintiff made partial payments to NARIC in the amount of ₱100 and ₱500.

One of appellants' main assignment of error is predicated on the fact that the action instituted by the surety company is premature because the principal debtor has not yet been made actually liable for any obligation to NARIC as in fact its claim is still being disputed in a civil case n CFI of Manila. The court readily dismissed this contention as without merit because under the terms of the indemnity agreement executed by the parties, the liability of the bondsman would attach as soon as it has become liable for payment of any account regardless of whether said amount shall have been paid or not. This situation actually obtains here, and the fact that the NARIC has actually filed an action in court demanding payment of the obligation is more than enough to entitle the surety company to enforce the indemnity agreements. This constitutes the cause of action of the appellee in the present case, following the ruling laid down in *Alto Surety & Insurance Co. v. Mariano Aguilar et als.*[4]

Appellant claimed next that the partial payments made by the surety company amounted to a novation of the original obligation of said debtor which has the effect of discharging appellant from his liability as surety.

This contention is untenable for what was actually done by appellee was not to change the nature of the obligation of the principal debtor, nor modify the terms of the bond posted by appellee, but merely to make partial payments of the accounts in order to accede to the demands of the Insurance Commissioner to ease up the situation of the NARIC. In other words, the nature of the liability of the principal debtors remained the same, with the only difference that certain payments were made in advance within the framework of the indemnity agreements. Certainly such payments cannot have the effect of discharging appellants from his liability because in the indemnity agreements he signed, he assumed to pay and make good "any damage, loss, costs, charges or expenses of whatever kind and nature, including counsel or attorneys' fees, which the Company may at anytime sustain or incur as a consequence of having become surety" upon the surety bonds.

Amado A. Bulaong, Jr.

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Civil Law—*Independent civil action for damages arising from infliction of physical injuries; responsibility of father for damages caused by his minor child; how affected by acquittal in criminal case.*

CALO, et al. v. PEGGY
G.R. No. L-10756, March 29, 1958

Arnold Peggy, a minor son of Luis Peggy, while driving a jeep owned by his father announcing the program of the Norma Theater, also belonging to the

[4] G.R. No. L-5625, March 16, 1954.

latter, on June 17, 1953, bumped Romeo Calo, a minor son of the spouses Hermenegildo Calo and Anacoreta Balinton, causing him physical injuries. He was subsequently charged with the crime of serious physical injuries through reckless imprudence in the Municipal Court of Butuan City. On March 6, 1954, while the criminal case was still pending, the present action was instituted by Romeo Calo and his parents for the recovery of damages against Luis Peggy, the father. The defendant filed a motion to dismiss. Action on the motion was delayed, and in the meantime, Arnold Peggy was acquitted in the criminal case. Upon hearing, the lower court granted said motion to dismiss in the belief that the civil action could not prosper in view of the judgment of acquittal.[1] This is an appeal from said order of dismissal.

In resolving the question of whether or not the trial court erred in dismissing the plaintiffs' complaint, the Supreme Court, deciding in favor of the appellants, held that:

1. Since the claim for damages is based on physical injuries, the case falls under Article 33 of the Civil Code of the Philippines.[2] Under this provision, the present action is completely independent from the criminal case, and the acquittal of Arnold Peggy does not constitute a bar to the prosecution of the present action wherein a mere preponderance of evidence is required and not a proof beyond reasonable doubt.[3]

2. The action under consideration is based not only on the physical injuries suffered by Romeo Calo when he was hit by the jeep driven by Arnold Peggy, but principally on the theory that the defendant, as father of Arnold Peggy and owner of the motor vehicle managed by the latter, had been negligent in allowing his son to drive the jeep for the purpose of announcing the program of the Norma Theater, knowing fully well that his son was a minor and that the announcing of the program would attract children.[4] The defense of *res*

[1] The judgment of acquittal reads as follows: "Wherefore, the court declares . . . that as supported by the evidence, the incident that took place in this case . . . was caused by the boy himself, and therefore acquits the herein accused . . . from any criminal responsibility in connection therewith, for failure on the part of the prosecution to prove the case by sufficient direct evidence, beyond reasonable doubt. . . ."

[2] Art. 33 provides: "In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require ony a preponderance of evidence." The words "defamation," "fraud," and "physical injuries" in this provision are used in their ordinary senses, so that "physical injuries" may embrace attempted homicide, frustrated homicide, or even death. Carandang v. Santiago, 51 O.G. 6, 2878 (1955). See also Laya, et al. v. Paras, et al. (CA), 52 O.G. 2, 841 (1955) and People v. Balagtas (CA), 51 O.G. 11, 5714 (1955).

[3] See RULES OF COURT Rule 107, sec. 1(d).

The Court further said that the judgment of acquittal of the lower court is rather vague, for while the opening phrases thereof convey the idea that Arnold Peggy was acquitted because the incident was due to the fault of Romeo Calo himself, the concluding sentence, however, declares that the accused was acquitted by reason of failure of the prosecution to prove his guilt beyond reasonable doubt.

It might be that because the prosecution failed to prove beyond a reasonable doubt that the accused was recklessly imprudent in driving the jeep, the trial court acquitted him as being exempt from criminal liability. See arts. 12, par. 4, and 365 of the REVISED PENAL CODE.

As correctly stated by the Court, art. 29 of the Civil Code of the Philippines may also be applied. Said article provides: "When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence."

[4] The responsibility of the father is founded on art. 2180 of the Civil Code of the Philippines, which provides: "The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company." The rationale of the article is that the negligence of the minors is presumed to be the negligence of the parents. However, the presumption is merely disputable (*juris tantum*) and can be overcome by proof that the parents exercised the diligence of a good father of a family to prevent the damage. IV PADILLA, CIVIL CODE ANNOTATED 923 (1956 ed.); JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW 54-55 (1954 ed.). See Gutierrez v. Gutierrez, 56 Phil. 177 (1931).

The lower court found that Romeo Calo himself was at fault. On this point, art. 2179 of the Civil Code of the Philippines provides: "When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover for damages, but the courts shall mitigate the damages to be awarded."

judicata is not therefore tenable. There is not only a difference in the causes of action but also a difference of parties in the criminal and civil actions.[5]

Lorenzo G. Timbol

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Civil Law—*When it does not appear that a promissory note was made in consideration of a promise or obligation to withdraw a complaint for a crime, it cannot be said that the note is void.*

GARRIDO v. CARDENAS

G.R. No. L-10631, April 25, 1958

Article 1352 of our Civil Code provides: "Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy." By the universal consensus of judicial opinion in all ages it has been considered contrary to public policy to allow parties to make agreements designed to prevent or stifle prosecution for crime.[1] Thus, it has been held by our Supreme Court that an agreement by the owner of stolen goods to stifle the prosecution of the person charged with the theft, for a pecuniary or other valuable consideration, is contrary to public policy and the due administration of justice.[2] Such an agreement is void from the beginning and will not be enforced by the courts.

Courts, however, should be wary lest they infringe upon the sanctity of contracts and should refrain from declaring contracts void from illegality unless it appears clear from the evidence. So that the mere expectation of the accused person that settlement of his civil liability will stop the criminal prosecution, or the promise of the injured person not to actively assist in such criminal case is not sufficient to taint the contract with illegality. Such was the doctrine announced by our highest court in the case of *Hibberd v. Rohde and McMillian*,[3] which was followed and applied in the instant case.

The promissory note in question was executed in 1941 by Jose Cardenas and Pedro Camus in favor of petitioner, Jose Garrido, and was of the following tenor: "For value received, Pedro Camus as principal, and J. Perez Cardenas as guarantor in solidum hereby promise to pay to the order of Jose Garrido, the sum of two thousand pesos, Philippine currency . . ." Apparently, Pedro Camus had swindled Garrido (according to the latter's testimony) in the sum of ₱2,000, for which reason Garrido filed a complaint against Camus in the office of the City Fiscal of Manila. Nevertheless, it does not appear from the records that the note was made in consideration of petitioner's promise or obligation either to withdraw his complaint for estafa or not to prosecute him, or not to testify against him, or to suppress any evidence against him, or otherwise to interfere with the proper administration of justice.

The amount not having been paid, despite demands, Garrido brought this action for its recovery. The lower court rendered judgment in favor of plaintiff Garrido and against defendant Cardenas. On appeal, however, this deci-

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[5] See RULES OF COURT Rule 107, sec. 1(d) and CIVIL CODE OF THE PHILIPPINE Art. 31.
Actually, in such a case, the defense of *res judicata* can never be available, since the parties, cause of action, and subject-matter will always be different in the criminal and civil cases. See I MORAN, COMMENTS ON THE RULES OF COURT 609-610 (1957 ed.). An exception is when the extinction of the penal action proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

[1] 8 MANRESA, CODIGO CIVIL 685 (2nd ed.).

[2] Arroyo v. Berwin, 36 Phil. 386 (1917).

[3] 32 Phil. 476 (1915).

sion was reversed by the Court of Appeals, upon the ground that the promissory note in question is unenforceable, its cause or consideration being unlawful and contrary to public order and to the proper administration of justice.

After drawing an analogy between the present case and that of *Hibberd v. Rohde and McMillan*,[4] Justice Concepcion, speaking for the Supreme Court, held that the undisputed obligation of Camus to refund to Garrido the sum of ₱2,000 was sufficient consideration for the execution of the note. Furthermore, from the testimony of respondent Cardenas, it appears that such obligation was the only consideration for the note. Another significant fact was the absence of any dealings between petitioner and respondent prior to, or at the time of, the execution of the promissory note.

Teodoro D. Regala

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Civil Law—*Advertised invitation to bid: A contract for the construction of particular work is perfected upon receipt by bidder of a notice of unqualified, impartial and unmodified acceptance of his offer by the offeree; posting of performance bond is not a condition precedent for the existence of said contract.*

VALENCIA v. RFC & CA
G.R. No. L-10749, April 28, 1958

The RFC advertised to the general public an "invitation to bid" [1] for the construction of a building in Davao City. Petitioner, in response thereto, submitted a bid consisting of 4 items with their stipulated prices, all subject to the "conditions and requirements" of the invitation to bid. The bid was accompanied by a bond which was to be retained in case the bid was accepted "as security until the execution and delivery of a satisfactory bond in the sum of twenty per cent (20%) of the total contract price for the full and faithful performance of the contract."

The respondent awarded to the petitioner the contract for the plumbing installations which was one of the 4 items included in his bid. Respondent advised petitioner of this award through a letter [2] which the latter received on June 22, 1952. In his reply to this letter petitioner expressed his "thanks and appreciation" for the award and at the same time advised the respondent to give said award to the contractor for the construction of the building.[3] Upon refusal of the petitioner to sign the contract document pertaining to the contract for plumbing installations, respondent eventually awarded said contract to the contractor for the construction of the building at a higher price. Soon thereafter, the RFC sued petitioner for the recovery of the sum of ₱6,200 representing the difference between the price of the original award and the price for the second award. Petitioner denied liability, alleging that upon receipt

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[4] *Ibid.*

[1] Sec. 48, 17 C.J.S., 390. "A mere advertisement or request for bids for the sale of particular property or the erection or construction of particular work is merely an invitation for offers, and is not an offer to accept any particular bid. It results in a contract only on the acceptance of a bid."

Art. 1826, New Civil Code. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.

[2] Sec. 52a, 17 C.J.S., 400. "Offer and acceptance may be made through the medium of letters, telegrams, or telephonic communications, and result in a complete contract as soon as an offer thus made is unconditionally accepted . . ."

[3] Sec. 50, 17 C.J.S., 395. "An offer cannot be revoked after its acceptance without the acceptor's consent . . ."

of notice of award he made preparations for the performance of the contract, but without his knowledge and consent respondent awarded said contract to another person, for which reason he asked for compensatory and actual damages. The CFI absolved petitioner from complaint. On appeal to the Court of Appeals, the decision was reversed, hence this appeal by the petitioner.

Petitioner insists that he could not be held liable for damages arising from his failure to sign the contract awarded to him because there was as yet no contractual obligation on his part to do so. In support of this contention he advanced the following arguments:

> (1) His bid was for the construction of the main edifice including the installation of electrical and plumbing facilities whereas the award given him was limited to the installation of plumbing facilities, resulting in the substantial modification [4] of his offer. And since he did not accept such modification, then there was no meeting of the minds;
>
> (2) His offer lapsed on June 15, 1952 when the bond that accompanied his offer expired on that date, and since the notice of acceptance came to his knowledge only after that date, said notice did not perfect a contract between him and the respondent;
>
> (3) The acceptance of his offer by the respondent was made subject to a condition, namely, the posting of a performance bond. There having been no such bond, the condition was not fulfilled, and no contract could exist between the parties.

Briefly stated, the real issue in this case is: Did a perfect contract arise upon receipt by the petitioner of the respondent's notice of acceptance of the offer?

Yes, said the court. The arguments of the petitioner were categorically answered against him on the following observations:

The petitioner submitted a bid consisting of 4 items, to wit:

> (a) For the construction of the building 'including (1) all electrical installations; and (2) all plumbing installations"; (b) "for the complete construction of the building *only*"; (c) for the "electrical installation *only*"; (4) for the "plumbing installations *only*."

Each item in the proposal was complete in itself, and as such, was distinct, separate and independent from each other.[5] Acceptance by the respondent of any of these items would certainly not have meant modification of the offer nor a partial acceptance thereof.

As regards the second argument, it is true and the Court admits that the bid did not specify a period for its duration. That the accompanying bond itself stated that it expired on June 15, 1952 does not however mean that the bid lapsed with it on said date because that bond merely guaranteed the performance of a principal obligation. This obligation, even without the bond can stand on its own and alone because the latter is merely an accessory to the former. And besides, this argument is also refuted by the petitioner's own conduct when he received the notice of award. He made no objections thereto on any

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[4] Sec. 43, 17 C.J.S., 381. "An acceptance must be identical with the offer and unconditional; if it is conditional or introduces a new term, it constitutes merely an expression of a willingness to treat or a counter-proposal, and does not complete a contract."
See: Layco v. Serra, 44 Phil. 326 (1923); Montinola v. Victorias Milling Co. and Cooper, 54 Phil. 782 (1930); Batangan v. Cojuanco, 44 O.G. 10, 3820 (1947).

[5] Sec. 331, 17 C.J.S., 785. "Generally a contract is entire when it contemplates that its parts and the consideration shall be common and independent, while it is severable if it is inherently susceptible of division and apportionment."
17 C.J.S., 367. "An offer is certain if, under the general rules of construction, the intention of the parties can be ascertained, and if it can be rendered certain, as by reference to something certain."

ground. Moreover, in his answer to the respondent's complaint, he stated that he made preparations for the performance of the contract. These all tend to show beyond doubt that upon receipt of the notice of award (notice of acceptance of the bid), he knew that the contract between him and the respondent had been perfected, and there would be no reason at all for him to say that his offer was no longer good at that time.

The third argument was answered by referring to paragraph 10 of the "Instructions to Bidders" which imposed upon the petitioner the obligation to execute the corresponding documents "within five days after notice of acceptance of bid." On paragraph 15 of said instruction to bidders it was further provided that "the contract shall be made . . . and shall be acompanied by a bond . . . in a penal sum equal to twenty (20) per cent of the full contract price of the work . . ."

These obligations were accepted by petitioner when he submitted his bid "subject to all conditions and requirements" of the advertised invitation to bid.

Therefore, the claim of petitioner that the posting of performance bond was a condition precedent to perfect the contract is absolutely erroneous. On this point, the court said:

> "*Such condition presupposes the existence of a contract*, which is qualified thereby. Compliance therewith is essential to the existence of petitioner's right to undertake the plumbing installations, and collect the price thereof. But, he had a *contractual right* to give the performance bond, in the sense that respondent had granted him by agreement the right to post said bond, and, once this had been done, he could invoke and enforce his other rights by virtue of the award in his favor. At the same time, respondent had a similar *contractual right* to demand to refuse to allow petitioner to undertake the pending installations and to demand damages for breach of petitioners obligation. In either case, the existence of a contractual relation between the parties did not depend upon the posting of the performance bond."

Jose B. H. Pedrosa

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Civil Law—*Civil Registrar has no authority to make of record the paternity of an illegitimate child whose birth certificate is signed and sworn to only by the mother.*

JOAQUIN P. ROCES v. THE LOCAL CIVIL REGISTRAR OF MANILA

G.R. No. L-10598, February 14, 1958

Under the Civil Registry Law,[1] where the birth certificate of an illegitimate child is signed and sworn to only by the mother and the father refuses, it is not permissible to reveal the name of the father or state any information by which such father could be identified, and under the Civil Code,[2] neither parent shall state any circumstance whereby the identity of the other parent may be known. Accordingly, the Local Civil Registrar has no authority to make an

[1] Act No. 3753, sec. 5 provides: "In the case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child or to give therein any information by which said father could be identified."

[2] CIVIL CODE OF THE PHILIPPINES, art. 280 provides: "When the father or the mother makes the recognition separately, he or she shall not reveal the name of the person with whom he or she had the child; neither shall he or she state any circumstance whereby the other parent may be identified."

entry in the records of the Civil Registry of the birth certificate of an illegitimate child showing the identity of the father.[3] Such an entry, being in violation of law, should be changed or corrected.

In the instant case, the petitioner, Joaquin P. Roces, came to know of the existence of a birth certificate registered with the Local Civil Registrar of Manila, mentioning him as father of one Ricardo Joaquin V. Roces, an illegitimate child. The birth certificate also mentioned one Carmen Valdellon as the mother, whose civil status is said to be "single." Apart from naming the petitioner as the father of the child, it also states that he is "married." Claiming such statements to be false, petitioner applied for an order directing the Local Civil Registrar to rectify the certificate by striking out from said document all information having reference to him as father of the child and that the surname "Roces" appended to the name Ricardo Joaquin Roces be also stricken from the records. Ricardo, represented by his natural guardian, Carmen Valdellon, opposed the petition on the ground that "it involves not merely correction of clerical errors but controversial matter."[4] On appeal to the decision of the trial court denying the petition,[5] the Supreme Court reversed such decision stating that:

"It appearing that on the birth certificate of Ricardo Joaquin Roces that the alleged father of the child, has not signed the instrument, it is clear that statements therein relative to the identity of the father of said child were and are in open violation of the law. Consequently, the Local Civil Registrar who is duty bound to comply with said law and is partly charged with its enforcement, has no authority to incorporate such unlawful statements in the corresponding entry made by him in the records of his office and that the entry as to the identity of the father of Ricardo Joaquin Roces is null and void and should be cancelled or corrected."

Efren C. Gutierrez

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Civil Procedure—*When a motion for postponement is filed because the parties are trying to reach an amicable settlement of the controversy, it behooves the court to grant the same.*

PHILIPPINE NATIONAL BANK v. DE LA CRUZ
G.R. No. L-11002, 16 April, 1958

This is an appeal from the orders of the Court of First Instance of Manila dismissing the plaintiff's complaint.

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[3] Crisolo v. Macadaeg, G.R. No. L-7017, April 29, 1954.

[4] CIVIL CODE OF THE PHILIPPINES, art. 412 provides: "No entry in a civil register shall be changed or corrected, without judicial order."

The procedure contemplated in this article has been construed to be summary in nature and does not cover cases involving controversial issues. If the purpose of a petition is merely to correct a clerical error in the record of birth then the court may order that the error or mistake be corrected. If it refers to substantial change such as one affecting the citizenship of a person, the matter should be threshed out in a proper action depending upon the nature of the issue involved. AQUINO, THE LAW OF PERSONS AND FAMILY RELATIONS 552-553 (1956 ed.). Ty Kong Tin v. Republic of the Philippines, G.R. No. L-5609, February 5, 1955.

[5] The trial court dismissed the petition upon the authority of Ty Kong Tim case, *ibid*, where the Supreme Court refused to grant an order amending the entry in the record of birth of petitioner's children relative to their political status. The point of controversy in that case, was whether or not the petitioner and his children were Chinese citizens as asted in the certificate of birth and record of birth, or Filipino citizen as contended by the petitioner. This according to the Court, is a question involving a controversial issue.

The Supreme Court, in refusing to follow the Ty Kong Tin case, ruled that the only issues involved in the instant case, are whether the statements in said birth certificate identifying the alleged father of the child are valid and whether the Local Civil Registrar was justified in making the corresponding entry in the record of his office.

It appears that defendant Isidoro de la Cruz obtained a loan of ₱5,000 from the Philippine National Bank, payable within 120 days, with 6% interest per annum, and an additional 10% of the amount due for attorney's fees. To secure the loan, De la Cruz executed a mortgage in favor of the bank over a certain property situated at Dasmariñas, Cavite.

The mortgagor failed to satisfy his obligation, and for this reason, the bank foreclosed the mortgage. The property was sold at public auction, and the same was awarded to the bank for ₱5,000, it being the highest bid received for the property. As there remained an unsatisfied balance in favor of the bank, the latter filed a complaint against De la Cruz to recover the deficiency.[1] In his answer, defendant claims that the sale of the property should be taken to have released him from his obligation. Before the hearing of the case, counsel for defendant filed an urgent motion for postponement, bearing the conformity of counsel for plaintiff, on the ground that the parties are trying to reach an amicable settlement of their controversy. The Court denied the motion for postponement, and it appearing that plaintiff failed to appear at the trial, the Court dismissed the case for failure to prosecute.[2] Hence this appeal.

The issue raised in this appeal is whether or not the lower court, in denying the motion for postponement, abused its discretion.

The Supreme Court held that while postponements, particularly those manifestly intended to delay the proceedings, should be discouraged, yet where a transfer of the hearing to some other time was sought for on reasonable grounds, as when the parties are trying to reach an amicable settlement of their controversy, it behooves the court to grant the same in order to afford the parties opportunity to thresh out their differences out of court.[3]

In the case at bar, considering that defendant's motion for postponement was the first, and that same was obviously requested to enable the parties to reach an amicable settlement, the ends of justice could have been better served if it were allowed. Similarly, although a party has no right to presume that a motion for postponement would be granted by the court to justify his failure to appear on the date of the hearing, yet taking into account the explanation offered by plaintiff which was not controverted, the court *a quo* would not have dismissed the case on account of plaintiff's failure to prosecute. Orders of the lower court set aside.

Maria Asuncion Sy-Quia

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Civil Procedure—*Where defendants have two claims or remedies arising from the same cause of action, the court cannot reserve to defendants the right to file a new and separate action based on one claim.*

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[1] Rule 70, sec. 6 of the Rules of Court provides for the case when there is a deficiency after the sale of real property in judicial foreclosures of mortgages.

[2] Rule 30, sec. 3 of the Rules of Court provides that when the plaintiff fails to appear at the time of the trial, the court on its own motive may dismiss the case.

[3] Art. 2030 of the Civil Code provides: "Every civil action or proceeding shall be suspended: (1) If willingness to discuss a possible compromise is expressed by one or both parties; or (2) If it appears that one of the parties, before the commencement of the action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

"The duration and terms of the suspension of the civil action or proceeding and similar matters shall be governed by such provisions of the rules of court as the Supreme Court shall promulgate. Said rules of court shall likewise provide for the appointment and duties of amicable compounders."

DAVID v. DE LA CRUZ
G.R. No. L-11656, 18 April 1958

This is a petition for review of the decision of the Court of Agrarian Relations.

This case was originally started in the Court of Industrial Relations by a complaint for reinstatement filed by respondents De la Cruz and others against their landlord, Maria M. David, who allegedly ejected them from their landholdings without just and lawful cause, and for damages allegedly caused to them by their unlawful ejectment. Upon the creation of the Court of Agrarian Relations, the case was transferred to said court.

After trial, the court rendered judgment ordering respondents' reinstatement, and reserving to them the right to file a new action for the recovery of losses and damages because "the evidence of record does not contain enough data upon which to base a fair adjudication of the damages said petitioners are entitled to." Maria David appealed to the Supreme Court by petition for review.

The issue raised is whether or not the lower court erred in reserving to respondents the right to file a new and separate action for damages.

The Supreme Court held that respondents have but one cause of action against petitioner, their illegal ejectment or removal from their landholdings, which cause of action, however, entitles them to two claims or remedies—for reinstatement and damages. As both claims from the same cause of action, they should be alleged, as in fact they were alleged, in a single complaint.[1] Respondents therefore had the burden and duty of proving both claims satisfactorily.[2]

But while respondents succeeded in proving their illegal ejectment and their right to reinstatement, they failed to prove the damages allegedly suffered by them. In view of their failure to establish their claim for damages, such claim should have been unqualifiedly dismissed. The reservation made by the trial court would not only result in a municipality of suits, but even allow the filing of another action between the same parties for a claim that has already been fully tried, litigated, and heard in this case, all to the prejudice of the petitioner as well as of the courts who would have to try the case anew.

Respondents urge the amendment of the decision appealed from so as to include an award of damages in their favor, or in the alternative, the return of this case to the lower court for the reception of additional evidence on the question of damages. They, however, did not appeal from the lower court's decision and so cannot, as merely appellees, ask for a substantial modification therefor. The rule is settled that an appellee cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter-

[1] Rule 2, sec. 3 of the Rules of Court states that a single cause of action cannot be split up into two or more parts so as to be made the subject of different complaints

[2] Rule 123, sec. 70 of the Rules of Court gives the rule on the burden of proof in civil cases and read: "Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document the custody of which belongs to the opposite party. The burden of proof lies on the party who would be defeated if no evidence were given on either side."

assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof.[3]

Judgment modified in the sense that the reservation to respondents of the right to file another action for damages is eliminated, and instead, their claim for damages is dismissed with prejudice.

Maria Asuncion Sy-Quia

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Civil Procedure—*Where the acts of contempt imputed by petitioner have been denied by respondents and petitioner has submitted the case without proof to support the charge, the same must be dismissed for lack of merit.*

GATTOC v. EVANGELISTA
G.R. No. L-12161, 18 April 1958

This is an original petition praying that respondents be required to show cause why they should not be declared in contempt for having disobeyed a writ of preliminary injunction issued by the Supreme Court.

It appears that in Civil Case No. 819 of Cotabato, wherein respondent Evangelista was the plaintiff and petitioner Gattoc the defendant, a decision was rendered ordering defendant to vacate the land which was the subject of the litigation.

In that case, trial was held in the absence of petitioner who claims not to have been properly served with summons and so he filed a motion for new trial, which motion was denied.[1] Petitioner went to the Supreme Court by way of certiorari. Upon his motion, a writ of preliminary injunction was issued by the Supreme Court decreeing the preservation of his rights.[2]

Petitioner now claims that notwithstanding said writ, respondents tried to deprive him of the land and threatened him with criminal prosecution if he would refuse to surrender it. The respondents denied this imputation.

The question is whether respondents could be held guilty of contempt for having defied a restraining order of the Supreme Court.

Petitioner's main claim is that he was still in possession of the land when the writ was issued, although there was a judgment ordering him to vacate it and return its possession to respondent Evangelista.

On the other hand, this contention is disputed by respondents who claim that as early as 1955, petitioner had already abandoned the land, so much so that when the case was filed against him, the sheriff was unable to serve the summons on him and so he was declared in default, and the only portion that continued in his possession was a small area on which his house is built.

It is for this reason, respondents contend, that when the writ was issued their tenants were in possession of the land, and when petitioner showed them the writ issued by the Supreme Court, they did not give it importance because

[3] Gorospe v. Peñaflorida, G.R. No. L-11583, July 19, 1957; Lapuz v. Sy Uy, G.R. No. L-10079, May 17, 1957; Penida & Ampil Mfg. Co. v. Bartolome, G.R No. L-6904, September 30, 1954.
[1] Rule 37, Rules of Court.
[2] Rule 60, Rules of Court

of their belief that he only made use of it as a means to intimidate them and regain possession of the land.

Considering that the acts of contempt imputed by petitioner had been denied by respondents specially with regard to the possession of the land, and petitioner has submitted the case without any proof to support the charge, the same has not been substantiated and the only alternative is to dismiss it for lack of merit.

Petition dismissed.

Maria Asuncion Sy-Quia

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Civil Procedure—*An action to recover the sum of ₱600.00 which involves the foreclosure of a chattel mortgage constituted to secure the payment of the obligation falls within the jurisdiction of the Court of First Instance.*

SENO v. PESTOLANTE
G.R. N. L-11755, 23 April 1958

This is an appeal from an order of the Court of First Instance of Cebu dismissing plaintiff's complaint.

Plaintiff brought this action before the Court of Frist Instance of Cebu to recover from defendant, Fausto Pestolante, the sum of ₱600.00 plus interest, and the sum of ₱250.00 as attorney's fees and, in default of payment thereof, to order the foreclosure of the chattel mortgage executed by said defendant covering personal properties valued at ₱2,500.00. One Telesforo Barimbao was made party defendant for the reason that he is presently in possession of the mortgaged property and has refused to surrender the same to plaintiff because he has purchased it from his co-defendant as evidenced by a deed of sale executed before a notary public.[1]

Defendant Pestolante filed a motion to dismiss on the ground, among others, that the court has no jurisdiction over the case, it appearing that the action is only to collect a balance of ₱600.00 which comes under the original jurisdiction of the justice of the peace court of Oroquieta, Misamis Occidental.[2]

Sustaining Pestolante's motion, the Court of First Instance dismissed the case. Seno appealed.

The question raised is whether the trial court erred in dismissing the present action.

The Supreme Court stated that while it is true that the purpose of the action is to recover the sum of ₱600.00 plus interest, which comes within the original jurisriction of the justice of the peace court, it is as well true that the action involves the foreclosure of the chattel mortgage executed by Pestolante to secure the payment of his obligation, which mortgage covers personal properties valued at more than ₱2,000.

Speaking of foreclosure of a chattel mortgage, former Chief Justice Moran says: "Of course a chattel mortgage may be foreclosed judicially, following

[1] Rule 38, sec. 7 of the Rules of Court.
[2] Sec. 86(b) in relation to Sec. 44 of the Judiciary Act provides that the Justice of the Peace court has original jurisdiction in civil cases where the demand, exclusive of interest, is not more than two thousand pesos.

substantially the same procedure provided in Rule 70 . . . when the mortgagor refuses to surrender possession of the mortgage chattel, an action of judicial foreclosure necessarily arises, or one of replevin to secure possession as a preliminary step to the sale contemplated in sec. 14 of Act 1508.[3]

In a similar case, the Supreme Court held "where . . . the debtor refuses to yield up the property, the creditor must institute an action, either to effect a judicial foreclosure directly, or to secure possession as a preliminary to the sale above quoted." [4]

Order of dismissal set aside.

Maria Asuncion Sy-Quia

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Civil Procedure—*A house, constructed by the lessee of the land on which it is built, should be dealt with for purposes of attachment as immovable property.*

EVANGELISTA v. ALTO SURETY
G.R. No. L-11139, 23 April 1958

This is an appeal by certiorari from a decision of the Court of Appeals.

In Civil Case No. 8235 of the Court of First Instance of Manila, entitled "Santos Evangelista v. Ricardo Rivera," for a sum of money, petitioner Evangelista obtained a writ of attachement which was levied upon a house, built by Rivera on a land situated in Manila and leased to him. A copy of the writ and the corresponding notice of attachment was filed with the Register of Deeds on June 8, 1949.[1]

On October 8, 1951, petitioner bought the house at public auction held in compliance with the writ of execution in said case. The corresponding definite deed of sale was issued to him on October 22, 1952. When Evangelista sought to take possession of the house, Rivera refused to surrender it, on the ground that he had leased the property from the respondent insurance company, and that the latter is now the true owner of said property, it having bought the property on May 10, 1952, being the highest bidder at an auction sale held on September 29, 1950, in compliance with a writ of execution issued in Civil Case No. 6268 of the same court.

Evangelista instituted the present action against respondent and Rivera for the purpose of establishing his title over said house, and securing possession thereof, plus damages.

Respondent claims better right to the house because the sale made in its favor precedes the sale to Evangelista.

After trial, the court rendered judgment for Evangelista. On appeal taken by respondent, this decision was reversed by the Court of Appeals which absolved respondent from the complaint on the ground that, although the writ of attachment in favor of Evangelista had been prior to the sale in favor of respondent, the former did not acquire thereby a preferential lien, the attachment having been levied as if the house in question were immovable property,

[3] II MORAN 250-1, 1957 ed.
[4] Bachrach Motor Co. v. Summers, 42 Phil. 6 (1921).

[1] Rule 59, sec. 7 of the Rules of Court provides how the various classes of real and personal property are attached.

although in the opinion of said court, it is "ostensibly a personal property." As such, the Court of Appeals held, "the order of attachment . . . should have been served in the manner provided in subsection (e) of sec. 7 of Rule 59."

The issue is whether a house, constructed by the lessee of the land on which it is built, should be dealt with, for purposes of attachment, as immovable property, or as personal property.

The Supreme Court held that the house in question is not personal property, much less a debt credit or other personal property not capable of manual delivery, but immovable property. In *Laddera v. Hodges*[2] it was held by the Supreme Court that a "true building (not merely superimposed on the soil) is immovoble or real property whether it is erected by the owner of the land or by a usufructuary or lessee."[3]

It is true that the parties to a deed of chattel mortgage may agree to consider a house as personal property for purposes of said contract.[4] However, this view is good only insofar as the contracting parties are concerned. It is based partly on the principle of estoppel. Neither this principle, nor said view, is applicable to strangers to said contract. Much less is it in point where there has been no contract whatsoever, with respect to the status of the house involved, as in the case at bar.

Apart from this, in *Manarang v. Ofilada*[5] the Supreme Court held "that the house of mixed materials levied upon on execution, although subject of a contract of chattel mortgage between the owner and a third person is real property within the purview of Rule 39, sec. 16, as it has become a permanent fixture of the land, which is real property." The foregoing considerations apply, with equal force, to the conditions for the levy of attachment, for it similarly affects third persons.

The decision of the Court of Appeals is reversed, the decision of the trial court is affirmed.

Maria Asuncion Sy-Quia

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Civil Law—*Liability of sheriff for acts of his deputy: Sheriff is liable to third persons for damages resulting from auction sale conducted by his deputy. Exceptions: (1) When deputy acts in his own name, (2) when deputy exceeds the limits of his agency, or (3) when deputy is guilty of active malfeasance.*

LORCA v. DINEROS

G.R. No. L-10919, February 28, 1958

This is an appeal from a judgment dismissing an action for damages against a deputy sheriff on the ground that it is the sheriff and not his deputy who is responsible for the damages resulting from an auction sale conducted by the latter.

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[2] 48 O.G. 5374 (1952)
[3] See also Leung Yee v. Strong Machinery Co., 37 Phil. 644.
[4] Luna v. Encarnacion, 48 O.G. 2664 (1952); Standard Oil Co. v. Jaramillo, 44 Phil. 630 (1923); De Jesus v. Juan Dee Co., Inc., 72 Phil. 464 (1941).
[5] 52 O.G. 3954.

The facts of the case are simple. Defendant Jose S. Dineros, Deputy Sheriff of Iloilo, executed the writ of execution issued in Civil Case No. 1062, entitled "Rosario Suero v. Jose Morata." He sold at public auction, in the name of the sheriff, the property attached therein to Jose Bermejo and Rosario Suero over the objection of Loreto Lorca who filed a third-party claim asserting ownership over said property.

Immediately thereafter, Loreto Lorca instituted an action for damages against Deputy Sheriff Jose S. Dineros. The latter denied liability, claiming that "he had merely acted for and on behalf of Provincial Sheriff Cipriano Cabalusos." The case was dismissed, hence this appeal.

Appellant insists that appellee was responsible for the damages resulting from the sale of the property in view of Section 334 of the Revised Administrative Code [1] in relation to Section 15, Rule 39, Rules of Court.[2]

Justice Cesar Bengzon, speaking for the Court, said:

> "In the light of Section 330 of the Administrative Code[3] we think the above provisions[4] apply where the deputy acts in his own name or is guilty of active malfeasance[5] or possibly when he exceeds the limits of his agency. In this case it is clear that the certificate of sale attached to the complaint as Annex C that Dineros acted all the time in the name of the ex-officio Provincial Sheriff of Iloilo; and no allegations of misfeasance are made. The sheriff is liable to third persons for the acts of his deputy,[6] in the same manner that the principal is responsible for the acts of his agent.[7] That is why he is required to post a bond for 'the benefit of whom it may concern,'[8] for instance the owners of property unlawfully sold by him on execution.[9]

Appellant further argues that the complaint should not have been dismissed since the Court could have included the Provincial Sheriff as party under Section 11, Rule 3 of the Rules of Court.[10] The Court answered this contention, saying:

> ". . . What should have been done was not 'inclusion' as plaintiff asked, nor 'exclusion' under said Section 11. It was 'substitution' of the deputy by the sheriff. Anyway, the word 'may' in said Section 11 implies discretion of the court; and we are shown no reason indicating abuse thereof."

Jose B. N. Pedrosa

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[1] "*Right of bonded officer to require bond from deputy or assistant.*—A sheriff or other accountable official may require any of his deputies or assistants, not bonded in the fidelity fund, to give an adequate personal bond as security against loss by reason of any wrongdoing on the part of such deputy or assistant. The taking of such security shall in no wise impair the independent civil liability of any of the parties."

[2] "*Proceedings where property claimed by third person.*— . . . and in case the sheriff or attaching officer is sued for damages as a result of the attachment . . ."

[3] "*Bond to be given by sheriff.*—A sheriff or a person exercising the functions of officer of court shall, before being qualified to perform the duties of his office, execute a bond, with approved sureties, in such form and amount as the Auditor General shall prescribe, running to the Government of the Philippines, for the benefit of whom it may concern. Such bond shall be conditional for the faithful performance of the duties of himself and his deputies as sheriff and officer of court, and for the delivery or payment to the Government, or the persons entitled thereto, of all property or sums of money that shall officially come into his or their hands. The failure to give bond as herein required before the expiration of the period of thirty days from the date when the officer should enter upon the discharge of his duties shall constitute a renunciation of the office. . . ."

[4] Sec. 334 of the Revised Administrative Code and sec. 15, Rule 39, Rules of Court.

[5] Singh v. Sulce, 49 Phil. 563 (1926).

[6] Basco v. Gonzales, 59 Phil. 1, 6 (1933); Singh v. Sulce, *supra*.

[7] See Macias & Co. v. Warner Barnes, 43 Phil. 155 (1922).

[8] Sec. 330, Revised Administrative Code.

[9] Walker v. McMicking, 14 Phil. 668 (1909); Osorio v. Cortes, 24 Phil. 653 (1912); Basco v. Gonzales, *supra*.

[10] "*Misjoinder and non-joinder of parties.*—Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."

Civil Procedure—*Ordinarily, a guardian* ad litem *has no authority to act or bind a minor in any transaction with regard to his estate; however, he can do so with the approval of the court.*

STO. DOMINGO, et al. v. STO. DOMINGO, et al.
G.R. No. L-10886, April 18, 1958

A minor, according to our Rules of Court, may sue or be sued through his guardian, or if he has none, through a guardian *ad litem* appointed by the court.[1] It is believed that the minor may not have sufficient intelligence or discernment to safeguard his properties so that occasion may arise when guardian *ad litem* is appointed to appear for an infant, and to manage and take care of suit for such infant when he is a plaintiff and to appear, manage, take care of the defense for the infant when he is defendant."[2] How far the guardian *ad litem* may bind the minor whom he represents was discussed in the case under review.

Raymundo Sto. Domingo contracted two marriages, the first with Juana Dilag out of which Urbana was born, and the second with Pilar Evangelista, the same having produced Leoncia as the only issue. Before his death, Raymundo executed a deed of donation of his properties in favor of his daughter Urbana. The donation was duly accepted and the properties were placed in the possession of the donee. When Raymundo died on May 1, 1935, the surviving heirs were Urbana, daughter of the first marriage, Leoncia, daughter of the second marriage, and his widow Pilar Evangelista, mother of the latter.

It appears that Urbana later sold the donated properties to one Matias, the deed of sale being duly registered in the Office of the Register of Deeds of Bulacan, who subsequently issued in favor of the vendee the corresponding certificate of title.

A series of litigations involving the annulment of the donation and the deed of sale followed.

In her own behalf and as guardian *ad litem*[3] of her minor daughter Leoncia, Pilar Evangelista instituted a civil case against Urbana and Matias wherein it was alleged that the donation as well as the sale of the properties of the deceased were fictitious and therefore null and void. After issues were joined by the filing of their answer, the case was amicably settled, the parties filing a motion asking for the dismissal of the case. As a result of such settlement, plaintiffs received the sum of ₱1,000.00 by way of compromise. The settlement was approved by the court and the case dismissed.

On October 7, 1938, after the lapse of twenty two months, the same widow, who in the meantime had remarried, in her own behalf and again as guardian *ad litem* of Leoncia, once more instituted another action in the same court praying for the identical relief. The case was again dismissed on petition of

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[1] Rule 3, sec. 5, Rules of Court.

[2] Emeric v. Alvarado, 54 Cal. 599; 2 Pac. Rep. 418, 459.

[3] It should be mentioned here that under the new Civil Code, the father and the mother have, with respect to their unemancipated children, the duty to represent them in all actions which may redound to their benefit (Art. 316). Thus, aside from being the natural guardian of their children, the parents are, without need of judicial appointment, also the legal representatives of their unemancipated children.

The new Civil Code restores the right and duty granted to the parents by the old Code. Our Supreme Court has in various cases held that the old Civil Code provision charging the parents with the duty of representing his minor children in the exercise of all actions which may redound to their benefit was abolished by sec. 553 of Act No. 19. *See* I FRANCISCO, CIVIL CODE OF THE PHILIPPINES 847 (1953).

plaintiffs who were not ready to go to trial but without prejudice to reviving the case if they so desired.

In the meantime, intestate proceedings for the settlement of the estate of the deceased Raymundo Sto. Domingo were instituted and one Severino Alberto was appointed administrator. In 1954, Alberto filed a complaint against the same defendants but the case was dismissed on the ground of lack of legal capacity on the part of the plaintiff.

The present action was brought by the same widow in her personal capacity and as guardian *ad litem* of her daughter daughter Leoncia against the same defendants seeking the annulment of the same deed of donation and sale based on the same ground of fraud and lack of consideration.

Can the present action be maintained? Certainly not, answered the Supreme Court. It is clear that in the first action brought by Evangelista, to the motion submitted to the court by the parties praying for its dismissal, there was attached an affidavit signed by the widow wherein she acknowledged having voluntarily entered into an amicable settlement of the case, and in this settlement she acted not only in her personal capacity but as guardian *ad litem* of her minor daughter Leoncia. The order approving the settlement became final for lack of appeal on the part of either party. Therefore, said the Court, "considering that the present case involves the same parties and the same issues as those involved and raised in the first case, the conclusion is inescapable that the present case is already barred by a prior judgment."

The fact that one of the party-litigants, Leoncia, is a minor is of no moment, for she had been represented all along by her guardian *ad litem*, in accordance with our Rules of Court.

Citing *Corpus Juris Secundum*, the Court pronounced that it cannot also be contended that because the minor was merely represented by a guardian *ad litem*, said guardian cannot bind the minor with regard to the amicable settlement. Although, ordinarily, a guardian *ad litem* cannot bind a minor in any transaction with regard to his estate,[4] the situation is different when the settlement has been approved by the court, as in the instant case.

Teodoro D. Regala

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Civil Procedure—*An order of default issued for failure to answer a cross-claim is interlocutory; hence it is not appealable.*

MANDIAN v. LEONG et al.
G.R. No. L-10564, April 25, 1958

The right of appeal, also a legal remedy, is one of the most useful checks to hasty and haphazard dispensation of justice in the inferior courts. As a right, it is quite comprehensive. As a legal remedy, however, its applicability and availability is limited to final and executory judgments,[1] not to nterlocutory or incidental questions. The reason of the law is obvious. It seeks to avoid multiplicity of appeals in a single action. Moreover, if an appeal on an interlocutory order were allowed the trial on the merits of the case would neces-

[4] "Ordinarily his (referring to the guardian *ad litem's*) authority is recognized only for certain specific purposes, and it is restricted to matters connected with the litigation at hand; he has no authority to act in any other matters and he cannot otherwise bind the infant or his estate; and it has been held that he cannot bind the infant by anything that he may do, except with the consent of the court" (43 C.J.S. 299).

sarily be delayed for a considerable length of time. It would compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by him and interlocutory orders rendered or issued by the lower court.[2]

A court order is said to be interlocutory in nature when it requires some further steps to be taken in order to enable the courts to adjudicate and settle the rights of the parties.[3] Such kind of order does not put an end to the ordinary proceeding in the nature of a judicial action, since the court has still to proceed with the hearing of the evidence to be presented by the other party in support of his claim, counterclaim or cross-claim as the case may be.[4] When a party is declared in default [5] by the court, his remedy is not to appeal from the order. Instead, he should file a motion to set aside the order of default under the pertinent rule of the Rules of Court.[6] If the motion is denied, then the party should wait for the final judgment of the court on the merits of the case. Only after said judgment is rendered can the remedy of appeal be availed of. On proper appeal, the appellant may not ony have the judgment revised and corrected, but he may also raise the question as to whether or not the order of default was corected in accordance with law and facts of the case. The reversal of the order of default will necessarily carry with it the invalidity of the subsequent judgment on the merits.[7]

The Supreme Court in the present case, upheld the doctrine of non-appealability of interlocutory orders.

The appellant in our case, Dionisio Leong, was charged by Mandian, widow of his late father, with having usurped a parcel of land and coconut plantation in Davao, degistered in her name. Appellant answered the complaint denying usurpation and pleaded that he possessed and administered the disputed property as part of the estate of his late father, by agreement with plaintiff.

Subsequently, defendant-appellant's brother, Celestino Leong, filed an answer in intervention [8] as defendant, pleading that the lot was only registered in Mandian's name because the husband was not then a Filipino citizen. The answer also contained a cross-claim [9] against Dionisio Leong, averring his exclusive possession of the estate. A copy of this answer was served on Dionisio, June 6, 1955. By order of June 27, 1955, the answer was admitted and plaintiff was ordered to answer the cross-complaint.

On July 1, 1955, a motion ex-parte was filed by counsel for defendant-intervenor praying that Dionisio be declared in default for failure to answer the cross-complaint.

On July 11, Dionisio sought reconsideration on ground that period to answer,[10] should be counted from June 27, at the time the court admitted the answer in intervention. The Court denied the motion and Dionisio Leong appealed.

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[1] Rules of Court Rule 39, sec. 1.
[2] Sitchon v. Provincial Sheriff of Occidental negros, 80 Phil. 397.
[3] 2 Am. Jur. 864.
[4] Sitchon v. Prov. Sheriff of Occidental Negros, *supra*.
[5] For examples see Rules of Court Rule 4, sec. 13; Rule 7, sec. 3; Rule 24, secs. 3(c) & 5; Rule 27, sec. 6; Rule 35, sec. 6.
[6] Rules of Court Rule 38, sec. 2.
[7] Garcia Lim Toco v. Go Fay, G.R. No. L-1423, January 31, 1958.
[8] Rules of Court Rule 13.
[9] *Ibid.*, Rule 10, sec. 2.
[10] *Ibid.*, Rule 10, sec. 7.

In dismissing the appeal, the Court declared that the order of default being interlocutory and preliminary to the hearing of the case on the merits, it is not appealable. This is so because such an order remains under the control of the court and may be modified or rescinded by it on sufficient ground at any time before final judgment.[11]

Said the Court:

> "The appeal at this stage is premature and improper. It is even useless because the trial court may dismiss the cross-complaint if the cross-plaintiff shall fail to establish his claim against appellant with the requisite evidence."

Alfonso C. Bince, Jr.

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Criminal Law—*Proof of motive is not essential to conviction.*

PEOPLE v. BUGAGAO, et al.
G.R. No. L-11328, April 16, 1958

Murder is the unlawful killing of any person which is not parricide or infanticide, provided that any of the circumstances mentioned in Article 248 of the Revised Penal Code is present. The elements of murder, therefore are: that a person was killed; that the offender killed him; that the killing was attended by any of the qualifying circumstances mentioned in the Revised Penal Code; that there was intent to kill which is presumed when death resulted; and that the killing is neither parricide nor homicide.[2]

Is motive necessary to conviction?[3] The Revised Penal Code defines felonies as those acts and omissions punishable by law.[4] From this definition, it is clear that motive is never an essential element of crime.[5]

In the case of *People v. Ramponit*[6] it was held that motive is important only when doubt exists as to whether the defendant committed the crime, as where the incriminating evidence s merely circumstantial. But where the killing is admitted, it is not important to know the motive or the exact reason for the deed.

In the later case of *People v. Sespeñe, et al.*,[7] the Supreme Court said:

> ". . . Although the motive for the murder is trifling and frivolous such as denial to extend further credit and boundary dispute, there may have been more potent cause not known to the widow . . ."

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[11] Manila Electric v. Artiaga, 50 Phil. 144, 147.

[1] Article 248 Revised Penal Code. The following attendant circumstances are: (1) With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity; (2) In consideration of a price, reward, or promise; (3) By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment, or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin; (4) On occasion of any of the calamities enumerated in the paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity; (5) With evident premeditation; (6) With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[2] REYES, CRIMINAL LAW REVIEWER 234-5 (1958).

[3] BOUVIER'S LAW DICTIONARY AND CONCISE ENCYCLOPEDIA defines motive as the inducement, cause or reason why a thing is done. It is the inducement or that which leads or tempts the mind to indulge the criminal act; it is resorted to as a means of arriving at an ultimate fact, not for the purpose of explaining the reason of a criminal act which has been clearly proved, but from the important aid it may render in completing the proof of the commission of the act when it might otherwise remain in doubt.

[4] Article 3, par. 1, Revised Penal Code.

[5] I PADILLA, REVISED PENAL CODE ANNOTATED, 30 (1957).

[6] 62 Phil. 284; 286 (1935).

[7] G.R. No. L-9346, October 30, 1957.

In the instant case of *People v. Bugagao, et al.*, the rule that motive is not essential to conviction was reaffirmed.

In this case, Rodrigo Piniano, the deceased and his nephew went to the cockpit of Barrio Calabangan, Sipocot, Camarines Sur. While watching a cock-fight they were approached by Luis Bugagao who invited Rodrigo Piniano to a drink in one of the stores nearby, outside the cockpit. Luis Bugagao bought a botle of wine and one of Coca-cola, mixed them and offered the mixture to Rodrigo but the latter refused the drink. Visibly irritated, Luis Bugagao dragged Rodrigo by the arm where the cocks were being matched a few meters away, and they grappled and wrestled until they were separated by another person. Unappeased, however, Luis picked a piece of lumber from a fence and struck Rodrigo on the left eyebrow, knocking him down. In an instance Rodrigo was up, parried other blows and would have escaped further injury, had it not been for Petronilo Bugagao who having witnessed the fight as a bystander suddenly stabbed Rodrigo in the back with a *balisong* inflicting a mortal wound four centimeters long that pierced the lung, the diaphragm and the stomach. Rodrigo expired the next day as a result of the wound.

The Court found Luis Bugagao guilty of the crime of physical injuries. Petronilo was found guilty of murder qualified by treachery,[8] the latter having suddenly and unexpectedly attacked the deceased with a deadly weapon.[9]

The Court in arriving at its conclusion, followed its previous rulings. Thus:

> "Whatever the cause of the killing, it is not absolutely necessary to find a motive therefore. The question of motive is of course necessary where there is doubt as to whether the defendant is or is not the person who committed the act but when there is no doubt . . . it is not so important to know the exact reason for the deed." [10]
>
> "It is not indispensable to conviction for murder that the particular motive for taking the life of a human being shall be established at the trial, and in general, when the commission of the crime is clearly proven, conviction may and should follow even when the reason for its commission is unknown." [11]

In the case of *People v. Bugagao et al.*, the testimony of the two eye-witnesses to the crime, the dying declarations, coupled with the immediate arrest of the culprits and the prompt presentation of the complaint convinced the court without doubt that the accused Petronilo Bugagao was the killer.

Nelly A. Favis

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Criminal Procedure—*The court may not reduce bail granted before conviction for capital offense except upon notice to the fiscal at least three (3) days before hearing of motion therefor.*

PEOPLE v. RABA

G.R. No. L-10724, April 21, 1958

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[8] Article 14, par. 16, Revised Penal Code states: There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

[9] See also People v. Rufin et al., G.R. No. L-9845, May 23, 1957 and People v. Salboro et al., G.R. No. L-11087, May 29, 1957.

[10] United States v. McMann, 4 Phil. 561, 563 (1905).

[11] United States v. Carlos, 15 Phil. 47, 51 (1910).

It is a well-setled rule that when a person is accused of a capital offense, admission to bail before conviction thereof is a matter of discretion on the part of the court.[1] This is in conformity with the provision in the Bill of Rights of our Constitution[2] guaranteeing the right to bail and the Rules of Court[3] on the matter. And, as a corollary, it is established that this judicial discretion, "by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing," and "a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal."[4] As the "burden of showing that evidence of guilt is strong is on the prosecution,"[5] "the court must require that reasonable notice of the hearing of the application for bail be given to the fiscal."[6]

The above procedure is applied by the Supreme Court in the case at bar which involves not the question of admission to bail itself, but the reduction of the amount of bail already fixed by the court.

The facts of the case are simple. Talantor and Raba, charged with murder before the Court of First Instance of Antique, were allowed bail fixed by the court at ₱30,000 as recommended by the provincial fiscal. After arraignment, in which both of the accused pleaded not guilty, Talantor filed urgent motion praying that the bail be reduced to ₱14,000 in order to enable him to go on bail. Although the motion setting the hearing in the morning of the same day contained notification to the provincial fiscal, the latter was not actually notified until just one hour before the motion for the reduction of the bail was granted by the lower court.

In seting aside the order of the Court of First Instance, the Supreme Court, speaking through Mr. Justice Bautista Angelo, held:

> "The Rules of Court make it a duty of a movant to serve notice of his motion on all parties concerned at least three days before the hearing thereof (Section 4, Rule 26). This requirement is more imperative in a criminal case where a person is accused of a capital offense for in such a case admission to bail is a matter of discretion which can only be exercised after the fiscal has been heard regarding the nature of the evidence he has in his possession . . . Here Talantor is charged with a capital offense and while the fiscal fixed a bail of ₱30,000 for his provisional liberty, its further reduction could not be granted without hearing him because the evidence in his possession may not warrant it."

Nicodemo T. Ferrer

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Criminal Procedure—*Rules on withdrawal of a plea of guilty before judgment; and on motion for new trial on ground of newly discovered evidence followed.*

PEOPLE v. PASA

G.R. No. L-11516, April 18, 1958

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[1] People v. Alano, 81 Phil. 19 (1948); Teehankee v. Rovira, 75 Phil. 634 (1945); United States v. Babasa, 19 Phil. 198 (1911).

[2] PHIL. CONST. Art. III, Sec. 1 (16) states: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."

[3] RULES OF COURT Rule 110, Sec. 6 provides: "*Capital offense not bailable.*—No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong."

[4] Ocampo v. Bernabe, 77 Phil. 55, 56 (1946); Marcos v. Judge of Ilocos Norte, 67 Phil. 82 (1939).

[5] RULES OF COURT Rule 110, sec. 7.

[6] RULES OF COURT Rule 110, sec. 8.

It is a procedural rule beyond question that permission to withdraw a plea of guilty and substitute a plea of not guilty in lieu thereof, at any time before judgment, depends on the sound discretion of the trial court, it not being a matter of strict right to the accused; and the appellate court will not interfere with such discretion in the absence of abuse thereof.[1]

In the matter of new trial on ground of newly discovered evidence, it is equally well-settled that the following requisites must be present: "(a) that the evidence was discovered after the trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching , and is of such weight that, if admitted, it will probably change the judgment. Accordingly, where the evidence was known to the movant and was obtainable at the trial . . . the motion for new trial should be denied." [2]

The above rules have been so well entrenched in our procedural law that the Court, in the instant case, just took it for granted in affirming the decision of the Court of First Instance of Camarines Sur denying the petition of the accused for permission to withdraw his plea of guilty and substitute therefor a plea of not guilty and the motion for new trial on newly discovered evidence.

Here, Alfredo Pasa, Isidoro Villareal and another, charged with crime of robbery to which they pleaded not guilty, subsequently obtained permission to withdraw said plea and to plead guilty of theft. Sometime later, after being arraigned anew, the accused prayed for reinstatement of their plea of not guilty in lieu of that of guilty on ground that the latter was entered "upon suggestion of the attorney-de-oficio" and that accused were not actually guilty. Accused were convicted and sentenced by the lower court. Two motions for "reconsideration to reopen the case for new found evidence" having been denied, Pasa appealed.

Apparently considering the above-mentioned procedural rules as too elementary to be restated, Mr. Justice Concepcion, speaking for the Court, decided the case solely on questions of fact, holding that the appellant's allegation that the counsel-de-oficio pressured him into pleading guilty was refuted by the very allegation of "suggestion" in the joint petition for withdrawal of plea of guilty and the motion for reconsideration filed by him and Villareal in the lower court, and that no "new found evidence" was presented by appellant.

Nicodemo T. Ferrer

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Election Law—*Eligibility for public office; failure to register; definition of qualified voter.*

ROCHA v. CORDIS
G.R. No. L-10783, April 16, 1958

[1] People v. Co Hap, et al., L-4271, Mar. 31, 1952; People v. Serrano, 47 O.G. No. 10, 5106 (1951); People v. Nazareno, 79 Phil. 297 (1947); People v. Nueno, 70 Phil. 556 (1940); People v. Ubaldo, 55 Phil. 94 (1930); People v. Quinta, 51 Phil. 820 (1928); United States v. Sanchez, 13 Phil. 336 (1909).

[2] 2 MORAN, COMMENTS ON THE RULES OF COURT, 847-848 (1957), citing the following cases: People v. Mangulabnan, 52 O.G. No. 15, 6532 (1956); People v. Diwa, G.R. No. L-2552, May 30, 1951; Tan v. People, L-4269, Apr. 27, 1951; People v. Alfaro, 46 O.G. No. 9, 4219 (1949); People v. Cu Unjieng, et al., 61 Phil. 960 (1935); United States v. Magtibay, 17 Phil. 417 (1910); Berzabal v. Bernal, 13 Phil. 463 (1909); United States v. Hernandez, 5 Phil. 429 (1905); United States v. Palanca, 5 Phil. 269 (1905); United States v. Luzon, 4 Phil. 343 (1905); United States v. Alvarez, 3 Phil. 24 (1903); United States v. Zamora, 2 Phil. 582 (1903); United States v. Torrente, 2 Phil. 1 (1903); United States v. De Leon, 1 Phil. 188 (1902); United States v. Tan Jenjua, 1 Phil. 51 (1901)

It is a settled rule in this jurisdiction that a candidate is not rendered ineligible for public office by his mere failure to register [1] as a qualified voter in the municipality where he is a candidate.

Quo warranto cases involving this point have pivoted on the proper construction of Article 2174 of the Revised Administrative Code which provides for the qualifications of a municipal officer in the following terms:

> "*Qualifications of elected municipal officer.*—An elective municipal officer must at the time of the election, be a qualified voter in his municipality and must have been a resident therein for at least one year, and must not be less than twenty-five years of age. He must also be able to read and write intelligently either English, Spanish or the local dialect."

Decisions of the Supreme Court [2] have consistently upheld the view that the phrase "qualified voter' when applied to a voter does not necessarily mean that a person must be a registered voter. To become a qualified voter a person does not need to register as an elector. It is sufficient that he possesses all the qualifications prescribed in section 431 and none of the disqualifications prescribed in section 432.[3] The fact that a candidate failed to register as an elector in the municipality does not deprive him of the right to become a candidate and to be voted for." [4]

In the aforecited case, petitioner Rocha contested the eligibility of the duly-elected candidate, Cordis, for the office of Mayor of Caramoan, Camarines Sur, in the elections of November, 1955. The ground for ineligibility alleged was premised on respondent's not possessing one of the qualifications required by law: that of being a qualified voter of the municipality, by the absence of his name in the list of qualified voter thereof—his right to vote having been earlier contested before the court, which after due hearing, ordered his name stricken out therefrom. The Supreme Court, upholding the aforementioned rulings on the same point, sustained the eligibility of respondent.

However, this writer believes that the Court should have been more cautious in applying the rule in this particular case. A distinction exists, and a significant one, between the cases cited as authorities and this case. The candidate's name does not appear in the list of qualified voters in the cited cases because of the candidate's *failure* to register; in the present case, the candidate's name does not appear because it was *stricken out* for a reason not stated in the court's opinion.

The Revised Election Code does not state the grounds when a voter's name should be excluded from the list by order of the court, although a reading thereof inevitably shows that such grounds are the absence of some or all of the qualifications as prescribed in section 98 and/or presence of a disqualifica-

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[1] "The act of registering is only one step towards voting, and it is not one of the elements that makes the citizen a qualified voter. Registering does not confer the right. It is but a condition precedent to the exercise of the right." Meffert v. Brown, 132 Kentucky 201, cited with approval in Yra v. Abaño, 52 Phil. 380 (1912).

[2] Among them are Yra v. Abaño, *supra;* Vivero v. Murillo, 52 Phil. 694 (1929); Larena v. Teves, 61 Phil. 36 (1934)

[3] Which Administrative Code (1916) provisions have been repealed and re-enacted as sections 98 and 99 of the Revised Election Code.

[4] The contemporaneous construction given by the then Executive Bureau, Unnumbered Provincial Circulars, May 2, 7, 19, 1925, cited in JOSE P. LAUREL'S LAW OF ELECTIONS IN THE PHILIPPINE ISLANDS and in turn adopted in Yra v. Abaño, *supra.*

tion provided for in section 99.[5] If such be the case, Cordis was not a qualified voter in the true sense of the term.

Remedios Catungal

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Election Law—*Right of successful protestant to office vacated; quo warranto and election contest distinguished.*

LUISON v. GARCIA

G.R. No. L-10981, April 25, 1958

Whether a protestee being found ineligible, and protestant having obtained the next highest number of votes, the latter can be declared entitled to hold the office to be vacated by the former.

Decisions of the Supreme Court have held that "the general rule is that the fact that a plurarity of a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected. In such a case, the election have failed to make a choice and the election is a nullity." [1] Another decision advanced the view that no such declaration in favor of the protestant can be made since the law not only does not contain an express provision authorizing such declaration but apparently seems to prohibit it." [2] This opinion was made, presumably referring to section 173 of the Revised Election Code which permits the filing of an action by *any* registered candidate irrespective of whether the latter acquired the next highest place or the lowest in the election returns.[3]

The above question was again raised in the present case. It appears that in the 1955 elections, Luison and Garcia were the only candidates for mayor of Tubay, Agusan. The certificate of candidacy of Garcia having been signed, not by the party officials, but by the candidate for vice-mayor, it was alleged, and sustained by the Commission on Elections, that the same was insufficient.

Garcia filed a petition for prohibition with the Court of First Instance which was dismissed for lack of jurisdiction. No appeal having been taken therefrom, the appeal became final. Meanwhile, he filed a motion for reconsideration with the Commission on Elections which was denied. No appeal was taken from such denial which also became final.

The Commission on Elections, by virtue of such decision, ordered the board of inspectors of every precinct affected that all votes cast for Garcia be considered stray votes. Notwithstanding such order, the election proceeded and all votes cast for respondent, having been counted, showed him garnering 869 votes as against Luison's 675, as a result of which he was declared Mayor of the municipality.

In addition to this construction given by the executive department, the Philippine Assembly, which was responsible for enacting the law, voiced the same stand when the election of Hon. Rernando Ma. Guerrero as a member of the Assembly from Manila was contested on the ground that he was not registered in his electoral district. *Ibid.*

[5] It should be noted that the settled view, over which there is no controversy, is the construction given the phrase "qualified voter" which is, one who has all the qualifications and none of the disqualifications, both being provided for in section 98 and 99, respectively.

[1] Hermoso v. Ferrer, et al., G.R. L-2470, August 30, 1949; Avelino v. Rosales (C.A.) 48 Off. Gaz. No. 12, 5309; Noval v. Guray, 52 Phil. 654 (1928); Topacio v. Paredes, 28 Phil. 238 (1912).

[2] Villar v. Paraiso, G.R. L-8014, March 14, 1955.

[3] Llamoso v. Ferrer, G.R. L-2470, August 30, 1949.

Luison filed a petition for quo warranto which was dismissed by the Court of First Instance on the ground that the certificate was sufficient. Upon appeal to the Supreme Court, the lower court's order was reversed since the previous rulings as to its sufficiency have become final and therefore, constitute *res judicata*. The present case, by way of an election protest was subsequently filed by Luison on the ground that Garcia was ineligible because his certificate of candidacy was declared null and void by both the Commission on Elections and the Court of First Instance.

The Supreme Court held that such question has become moot in view of the finality of the rulings mentioned; and therefore, the only issue for determination was whether the successful protestant was entitled to the office vacated by the protestee.

Holding that he is not so entitled, the Court proceded to distinguish between a petition for quo warranto and an election protest. It held that while the first involves the question as to who received a plurality of the legally cast votes, the second is confined to a determination of the personal character and circumstances of the candidate. As such, under the first there is a real contest, because the candidate who is found to have actually obtained a plurality of the legally votes cast may be declared elected; while under the second, generally, the only result can be that the election fails entirely.

The present case is fundamentally an action for quo warranto, and in the words of the Court "the protestant cannot disguise his action so as to make his protest a justification to be seated in office."[4]

In the dissenting opinion,[5] however, Justice Montemayor moved for a revision of previous rulings to the extent of admitting exceptions to said general rule under the following circumstances: Where the ineligibility of the first candidate was known to the electorate before the elections and/or there were only two candidates for the office, the candidate receiving the next highest number of votes should be declared elected.

Remedios Catungal

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Evidence—*As to disputable presumptions in Rule 123 section 69(z): Failure to report incident which is allegedly known or seen until after quite a long time; failure to call or ask for immediate help for victim; both of these are out of the ordinary. As to Rule 123 section 4; Alibi, when corroborated by persons of good reputation and unquestioned probity, unbiased and disinterested, is an effective defense.*

PEOPLE v. ABADA
G.R. No. L-9387, April 28, 1958

[4] The Court made lavish use of the distinctions and arguments utilized in Topacio v. Paredes, *supra*

[5] Justice Montemayor admitted that under the present law, the filing of a petition for quo warranto in connection with an elective office is based and motivated by a sense of civic duty and with no reward or advantage to the person filing the same. The aim of the revision advanced was to give encouragement to those who would go into the trouble and expense of filing quo warranto proceedings for the ouster of those illegally occupying public offices.

It is presumed that a person is innocent of crime or wrong until the contrary is proved.[1] In criminal cases, this presumption applies until his guilt is proved beyond reasonable doubt.[2]

Presumption is an inference as to the existence of a fact not actually known, arising from its usual connection with another which is known.[3] There are two classes of presumptions of law, namely conclusive presumption or presumption *juris et de jure* and disputable presumption or presumption *juris tantum*.[4]

The above-cited case is just an application of the rule as to disputable presumptions more particularly section 69(z).[5]

In this case, defendant-appellant Roberto Abada was convicted of murder and sentenced to *reclusion perpetua* in the Court of First Instance of Iloilo.

The appeal was based on the credibility of prosecution witnesses. In this case, Lourdes Lozada and Roberto Abada were and had been sweethearts. On February 2, 1953, Roberto married another girl. Despite thereof, he continued to date Lourdes. She refused to believe the warning of her own father that Roberto was already married. On November 5, 1953, and for sometime prior thereto, Lourdes was employed in a taxicab stand on Ledesma Street, Iloilo City. Her work was from noon to eight o'clock in the evening. She used to take a calesa in returning home from work.

On November 7, 1953, the dead body of Lourdes was found in the river near General Luna Street, Iloilo.

The credibility of the testimonies of the following prosecution witnesses is now the issue:

1. As to Francisco Dariagan who alleged that Lourdes and Roberto rode in his calesa on the night of November 5, 1953 (the time of the alleged murder of Lourdes). Dariagan testified that while the couple were in his calesa, Lourdes asked Roberto to marry her but the latter replied he could not because he was yet studying. (Accused had already graduated in 1953 and passed the bar in 1954 but had not yet taken the lawyer's oath due to this case). Dariagan claimed further that he saw them off walking the railroad track.

The Court held that Dariagan's failure to explain why he could recognize the accused although he could not remember the other people who rode in his calesa on November 5, 1953 weakened his testimony.

2. As to Pablo Elauria. He claimed that at about nine o'clock on the night of November 5, 1953 while fishing under the bridge, he heard footsteps on the bridge and saw a man and a woman walking thereon. The man was the accused. He heard the woman say "Berting, when are you going to marry me?" Then all of a sudden, the accused lifted the woman and threw her into the water. After that, the accused walked back towards the north end of the bridge.

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[1] Section 69 (a) Rule 123 of the Rules of Court.

[2] Rule 123 section 95 of the Rules of Court states: In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[3] III MORAN COMMENTS ON THE RULES OF COURT 464 (1957).

[4] Rule 123 section 69 enumerates them. These disputable presumptions lose their significance if evidence is presented to contradict them.

[5] Rule 123 section 69(z): "That things have happened according to the ordinary course of nature and the ordinary habits of life."

Elauria alleged that he did not help the drowning woman because he did not know how to swim. But two defense witnesses testified that Elauria was an election inspector in Cuartero, Capiz from November 1-5, 1953. Moreover, another witness, Jaranilla testified that he went out to fish at the railroad bridge from seven to twelve o'clock in the evening particularly on November 4, 5, and 6, 1953 and he did not see the accused nor Elauria.

3. As to Mateo Salmorin. He testified that he did not give assistance to the girl who was shouting for help because he did not know how to swim. When asked why he did not call for help from the people living in the houses nearby, he answered that he was not sure he would be heard and was afraid to be involved in the case. But there was the testimony of Crisostomo Delgado that he and Salmorin were co-acusecd in a robbery case and had previously served a term in jail for theft, and that Salmorin could swim. There was also the testimony that Salmorin admitted not having any knowledge about the murder case. Moreover, upon ocular inspection, said houses and the provincial jail were only fifty meters from where Salmorin was allegedly standing.

All these testimonies were made only after one year from the incident although all of the witnesses admitted having heard the radio broadcast about a drowned woman.

The Supreme Court said:

> "The fact that the prosecution witnesses did not even bother to report the fateful incident they allegedly know or saw until after quite a long time, is rather contrary to the normal behavior which persons under the same circumstances would display. The failure also of either of said witnesses to call or ask for immediate help for the pitiful victim, is certainly out of the ordinary. And the prosecution has not satisfactorily explained how and why said witnesses were picked up . . ."

From the testimony of the father of Lourdes that the deceased had been looking forward to marrying the accused and had intimated that if, she could not marry him, she would seclude herself from the world, the Court inferred that the motivation of suicide was seemingly greater than motivation for murder.

In this case, the defense of alibi was accepted.[6] It was supported by the testimonies of witnesses of good reputation, men who hold the highest respect of the community.[7]

Rule 123 section 4 of the Rules of Court states: "Evidence must correspond with the substance of the issue and, therefore, collateral matters shall not be allowed, except when they tend in any reasonable degree to establish the probability or improbability of a fact in issue.[8]

Alibi is a kind of a concomitant circumstance.[9] It is a circumstance of incompatibility which gives rice to an inference as to the improbability of the issue.

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[6] Alibi is a defense wherein an accused claims to have been at a place far from the crime, at the time of its commission.

[7] In this case, the ex-chief of police, mayors of the municipality and of the nearby town and practicing attorneys testified in behalf of the accused to support his claim of alibi.

[8] Collateral matters are matters other than the facts in issue and which are offered as a basis for inference as to the existence or non-existence of the facts in issue. III MORAN COMMENTS ON THE RULES OF COURT 13 (1957).

Circumstantial evidence is the evidence of collateral facts or circumstances from which an inference may be drawn as to the probability or improbability of the facts in dispute. Moran 14.

[9] The three kinds of circumstantial evidence are the antecedent, concomitant and subsequent circumstances.

It has been held that alibi is one of the weakest defense that can be resorted to by an accused.[10] But, as has been held in other cases, an alibi can be admitted if it is proved by positive, clear and satisfactory evidence.[11]

In the above-cited case, since the testimonies of the principal witnesses for the prosecution were doubtful, that there is a greater motivation for suicide and that the defense of alibi was proved by satisfactory evidence, the accused was acquitted.

Nelly A. Favis

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Labor Law—*A case for violation of internal labor organization procedures affecting only one or very few employees need not be filed by 10% of the members of the union.*

PHILIPPINE LAND-AIR-SEA LABOR UNION (PLASLU) v. HON. MONTANO A. ORTIZ

G.R. No. L-11185, April 23, 1958

Under the Industrial Peace Act, there are rights which are made incidents to membership in a labor union.[1] Each right covers a prohibition against arbitrary or excessive initiation fees and arbitrary, excessive or oppressive fines; full and detailed reports from the officers and representatives of all financial transactions of a labor organization; election of officers by secret ballot at intervals of not more than two years and the determination and vote upon the question of striking or upon any other question of major policy; a labor organization knowingly admitting as member or continuing in members any individual belonging to any subversive organization or engaged directly or indirectly in any subversive activity or movement; eligibility for election to any office in a legitimate labor organization, or appointment to any position involving the collection, custody, management, control of disbursement of its money or funds unless vested with the necessary authority; payment of fees, dues, or other contribution by a member without a receipt signed by the officer or agent making the collection entered upon its records; the application of the funds of the organization for any purpose or object other than those expressly stated in its constitution or by-laws or expressly authorized by resolution of the majority; expenditure of the funds of the corporation without receipt from the person to whom payment was made; and officers of legitimate labor organization being paid any other compensation in addition to the salaries and expenses for their positions to be specifically provided for in its constitution and by-laws except when there is a resolution duly approved by a majority vote. Likewise access to the books of accounts and other records of financial activities of a legitimate labor organization by any officer of member thereof is provided.[2]

It is provided that a minimum of ten per cent of the members of a labor organization may report to the Court of Industrial Relations an alleged violation of these procedures in labor organization.[3] It seems doubtful however whether an expulsion affecting one member or an excessive fine imposed upon one member or when one member is deprived of his right to vote by secret ballot

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[10] People v. Bondoc, G.R. No. L-2278, February 27, 1950.
[11] See People v. Pulmones, 61 Phil. 680 (1935) and People v. Rafalbo and Millare, G.R. No. L-2265, April 1, 1950.

[1] CARLOS & FERNANDO, LABOR AND TENANCY LAW 194 ff. (1955).
[2] Section 17 (a) to (1), Rep. Act No. 875.
[3] Section 17 (1st par.),

or when dues are collected from a member by an officer without authority pursuant to the constitution or by-laws can ever be taken to the attention and consideration of the CIR without the 10% requirement in the first paragraph of section seventeen of R.A. 875. Upon this matter, the Supreme Court, in the case of *Kapisanan Ng Mga Manggagawa Sa MRR v. Bugay and the CIR*,[4] unequivocably ruled that in the above-mentioned cases and others of similar nature, the 10% requirement is not necessary in order to take a case to the CIR.

The same ruling was reiterated by the same court in the case at bar.[5] A petition for mandamus was filed by Saturnino Betangcor, a union member, to compel the officers of the union to issue receipts for all the former's payment to the union and to render an accounting of the union's funds as well as to make all records of the financial activities of the union available for inspection to the members thereof; and further, to annul the election of the officers of the union on the ground that Betangcor and other members of the union were not allowed to participate in said election in violation of the Union's constitution and by-laws. Said case, having been filed with the CFI of Agusan, the petitioners moved to dismiss on the round that the court had no jurisdiction. The court in denying the motion stated that in this instance the CFI and not the CIR had jurisdiction of the case on the ground that only one member filed the case whereas sec. 17 of R.A. 875 requires a minimum of 10% of the members of the union to report any alleged violation of internal labor organization procedures.

On appeal, the Supreme Court, adopting the holding in the case of *Kapisanan Ng Mga Manggagawa Sa MRR v. Bugay*, overruled the lower court. There is reason to believe, said the court, that said minimum of 10% refers only to violations which involve a group or a sizeable number of the members in which the latter are interested, or which necessarily affect them. However, when a violation like the supposed illegal expulsion of a member affects only the member so expelled or under par. (a) an excessive fine is imposed only upon one member; or under par. (c) one member is deprived of his right to vote by secret ballot in the election of officers of the union; or under pars. (f) and (g) an officer collects from a member any fees or dues or contributions without authority pursuant to the constitution or by-laws, or refuses to issue a receipt to a member from whom any fees, dues or other contributions are collected, etc., then it is not necessary that 10% of such members of the union make the report or complaint to the CIR, but only the member immediately affected may do so.

Manuel D. Ortega

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Labor Law—*Effects of picketing without a strike, a labor dispute nor employer-employee relation.*

UNITED SALES AND SERVICE EMPLOYEES ASSOCIATION v. HON. JUDGE JOSE F. FERNANDEZ

G.R. No. L-12295, April 25, 1958

Simplicio Palanca, as general manager of the Palanca Enterprises, instituted a case against United Sales and Service Employees Association alleging

[4] G.R. No. L-9327, March 30, 1957.
[5] Philippine Land-Air-Sea Labor Union v. Ortiz, G.R. No. L-11185, April 28, 1958.

that the defendant without any lawful cause or a lawful strike, much less a labor dispute between its members and the plaintiff, maintained and threatened to continue to maintain pickets within the premises of certain theatres operated by said enterprise, despite the absence of employer-employee relationship between the plaintiff and defendant's members. A writ of preliminary injunction prayed for was issued.

The present action is commenced to set aside the order of preliminary injunction on the ground that petitioner had filed against Inocentes de la Rama, Inc. (from which the Palanca Enterprises claims to have derived their right to operate the above mentioned theatres) with the Iloilo Branch of the CIR a charge for unfair labor practice; that the members of the petitioner union ceased to work in the theatres and established picket in view of said unfair labor practice; that consequently the CIR has exclusive jurisdiction over the issues raised in said civil case and that the acts may therefore be enjoined only by the CIR,[1] pursuant to section 9 (d) of R.A. 875. Before the Supreme Court could decide the case, the Court of First Instance lifted the injunction upon learning of the promulgation of the decision in the case of *de Leon v. National Labor Union*.[2] The case, as a consequence of the issue becoming moot, failed to resolve the issues.

Palanca raises three objections to the maintenance of a picket in the theatres operated by Palanca Enterprises of which he was general manager, namely, first that there is no lawful strike or cause; second, there is no labor dispute; and; third, there is an absence of labor-employee relationship between plaintiff and defendant's members.

As regards the first objection, some courts have held that "picketing, even though peaceable, is unlawful in the absence of a lawful strike or an actual bona fide dispute concerning terms or conditions of employment, the theory perhaps being that under such circumstances, the purpose of the boycott is unlawful, so as to render illegal any attempt to accomplish it." [3]

However, while some courts have held that picketing is unlawful in the absence of a lawful strike, other courts hold that picketing without a strike is no more unlawful than a strike without picketing.[4]

With respect to the second objection, the validity of picketing can be upheld only when some lawful justification for its exercise exists. To authorize picketing in the absence of a strike, there must exist at least an industrial dispute with the owner of the place of the business picketed.[5] It is illegal to picket the place of business of one who is not himself a party to an industrial dispute, to persuade the public to withdraw its patronage generally from the business either for the purpose of coercing the owner to take sides in a controversy in which he has no interest or simply because he appears to be in sympathy with others against whom strikes have been called.[6] The test whether a labor controversy comes within the definition of a "labor dispute" depends on whether it involves or concerns "terms," "conditions" of employment or "representation." [7]

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[1] Section 9(d), Rep. Act No. 875 (June 17, 1953).
[2] G.R. No. L-12295, April 25, 1958.
[3] Moreland Theatres Corp. v. Portland Moving Pictures MOP Union (1932), 140 Or. 85, 12 P. (2d) 333; International Asso. M.V. v. Federated Asso. A.W. (1937) Tex. Civ. App. 109 S.W. (2d) 301; Cushman's Sons v. Amalgamated Food Workers Bakers (1926) 127 Misc. 152, 215 N.Y.S. 401; Samuel Hertzig Corp. v. Gibbs (1936), Mass. 3 N.E. (2d) 831.
[4] Castro, Labor and Social Legislation III 1115 (1957).
[5] Francisco, The Law Governing Labor Disputes in the Pfilippines 304 (1956).
[6] *Ibid.*
[7] Carpenter's and Joiners Union v. Ritter's Cafe, 315 U.S. 722.

Concerning the third objection, although it has been held that the right to peaceful picketing does not include the right to picketing an establishment not a party to a labor dispute, nevertheless, such right to peaceful picketing may be lawfully exercised even in the absence of employer-employee relation.[8] Picketing peacefully carried out is not illegal even in the absence of employer-employee relationship,[9] for peaceful picketing is a part of the freedom of speech guaranteed by the constitution.[10]

Manuel D. Ortega

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Labor Law—*An employee, where the contract does not have a fixed period, may be dismissed without cause under R.A. 1052.*

MONTEVERDE v. CASINO ESPAÑOL DE MANILA
G.R. No. L-11365, April 18, 1958

Under the Code of Commerce,[1] in cases in which the contract does not have a fixed period, any of the parties may terminate it, advising the other thereof one month in advance. The factor or shop clerk shall have a right in this case, to the salary corresponding to said month. Upon the taking effect of the New Civil Code in 1950, a question arose whether the provision on the so-called *mesada* in Art. 302 of the Code of Commerce was repealed by the Civil Code. Upon this point, the Court of Appeals held that the one month salary or notice in the Code of Commerce was not repealed.[2] Later in the case of *Lara v. Del Rosario*,[3] the Supreme Court overruled the ruling of the Court of Appeals in that case of *Bernardo v. Vasquez* and pronounced that Art. 302 of the Code of Commerce was repealed by the Civil Code. The same ruling was reiterated in the case of *Macleod & Co. v. Progressive Federation of Labor*.[4] Subsequently, the Court of Appeals, in *Monroy v. Dainty Baby Wear Corp.*,[5] adopted the ruling of the Supreme Court in the *Macleod* case. However, in a later case,[6] the Court of Appeals recognized the operation of R.A. 1052 which revived the *mesada*, but nevertheless, in view of the ruling of the Supreme Court in the *Macleod* case, had to adopt the said ruling.

In the instant case,[7] the Supreme Court had occasion to apply R.A. 1052. The plaintiff, employed as waiter-pinboy by the defendant, was dismissed allegedly on suspicion of having stolen two teaspoons, one knife and a towel belonging to the defendant. It was revealed that said things were seen by a co-worker in the house of the plaintiff. Plaintiff filed a claim with the Bureau of Labor praying to be paid back his salaries but the bureau dismissed the complaint for it was found as a fact that the plaintiff was dismissed for cause. Subsequently, upon the co-worker's rectification of a previous statement saying that what he saw were articles similar to those belonging to the defendant, the Bureau of Labor, on rehearing, ruled that the plaintiff be paid a sum equivalent to one month salary in lieu of one month notice in advance. The present action

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[8] American Federation of Labor v. Swing, 312 U.S. 321.
[9] Narcisa de Leon *et al.* v. Nat. Labor Union, G.R. No. L-7588, Jan. 30, 1957; Senn v. Tile Layers Protective Union, 301 U.S. 468; Thornhill v. Alabama, 310 U.S. 88; Bridges v. California, 314 U.S. 252.
[10] Mortera v. CIR, 45 O.G. 1714, 1719; Bakery and Pastry Drivers v. Wohl, 315 U.S. 769.
[1] Art. 302, Code of Commerce.
[2] Bernardo v. Vasquez (CA), 50 O.G. 5429 (1954).
[3] 50 O.G. 1975 (1954).
[4] G.R. No. L-7887, May 31, 1955.
[5] (CA) 52 O.G. 5209 (1956).
[6] Vera, *et al.* v. Gove Shepherd Wilson & Kruge, Inc., *et al.* (CA) 52 O.G. 274.
[7] G.R. No. L-11365, April 18, 1958.

was commenced praying for reinstatement and back wages. The issue before the court was whether there could be a valid dismissal without cause.

In resolving the question, the Supreme Court laid down the rule that even if there were no cause for separation, defendant can still separate the appellant from the service under the provisions of R.A. 1052. Section 1 of this Act provides, "In case of employment without a definite period, in a commercial, industrial, or agricultural establishment or enterprise neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance." In other words, as long as that notice is given, the relation may be terminated. Defendant complied with this requirement when in lieu of that notice, it paid an equivalent to one month salary to the appellant. The employee upon whom no such notice was served, shall be entitled to one month's compensation from the date of the termination of his employment.[8]

Manuel D. Ortega

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Land Registration Law—*Where there is a petition concerning the cancellation of any encumbrance noted on the certificate of title and there is no substantial controversy in regard thereto between the petitioner and any interested party, such petition may be considered in the cadastral case in which the decree of registration was entered; Property mortgaged with the Agricultural and Industrial Bank (later the R.F.C.) cannot be attached.*

IN RE GEONANGA

G.R. No. L-11323, April 21, 1958

Where there is a petition concerning the cancellation of any encumbrance noted on a Torrens certificate of title within the record of the Land Registration case in which the basic decree was entered and there is no substantial controversy in regard thereto between the petitioner and any interested party, such petition may be considered as a mere incidental matter in such land registration case and may therein be acted upon by the proper court.[1] This principle was applied in the instant case.

The relevant facts may be stated, thus: The spouses Raymundo Robles and Margarita Mondejar borrowed from the Agricultural and Industrial Bank a sum of money, and, to guarantee its payment, they constituted, in favor of said bank a real estate mortgage on their two lots. The owner's duplicate copy of title was held by the Bank. Sometime in 1954, respondent C. N. Hodges, plaintiff in Civil Case No. 3172, secured a writ of attachment, which was levied upon the lots in question, by filing the corresponding papers with the Register of Deeds, who made the corresponding entry on August 11, 1954, of the attachment on the original of the aforementioned Transfer Certificate. Subsequently, with the express consent of the Rehabilitation Finance Corporation, the legal successor of the Agricultural and Industrial Bank, petitioners Benjamin Geonanga and Emilio Gotera paid the obligation of Robles and Mondejar and bought the lots from them. Consequently, the Register of Deeds cancelled the original Transfer Certificate and issued a new certificate of title to Geonanga

[8] Section 2, Rep. Act No. 1052.
[1] Floro v. Granada, 46 O.G. 11, 5484 (1950); NOBLEJAS, REGISTRATION OF LAND TITLES AND DEEDS, 31 (1st ed. 1957).

and Gotera with the corresponding memorandum of the attachment in favor of Hodges. Geonanga and Gotera asked that the annotation be cancelled on the ground that it was illegal, null and void, pursuant to section 26 of Com. Act No. 459.[2]

The petition was filed in the cadastral case in which the decree for the registration of said lots had been entered. Hodges contested the jurisdiction of the lower court, sitting as a court of land registration,[3] to grant said petition, upon the ground that the issue therein raised is a controversial one and should be threshed out, either in an ordinary civil action or in Civil Case No. 3172.[4] The trial court overruled said opposition, and the case is now in the Supreme Court for review.

The issue before the Court is two-fold:

(a) Whether the Court of First Instance, sitting as a court of land registration, committed an error in granting the petition of Geonanga and Gotera for cancellation of the memorandum of attachment in favor of Hodges in their new certificate of title; and

(b) Whether the two lots mortgaged with the Agricultural And Industrial Bank (succeeded by the R.F.C.) can be attached.

The Supreme Court, speaking through Justice Concepcion, disposed of the first issue by answering it in the negative. It said that it is not disputed that, under section 112 of Act No. 496,[5] petitioners-appellees, as registered owners of the lots in question, may petition the court having jurisdiction over the cadastral case in which the decree of registration of said lots was entered for such relief as may be proper against "any error x x x or mistake x x x made in entering a certificate or any memorandum therein," provided that the original decree of registration is not thereby reopened and the title or other interest of a purchaser holding a certificate for value and in good faith is not impaired without his written consent. The Court, therefore, found the Register

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[2] Sec. 26, Com. Act No. 459, provides: "Securities on loans granted by the Agricultural and Industrial Bank shall not be subject to attachment nor can they be included in the property of insolvent persons or institutions, unless all debts and obligations of the debtor to the Agricultural and Industrial Bank have been previously paid, including accrued interest, collection expenses and other charges.

[3] Originally, the Court of Land Registration, created by section 2 of Act 496, was conferred exclusive jurisdiction over all applications for registration of title to land or building or interest therein, with power to hear and determine all questions as may come before it under the land registration act, subject of course to the right of appeal. By virtue, however of Act No. 2347, the Court of Land Registration was abolished and all the powers and jurisdiction therefore conferred upon said court were conferred upon the Court of First Instance of the respective provinces in which the land sought to be registered is situated. (NOBLEJAS, *op. cit. supra* note 1, at 25).

[4] Relief under Section 112, Act 496 can only be granted if there is unanimity among the parties, or if there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident proper belongs. (Tangunan et al. v. Republic, G.R. No. L-5545, Dec. 29, 1953; Noblejas, *op. cit. supra* note 1, at 27).

[5] Sec. 112, Act No. 496, provides: "No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the clerk or any register of deeds, except by order of the court. Any registered owner or other person in intrest may at any time apply by petition to the court, upon the ground that registered interest of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or *that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate;* or that the name of any person on the certificate has been changed; or that the registered owner has been married; or if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, or grant any other relief uon such terms and conditions, requiring security if necessary, as it may deem proper; Provided, however, That this section shall not be construed to give the court authority to open the original decree of registration and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, of his heirs or assigns, without his or their written consent." (Italics supplied).

of Deeds in error, so clear and patent that not even appellant herein denies it, because the lots in question cannot be attached as disposed of in the second issue.

Passing to the second issue, the Court said that said lots in question cannot be attached pursuant to sec. 26 of Com. Act No. 459.[6] Moreover, under Rule 59, section 2, of the Rules of Court, only properties "not exempt from execution" may be attached. And, said that the contention of the respondent-appellant that sec. 26 of Com. Act No. 459 [7] benefits only the Bank is untenable. It elucidated its holding by saying:

> "We find no merit in this pretense. Pursuant to said legal provision, properties mortgaged to the Agricultural and Industrial Bank, now the Rehabilitation Finance Corporation, are 'not subject to attachment' unless 'all debts and obligations' in favor thereof have been previously paid. In the case at bar, the credit of the Bank was settled *after* the entry in question. Apart from this, said entry, if valid, would *retroact* to the date thereof, or August 11, 1954, thus violating the spirit and purpose of the aforementioned section 26. Moreover, having been made against a 'mandatory or prohibitory" provision of law, the aforementioned entry was, and is 'void' (Article 5, Civil Code of the Philippines),[8] not merely voidable, and may accordingly, be assailed by any party adversely affected thereby, such as petitioners herein. Again, by virtue of the payment of the debt due to the Bank, with the consent of the latter, and that its debtors and original owners of lots Nos. 430 and 855, petitioners herein are presumed to be legally subrogated into the rights of said creditor Bank, *not only against its former debtors, but also, 'against third persons.'* (Articles 1237, 1302 and 1303, Civil Code of the Philippines.[9] . . ."

Aurelio V. Cabral, Jr.

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Legal Ethics—*Failure to properly attend to a client's case with results highly prejudicial to the interests of the client constitutes malpractice and violation of the attorney's oath and is a ground for disbarment.*

ROYO v. OLIVA
Adm. Case No. 228, April 16, 1958

One of the primary characteristics which distinguishes the legal profession from business is that attorneys' relation to clients is in the highest degree fiduciary.[1] To his client the attorney owes absolute candor, unswerving fidelity and undivided allegiance, furthering his cause with entire devotion, warm zeal and his utmost ability and learning, but without using means other than those addressed to reason and understanding; employing and countenancing no form of fraud, trickery or deceit which, if brought to light, would disturb his con-

[6] See note 2, *supra*
[7] *Ibid.*
[8] Art. 5, Civil Code, provides: "Act executed against the provisions or mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."
[9] Art. 1237, Civil Code, provides: "Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.
Art. 1302, Civil Code provides: "It is presumed that there is legal subrogation:
(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge
(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor:
(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share."
Art. 1303, Civil Code, provides: "Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation."

[1] Ventura, Francisco, *Legal and Judicial Ethics*, 20 (1954).

science or bring discredit to his profession.[2] In prosecuting or defending the case of his client, an attorney should exercise due care, skill and reasonable diligence.[3] Ordinarily, an attorney is not bound to possess or exercise the highest degree of skill, care and diligence; nor is he an insurer or guarantor of the results of his work; but rather he is required, as respects his client to exercise such skill, care and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment. The rule as announced in many of the cases, however, is that an attorney is liable only on proof of "gross negligence."[4]

The high trust and confidence which the citizens must repose in the attorney can only be attained if the attorney observes the utmost good faith towards the client.[5] Fully cognizant of this fact, the Supreme Court has consistently held in a long line of cases that an attorney spurns his oath as an attorney and officer of the court when he violates the confidence created by the relation of attorney and client and when he fails to serve his client's interest as it was his sworn duty to do.[6] In the case of *In Re Filart*,[7] the court held that a client whose rights have been prejudiced by the failure or by the delay of an attorney in preparing or filing pleadings necessary in the proper conduct of a cause and in taking such steps as may be required in the progress of the case and who has suffered damages as the result of his attorney's negligence or misconduct may recover therefor. In another case,[8] the court said that the abandonment of a client in violation of the attorney's contract ignores the most elementary principles of professional ethics.

In the instant case of *Royo v. Oliva*, the court again had the occasion to reiterate this time-honored principle. It appears that Atty. Celso Oliva was retained for his legal services by Panfilo Royo in an action brought by the latter against the Mayor of Masbate for malicious mischief. After accepting the case, respondent, instead of filing the complaint for malicious mischief himself, had his client file it in Manila with the PCAC (Presidential Complaint and Action Committee) as a result of which a complaint for malicious mischief was filed by the Philippine Constabulary in Masbate. Again, after informing his client, the complainant herein, that in his (respondent's) opinion, the case fell within the jurisdiction of the justice of the peace court, he questioned the jurisdiction of said court when the case was heard on April 30, 1955. Then, with the evident intent of losing his client's case, respondent intentionally absented himself from his house and other places wherein he might be found or contacted by his client so as to take him to court for trial on two occasions: on May 5 and May 14 when the case was set for hearing before the justice of the peace court. As a result of such unprofessional conduct and non-appearance in court during said hearings, the case of respondent's client was dismissed with cost de oficio by said court. It was manifested all along that the respondent was loathe to prosecute the case. The court, in ordering the disbarment of respondent said:

> "Consistent with our policy to maintain the high traditions and standards of the legal profession, insure the observance of legal ethics, protect the interests of clients and help keep their faith in attorneys-at-law, we are constrained to deal firmly with cases like the present."

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[2] Drinker, Henry S., *Legal Ethics*, 3-7.
[3] Ventura, *op. cit. supra*, note 1, 47.
[4] 7 CJS 979
[5] Hernandez v. Villanueva, 40 Phil. 775, 778 (1919).
[6] In Re Hamilton, 24 Phil. 100 (1913).
[7] 40 Phil. 205 (1919).
[8] In Re Yeager, 56 Phil. 691, 692 (1932).

In the United States, the courts have also stressed the importance of the exercise of utmost good faith in every attorney-client relationships. In one case,[9] it was held that conduct of an attorney in accepting payment for services as assistant attorney for the sanitary district which he did not render during the period when he was employed at full time by a private concern and in testifying falsely as to his relation with the district constitutes ground for disbarment. In the case of *In Re Tillman*,[10] the court stated that where an attorney accepts an employment to represent a client before an appellate court and violates his duty to said client in his conduct of said cause, the same is a ground for disciplinary action against said attorney.

Therefore, in compliance with the attorney's oath of office[11] which every applicant entitled to admission to the Bar is required to take under Sec. 16, Rule 127, Rules of Court, a lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost ability.[12] And it has been wisely held by the Supreme Court that non-observance of the lawyear's oath is a ground for suspension or disbarment.[13]

Cherry-Lyn M. Sunico

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Naturalization Law—*Compliance with the requirement that the certificate of arrival and the declaration of intention must be made part of the petition.*

TAN GOAN v. REPUBLIC
G.R. No. L-11385, April 18, 1958

Harboring the suspicion that the declaration of intention and the certificate of arrival were not filed simultaneously with or attached to the petition for naturalization,[1] the Government appealed from a decree granting the application for citizenship filed by Tan Goan after the court was convinced that petitioner possesses all the qualifications and none of the disqualifications provided by law.

Petitioner-appellee denies the factual basis of this pretense; and, in support thereto, he introduced the testimony of two witnesses: Crisanto Varias, now assistant provincial fiscal, who was his counsel and who prepared and filed his petition; and Miss Bacarisas, docket clerk of the Court which heard the petition. The former declared that he filed said petition by delivering the same with several copies thereof to Miss Bacarisas, together with petitioner's alien certificate of registration and photostats of his immigrant certificate of re-

[9] In Re Information to Discipline Certain Attorneys of Sanitary District of Chicago, 184 NE 332 (1933)

[10] 11 P. (2d) 511 (1932).

[11] The attorney's oath runs thus: "I, ..., do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God."

[12] Canons of Professional Ethics, No. 15.

[13] Topacio Nueno v. Santos, 58 Phil. 577 (1933).

[1] Section 7 of the Revised Naturalization Law (Com. Act No. 473, approved June 17, 1939) provides: "x x x. The certificate of arrival, and the declaration of intention must be made part of the petition."

sidence.[2] Miss Bacarisas affirmed that the petition together with a number of copies thereof, and the immigrant certificate of residence were delivered to her by Varias. She further stated that because she had to, and did send copies of the petition and of its annexes to several officials,[3] she misplaced the immigrant certificate of residence and failed to attach it to the original in the court of record; and that when Varias inquired about it, before the hearing, she found said document in the drawer of her desk.

No evidence was introduced by the Government to contradict the foregoing testimony. Moreover, the fact that it was really attached thereto is partly borne out by petitioner's petition the penultimate paragraph of which reads: "Attached thereto are my declaration of intention to become a citizen of the Philippines and photostat of immigrant certificate of residence the original of which will be presented at the hearing of the petition." [4]

Upon these evidence the Court was satisfied:

> "x x x that the photostatic copies of appellee's immigrant certificate of residence had been filed together with his petition although the docket clerk x x x failed, through oversight, to attach one copy to the record of said court."

With respect to the question regarding the declaration of intention, Exh. T, a carbon copy of the declaration of intention filed by the appellee with the office of the Solicitor General on August 10, 1953 as shown by the stamp mark of said office thereon, was presented. It is argued however by appellant that said copy had not been attached to the petition at the time of the institution of this case. The testimonial evidence introduced by the appellee fails to show affirmatively that copy of said declaration was then annexed to the petition. Nevertheless, this did not work adversely on the appellee, for as the Court observed:

> "It appears, however, that the opposition of the Government during the hearing in the lower court, was predicated solely upon the alleged failure of the petition to enclose therewith either appellee's landing certificate or his immigration certificate of residence x x x. Hence, appellee concentrated his evidence on this point, x x x. In other words, there was no question, in the lower court, that appellee's declaration of intention had been, and was attached to the petition. In fact, as the above-quoted paragraph thereof indicates, it was so expressly alleged in the petition, and the truth of this allegation was not assailed, either in the two written oppositions filed by the Government in the lower court or at any time during the pendency of the proceedings therein. Again, considering that appellee had really filed said declaration of intention, that his counsel was evidently aware of the need of enclosing it with the petition for naturalization and that the same alleges that copy of said declaration is attached thereto, there is absolutely no reason why counsel for the appellee would not have actually done so."

Hilario G. Davide, Jr.

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Naturalization Law—*Defective affidavit of character witness is fatal to the petition; petitioner must prove by competent evidence that he is of good moral character and has conducted himself in an irreproachable manner.*

[2] This immigrant certificate of residence was issued in lieu of the landing certificate or certificate of arrival upon surrender thereof.

[3] She sent copies thereof to the Solicitor General, the Executive Secretary, the Provincial Commander, and the Justice of the Peace of Kinoguitan.

[4] Petitioner-appellee actually introduced in evidence his immigrant certificate of residence and his declaration of intention.

DY TIAN SIONG v. REPUBLIC
G.R. No. L-10200, April 18, 1958

The law [1] requires that a petition for citizenship [2] must be supported by an affidavit of at least two creditable persons stating that they are Filipino citizens,[3] that they personally know the petitioner to be a resident of the Philippines for the period of time required by law,[4] that the petitioner is a person of good repute and morally irreproachable, and that the petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provision of the Act. Failure to state any of these is fatal to the petition.[5]

The case at bar joins several cases where the Supreme Court did not hesitate to stamp its affirmance on decrees denying petitions for citizenship for failure to comply with the foregoing requirements.[6]

In this case petitioner filed his application for naturalization before the Court of First Instance of Manila. In support thereof affidavits of two witnesses, Balbino Lim and Margarito dela Rosa, were presented. In both affidavits affiant states that "he has personal knowledge that the petitioner is and during all such periods has been a person of good repute and morally irreproachable x x x and well disposed to the good order and happiness of the Philippines."

At the hearing of the petition the affiants were introduced as witnesses.[7] Neither of them ever expressly testified as to the character and conduct of the petitioner. Margarito dela Rosa testified that he had come to know the petitioner in 1940,[8] only when the latter was already 18 years old;[9] and that he met him five times only.

After evaluating the above facts the lower court denied the petition. It held that as dela Rosa did not have sufficient knowledge for sufficient time of the petitioner "the Court hesitates to believe that petitioner has complied with the requirement that he has presented two credible witnesses who have known him personally for the period of time required by the Act."

Armed with the contention that the lower court erred in finding that the testimony of witness dela Rosa is inadequate to sustain the affirmation in his affidavit as to qualifications of the petitioner, Siong appealed to the Supreme Court.

It is contended in support of the assignment of error that even if dela Rosa met the petitioner five times only and that he did not know exactly what the petitioner was doing, nevertheless the requirement of the law has been fully

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[1] Com. Act No. 473 (June 17, 1939).

[2] *Ibid.* Sec. 7.

[3] If one of the affiants is not a Filipino citizen, the application is void. Cu v. Republic, G.R. No. L-3018, July 18, 1951.

[4] This has been interpreted to mean 10 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; I PADILLA, CIVIL CODE ANNOTATED, 155 (1956 ed.).

[5] Pidelo v. Republic, G.R. No. L-7796, Sept. 29, 1955; Chan Pong v. Republic, G.R. No. L-9153, May 17, 1957.

[6] Cu v. Republic, G.R. No. L-3018, July 18, 1951; Yu Chong Tian v. Republic, G.R. No. L-6029, April 12, 1954; Dy Suat Hong v. Republic, G.R. No. L-9224, May 29, 1957; Sy Chut v. Republic, G.R. No. L-10203, Jan. 8, 1958.

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

[8] The same statement appears in his affidavit.

[9] Petitioner claims to have been born in Manila on August 22, 1922.

complied with because under section 7 of the Revised Naturalization Law the affidavits of the two witnesses must state that they personally know petitioner for the period of time required by the Act.

The contention is without merit, said the Court:

> "This argument overlooks two requirements demanded of the petition for naturalization. It will be noted that the affidavit of a witness in support of a petition should contain statement that the affiant personally knows the petitioner to be a resident of the Philippines for a period of time required by the Act, and a person of good repute and morally irreproachable (Sec. 7, Com. Act 473). In this statement two points are embraced or included: first, the fact that affiant must know that the petitioner has been a resident of the Philippines for the period of time required by law; and second, the affiant must know that petitioner is of good repute and morally irreproachable."

Even granting that the affidavit of dela Rosa was sufficient,[10] still the petition must fail because the petitioner was not able to prove by competent evidence that he is of good repute and morally irreproachable. The best evidence of course would be the testimony of the two affiants since they are the ones to be presented at the hearing.[11] However, dela Rosa [12] did not expressly testify to such proper and irreproachable conduct of the petitioner during his entire stay in the Philippines notwithstanding the fact that he made express statement to that effect in his affidavit. It is not enough, pointed out the Court, that a witness states personal knowledge of petitioner's proper and irreproachable conduct in his affidavit; such irreproachable conduct must be proved by evidence before the Court as to the existence of such qualifications. Dela Rosa's testimony showed nothing of such personal knowledge.

Hilario G. Davide, Jr.

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Naturalization Law—*Violation of a municipal ordinance is a minor transgression and should not be deemed by itself to mar the satisfactory behaviour of petitioner or to negate his claim to irreproachable conduct.*

PISINGAN CHIONG v. REPUBLIC
G.R. No. L-10979, April 16, 1958

It is incumbent upon an applicant for naturalization to show by competent proof that he possesses all the qualifications and none of the disqualifications provided by law.[1]

The qualification that he must be of good moral character and has conducted himself in a proper and irreproachable manner [2] has frequently been touched upon and commented on by our Supreme Court in several cases.[3] A consideration of these cases strengthens one evident conclusion: that our Su-

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[10] The Court stated: The affidavit submitted (by dela Rosa) x x x *may have been* sufficient. (Underscoring supplied).

[11] *Supra* note 7.

[12] Even the other witness, Lim, did not so expressly testify. The two witnesses, therefore, were incompetent.

[1] Com. Act No. 473 (June 17, 1939) known as the "Revised Naturalization Law."
Section 2 provides for the qualifications; section 4 sets forth the disqualifications.
See: Bell v. Atty. General 56 Phil. 667 (1932); Ang Ke Choan v. Republic, G.R. No. L-6380, Aug. 24, 1954; Te Chao Ling v. Republic, G.R. No. L-7346, Nov. 25, 1955.

[2] Com. Act No. 473, sec. 2, par. 3.

[3] See cases in AQUINO, LAW OF PERSONS AND FAMILY RELATIONS, 98-102 (1958 ed.).

preme Court has not so far adopted a hard and fast rule for determining what constitutes "good moral character." This is perhaps to be expected since the phrase "good moral character" is not susceptible to a precise, circumscribed definition.[4] Each case should be treated according to its particular circumstances.

Although there is no such rule, our Supreme Court nevertheless has been consistently firm on its stand that a violation of a municipal ordinance does not by itself negate the good character of the applicant as to be a ground for the denial of his application for naturalization.[5] In the instant case the Supreme Court found it proper to reiterate this doctrine.

Pisingan Chiong filed his petition for citizenship before the proper court, claiming that he had all the qualifications and none of the disqualifications provided by law. After hearing, the court granted the petition. The Government appealed from said decree contending that the grant was erroneous because the petitioner lacked the qualification of good moral character and irreproachable conduct. It was shown that years prior to the filing of the petition Chiong had pleaded guilty to an information charging him with the violation of a city ordinance prohibiting the game of "mahjong" for money without corresponding permit.[6] The Oppositor argued that this conviction implies lack of good moral character even as it negates petitioner's claim to irreproachable conduct.

The Court, through Justice Bengzon, rejected the contention. It was of the opinion that:

> "x x x this is a minor transgression which, involving no moral turpitude or wilful criminality should not be deemed by itself to have marred Pisingan Chiong's satisfactory behaviour in the community as attested by his vouching witnesses, one of them Senator Roseller Lim who swore that among the Chinese in Zamboanga petitioner is the one who has never failed to contribute to any social and civic funds x x x."

Hilario G. Davide, Jr.

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[4] 18A WORDS AND PHRASES, 152 (1956).
Indeed, what constitute good moral character is not a constant quantity susceptible of definition but varies according to the particular circumstance and from one generation to another. Good reputation is not sufficient. The actual conduct of the applicant must have been such as comports with a good character. In other words, he must have behaved as a man of good moral character ordinarily does. 2 Am. Jur. 568.

[5] Thus in the case of Tan Song Sin alias Antonio Bueno v. Republic, G.R. No. L-9080, May 18, 1957, a decision of the lower court granting the petition was affirmed in spite of the fact that the petitioner has been previously convicted for a violation of a municipal ordinance penalizing a person for having in his possession more than two cans of petroleum which violation was penalized by a fine of five pesos. The Court held that such violation does not involve moral turpitude

In another case, Yu Kong Eng v. Republic, G.R. No. L-8780, Oct. 19, 1956, the Supreme Court likewise affirmed a decree granting the application although it was shown by Oppositor that the petitioner was convicted and fined for driving a car without a driver's license and later was suspended from driving for three months for another violation. According to the Court this conviction and suspension cannot be considered as serious acts which render him unfit for they are minor incidents in one's life that may happen to any Filipino citizen. Such acts may be given liberal treatment considering that petitioner has complied with all the other requirements of the law.

[6] It is well to note at this point that under Section 1 of Rep. Act No. 530 (Approved June 16, 1950) no decision granting the application become executory until after two years from its promulgation and after the court on proper hearing is satisfied and so finds that during the intervening period the applicant has not, among others, been convicted of any offense or violation of Government promulgated rules. It is only after such finding that the petitioner is allowed to take the oath which entitles him to all the privileges of a Filipino citizen (sec. 2). Under the ruling in the case of Tiu San v. Republic, G.R. No. L-7301, April 20, 1955, "government promulgated rules" include a municipal ordinance.

Political Law—*Appointment, temporary in character, is terminable at pleasure by the appointing power.*

ALFREDO CUADRA v. TEOFISTO CORDOVA
G.R. No. L-11602, April 21, 1958

The Constitution guarantees security of tenure to Civil Service employees by prohibiting their removal or suspension except for cause as provided by law.[1] But this constitutional guarantee is not infringed by the removal from office of persons holding their positions by virtue of temporary appointments. Their appointments, being temporary in character or one made only in an acting capacity, can be terminated at pleasure by the appointing power, there being no need to show that termination is for cause.[2] As stated by the Supreme Court in one of its decisions, "it is elementary in the law of public officers and in administrative practice that such appointment is merely temporary in character, good until another permanent appointment is issued." [3] This doctrine is reiterated by the Supreme Court in the instant case.

The petitioner herein, Alfredo Cuadra, who was not a civil service eligible was temporarily appointed a member of the police force of Bacolod City on November 11, 1955. The position was newly created, the salary for which was included in the budget for the fiscal year 1955-1956. The budget was approved by the City Council and by the Secretary of Finance. Petitioner was paid his salary for service rendered from the date of his appointment to the date of his removal. Upon his removal, the petitioner sought his reinstatement as a policeman by a petition for mandamus, and also prayed for the payment of his back salaries from date of his dismissal to the date of his reinstatement. Respondent set up the defense that the petitioner was removed from service in accordance with the law. The trial court ruled the dismissal as proper.[4] On appeal, the Supreme Court affirmed the decision of the trial court stating:

> . . . there is one argument which justifies the separation from the service of the petitioner and that refers to the fact that when he was appointed he was not a civil service eligible and his appointment was merely temporary in character. His appointment being temporary, does not give him any definite tenure of office but makes it dependent upon the pleasure of the appointing power. A temporary appointment is similar to one made in an acting capacity the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment canont complain if it is terminated at moment's notice." [5]

Efren C. Gutierrez

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[1] PHIL. CONST., Art. XII, Sec. 4.
[2] Mendez v. Gangzon, G.R. No. L-10483, April 12, 1957.
[3] Austria v. Amante, 79 Phil. 780; Castro v. Solidum, G.R. No. L-7750, June 30, 1955.
[4] The trial court gave as its reason in justifying the dismissal, the fact that the petitioner was already 47 years, 3 months and 13 days old when appointed and as such he was disqualified for the appointment under Sec. 17 of Executive Order No. 175 series of 1930 which provides: "*To be eligible for examination for initial appointment* a candidate must be a citizen of the Philippines between the ages of *twenty-one* and *thirty*, of good moral habits and conduct, without any criminal record and must not have been expelled or dishonestly discharged from the civil or military appointment." (Italics supplied)
The Supreme Court, however ruled that such provision refers only to examination for initial appointment and not to appointment itself. This interpretation appears more justified by considering Sec. 16 of the same Executive Order which provides: "The Commission of Civil Service shall announce from time to time *the date and place of examination to qualify for the police service* which shall be held in accordance with the provision of civil service law and rules." (Italics supplied).
[5] The Supreme Court in deciding the instant case has followed its former decision in the case of Villanosa, et al. v. Alera, et al., G.R. No. L-10586, May 29, 1957:
"Since it is admitted fact that the nature of the appointments extended to the petitioners was merely temporary, the same cannot acquire permanent character simply because the items occupied refer to permanent positions. What characterizes an appointment is not the nature of the item filled out but the nature of the appointment extended. If such were not the case, then there would never be temporary appointments for permanent positions. This is absurd. The appointments being temporary in character, the same have the character of 'acting appointments,' the essence of which is that they are temporary in nature."

Special Proceedings—*Competency of character witness in naturalization proceedings; testimony of petitioner as to his lucrative occupation and income, corroborated by witness' testimony prevails over discrepancy with income tax returns.*

ANTONIO TE v. REPUBLIC
G.R. No. L-10805, April 23, 1958

JOAQUIN YAP v. REPUBLIC
G.R. No. L-1187, April 23, 1958

Citizenship is the superior title to state membership. The citizen is given rights not available to aliens. Thus in the Philippines only citizens are entitled to the enjoyment of certain political rights and privileges; they alone may acquire public land and develop the natural resources of the country; they alone may individually own public utilities. The practice of certain professions and particular occupations may be enjoyed by them only.[1]

Modern public law recognizes three distinct basis for the acquisition of citizenship, namely: (1) blood relationship, (2) place of birth, and (3) naturalization. Naturalization being the act of adopting a foreigner and clothing him with the privileges of a native citizen, it s not then the province of the courts to make bargains with applicants for naturlization. The courts have no choice but to require that there be full compliance with statutory provisions.

Pursuant to Section 2, Article IV of the Philippine Constitution,[2] that Philippine citizenship may be lost or reacquired in the manner provided by law, Commonwealth Act No. 473 and later Republic Act No. 530 were enacted to primarily govern naturalization proceedings in the Philippines. Under said statutes any person, regardless of nationality or race, may apply for Philippine citizenship through the process of naturalization if he possesses certain specific qualifications respecting: (1) age, (2) residence, (3) character and behaviour, (4) property and occupation, (5) language, and (6) children's education.[3] If the alleged qualifications are to be proved by witnesses, the qualifications of such witnesses and the competency of their testimony are matters of more than ordinary significance, because the witness who appears before the court are in a way insurers of the qualifications of the candidate and on his qualifications the court is compelled to rely.[4]

Thus in *Te v. Republic*,[5] upon appeal by the Republic of the Philippines from a decision of the Court of First Instance of Davao granting Filipino citizenship to petitioner-appellee Antonio Te, the Solicidor General raises the argument that one of the petitioner's character witnesses, Jovito Francisco, does not possess an intimate knowledge of appelee's way of life and is therefore unqualified to testify on petitioner's fitness to become a Filipino citizen, because this witness testified at the trial that he visited petitioner's house for the last five years only five to ten times and did not always find petitioner at home; that he does not know the name of petitioner's mother or full name of his father; and that witness is acquainted only with one of petitioner's brothers.

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[1] Salmond. Jurisprudence (7th Ed.), pp. 145-150.
[2] Sec. 2, Article IV, Philippine Constitution: Philippine citizenship may be lost or reacquired in the manner provided by law.
[3] SINCO, V. G., PHILIPPINE POLITICAL LAW, 10th Ed. Community Publishers, Manila, p. 352.
[4] *Cu v. Republic*, L-3018, July 18, 1951.
[5] *Antonio Te v. Republic*, G.R. No. L-10805, April 23, 1958

The Supreme Court in disposing of such arguments stressed that the witness' testimony should be taken in its entirety, from which it appears that Dr. Francisco is a personal friend of petitioner's family, having come to know them from the time he started medical practice in Davao City in 1937 and that he has known the petitioner since the latter was a boy of ten. Thus, even after Dr. Francisco transferred his practice to another part of Davao City, he used to visit the petitioner's family, not in a professional capacity but as a friend. It was from this close association and intimacy with them that he gained personal knowledge of their way of life and moral character, including that of the petitioner.

The fact that Dr. Francisco did not always see the petitioner at home when he visited the family is far to insignificant to affect his knowledge of his conduct and character. It is not also uncommon that Filipinos do not get to know the true and full names of their Chinese friends, which are usually hard to pronounced and hard to remember, so Dr. Francisco's not knowing their Chinese names would not mean that he is not familiar with the petitioner and his family. Dr. Francisco was only acquainted with one of petitioner's brothers because the others had died during the Japanese occupation.

Similarly in the case of *Yap v. Republic*,[6] where petitioner stated that he was employed as a salesman in Royal Grocery of his father in Cebu City, receiving a monthly compensation of ₱140.00, to meet the "lawful and lucrative occupation qualification."[7] prescribed by law and this statement being fully corroborated by a Rafael Yap, not a relative, who was in charge of the account of the books of the Royal Grocery since 1948, the discrepancy between the witness' testimony and the income tax returns of petitioner for the year 1954 and 1955 which shows that he declared a gross income of ₱1,903.91 is only a slight variance and does not warrant the rejection of the testimonies presented, for to do so would make the witnesses perjurers, and would adjudge as falsifications the books of the store wherein entries of such salaries had necessarily been recorded—not to mention resultant violations of the Internal Revenue Code.

Romulo M. Villa

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Taxation—*The term "residence" as used in Section 122 of the Revised Internal Revenue Code is synonymous with the term "domicile"; exemption under Section 122(b) shall not be granted when there is no reciprocity, such as when the provision found in the law of a foreign state partakes the nature of a reduction and not of an exemption.*

COLLECTOR v. DE LARA

G.R. Nos. L-9456 and L-9481, January 6, 1958

"Residence" and "domicile" are two legal terms which have been the subject of much abuse. It has been declared that the terms "domicile" and "residence" are almost universally used interchangeably in statutes that "residence" when used in statutes, is generally interpreted by the courts as meaning "do-

[6] *Joaquin Yap v. Republic*, G.R. No. L-11187, April 23, 1958.

[7] The qualifications respecting property or occupations is intended to prevent aliens, who might become a burden on the state from becoming citizens. In *Lim v. Republic*, L-4588, Jan. 28, 1953; *Tiong v. Republic*, 50 O.G. No. 8, 1925, it was held that lucrative occupation implies salary or monetary compensation or pay. But a person working in his father's business establishment and receiving salary thus satisfies this requirement of the law.

micle", and "domicle" as meaning "residence".[1] In its precise usage, domicle is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by the law.[2] On the other hand, residence denotes a place of dwelling, whether permanent or temporary.[3]

But whether the term "residence", as used in a statute, will be construed as having the meaning of domicile, depends on the purpose of the statute and the nature of the subject matter, as well as the context in which the term is used.[4]

In the instant case, our Supreme Court construed these two terms as synonymous for purposes of taxation.

Hugo H. Miller, an American citizen, was born in Santa Cruz, California, U.S.A., in 1883. In 1905, he came to the Philippines. From 1906 to 1917, he was connected with the public school system and upon his retirement he accepted an executive position in the local branch of Ginn and Co., book publishers with principal offices in New York and Boston, U.S.A. On January 17, 1941, Miller executed his last will and testament in Santa Cruz, California, in which he declared that he was "of Santa Cruz, California". On December 7, 1941, Miller joined the Board of Censors of the United States Navy. During the war, he was taken prisoner by the Japanese forces in Leyte, and in January, 1944, he was transferred to Catbalogan, Samar, where he was reported to have been executed by said forces on March 11, 1944. At the time of his death, Miller owned the following properties: Real properties situated in Santa Cruz, California—₱5,000.00; Real properties situated in San Mateo, California —₱16,000.00; Tangible personal property, worth—₱2,140.00; Cash in the banks in U.S.—₱21,178.20; Accounts receivable from various persons in U.S.— ₱36,062.74; Stocks in U.S. corporations and savings bonds—₱123,637.16; and Shares of stock in Philippine corporations—₱51,906.45. Testate proceedings were instituted before the Supreme Court of California in Santa Cruz county, in the course of which Miller's will was admitted to probate and wherein it found that Miller was a "resident of the County of Santa Cruz, State of California" at the time of his death. Thereafter, ancillary proceedings were filed by the executors of the will before the Court of First Instance of Manila, which court by order of November 21, 1946, admitted to probate the will of Miller as probated in the California court, and also found that Miller was a resident of Santa Cruz, California, at the time of his death. On July 29, 1949, the co-executor of the will filed an estate and inheritance tax return with the Collector covering only the shares of stock issued by Philippine corporations, reporting a liability of ₱269.45 for estate taxes and ₱230.27 for inheritance taxes. After due investigation, the Collector assessed estate and inheritance taxes. The estate of Miller protested the assessment, but the Collector maintained his stand and made the assessment of the liability for estate and inheritance taxes, including penalties at ₱77,300.92 as of January 16, 1954. This assessment was appealed by De Lara as Ancillary Administrator before the Court of Tax Appeals.

In determining the "gross estate" of a decedent, under Section 122 in relation to Section 88 of our Tax Code, it is first necessary to decide whether the

[1] 28 C.J.S., Sec. 2, 7
[2] Reestatement, Sec. 9; cited in SALONGA'S PRIVATE INTERNATIONAL LAW, 134 (1952).
[3] Salonga, *op. cit.*, 142.
[4] 28 C.J.S., Sec. 2, 7.

decedent was a resident or non-resident of the Philippines at the time of his death. The Collector maintains that under the tax laws, residence and domicile have different meanings; that tax laws on estate and inheritance taxes only mention resident and non-resident, and no reference whatsoever is made to domicile except in Section 93(d) of the Tax Code; that Miller during his long stay in the Philippines had acquired a "residence" in this country, and was a resident thereof at the time of his death and consequently, his intangible personal properties situated here as well as in the United States were subject to said taxes. The Ancillary Administrator, however, equally maintains that the term "residence" is synonymous with the term "domicile". The Court of Tax Appeals sustained the latter view. Hence, this appeal by the Collector of Internal Revenue.

Our Supreme Court in upholding the ruling of the Court of Tax Appeals stated that at the time the National Internal Revenue Code was promulgated in 1939, the prevailing construction given by the courts to the term "residence" was synonymous with domicile, and that the two were used interchangeably.[5] Consequently, it will be presumed that in using the term residence or resident in the Tax Code of 1939, the Legislature was giving it the meaning as construed and interpreted by the Court. Furthermore, according to the Court, there is reason to believe that the Legislature adopted the American (Federal and State) estate and inheritance tax system.[6] In the United States, for estate tax purposes, a resident is considered one who at the time of his death had his domicile in the United States, and in American jurisprudence taxation, "residence" is interpreted as synonymous with domicile, and that "the incidence of estate and succession taxes has historically been determined by domicile and situs and not by the fact of actual residence."[7]

The Supreme Court also agreed with the Court of Tax Appeals that at the time of his death, Miller had his residence or domicile in Santa Cruz, California. According to the Court, during his long stay in this country, Miller never acquired a house for residential purposes for he stayed at the Manila Hotel and later on at the Army and Navy Club. Except for occasional visits his wife never stayed in the Philippines. The bulk of his savings and properties were in the United States. To his home in California, he had been sending souvenirs such as carvings, curios and other similar collections from the Philippines and the Far East.[8] In November, 1940, Miller took out a property insurance policy and indicated therein his address as Santa Cruz, California, this from the fact that Miller executed his will in that place, wherein he stated that he was of "Santa Cruz, California." From the foregoing, it is clear that as a non-resident of the Philippines, the only properties of his estate subject to estate and inheritance taxes are those shares of stock issued by Philippine corporations, valued at ₱51,906.45. The Court justified the imposition of this tax by saying that while it may be the general rule that personal property, like shares of stock in the Philippines, is taxable at the domicile of the owner under the doctrine of *mobilia sequuntur personam*, nevertheless, when he, during his life time, "extended his activities with respect to his intangibles, so as to avail himself of the protection and benefits of the laws of the Philippines, the reason

[5] Citing the case of Velilla v. Posadas, 62 Phil. 624 (1935).
[6] II Report to the Tax Commission of the Philippines, 122-124, cited in I Dalupan, National Internal Revenue Code Annotated, 469-470.
[7] Bowring v. Bowers, 24 F 2d 918, 921; 6 AFTR 7498, cert. den. 272 US 608 (1928).
[8] This fact shows Miller's intention to return to his home in California, which fits Mr. Justice Story's definition of domicile, to wit: "That is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." (Story, Conflict of Laws, 8th Ed., 1883, Sec. 41).

for a single place of taxation no longer obtains—protection, benefit, and power over the subject matter are no longer confined to California, but also to the Philippines." [9]

Another important question decided in this case is the granting of certain exemptions to foreigners under our estate and inheritance tax laws. The pertinent provision of Section 122 of the Tax Code on this point reads as follows:

> . . . *"And provided, further,* That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of which decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

The Ancillary Administrator bases his claim of exemption on (a) the exemption of non-residents from the California inheritance taxes with respect to intangibles, and (b) the exemption by way of reduction of ₱4,000.00 from the estates of non-residents, under the U.S. Federal Estate Tax Law.[10] Considering the State of California as a foreign country in relation to Section 122 of our Tax Code, the Court held that the Ancillary Administrator is entitled to exemption from the inheritance tax on the intangible personal property found in the Philippines. Incidentally, this exemption granted to non-residents under the provision of Section 122 of our Tax Code was to reduce the burden of multiple taxation, which otherwise would subject a decedent's intangible personal property to the inheritance tax, both in his place of residence and domicile and place where these properties are found. As regards the exemption or reduction of ₱4,000.00 based on the reduction under the Federal Estate Tax Law in the amount of $2,000.00 the Court agreed with the Tax Court that the amount of $2,000.00 allowed under the Federal Estate Tax Law is in the nature of a deduction and not of an exemption. Besides, as the Tax Court observes—

> . . . "this exemption is allowed on all gross estates of non-residents of the United States, who are not citizens thereof, irrespective of whether there is a corresponding or similar exemption from the transfer or death taxes of non-residents of the Philippines, who are citizens of the United States; and thirdly, because this exemption is allowed on all gross estates of non-residents, irrespective of whether it involves tangible or intangible, real or personal property, so that for these reasons petitioner cannot claim a reciprocity." . . .

Ruben G. Bala

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[9] Wells Fargo Bank & Union Trust Co. v. Collector, 70 Phil. 325 (1940).

[10] Sec. 6 of the California Inheritance Tax Act of 1935, now reenacted as Sec. 13851, California Revenue and Taxation Code, reads:

"Section 6. The following exemptions from the tax are hereby allowed: . . .

(7) The tax imposed by this act in respect of intangible personal property shall not be payable if decedent is a resident of a state or Territory of the United States or a foreign state or country which at the time of his death imposed a legacy, succession or death tax in respect of intangible personal property within the State or Territory of foreign state or country of residents of the States or Territory or foreign state or country but did not impose a legacy or succession or a death tax of any character in respect of intangible personal property within the State or Territory or foreign state or country of residence of the decedent at the time of his death contained a reciprocal provision under which non-residents were exempted from legacy or succesion taxes or death taxes of every character in respect of intangible personal property providing the State or Territory or foreign state or country of residence of such non-residents allowed a similar exemption to residents of the State, Territory or foreign state or country of residence of such decedent."

Taxation—*Exemption enjoyed by persons, partnerships, or corporations engaged in a new and necessary industry, from all internal revenue taxes extend not only to the materials used in the making of the finished product but also to those which are germane to and exclusively used in connection with such production.*

COLLECTOR OF INTERNAL REVENUE v. INDUSTRIAL TEXTILES COMPANY OF THE PHILIPPINES AND THE COURT OF TAX APPEALS

In consonance with the benevolent policy of the government to encourage the opening and developing of domestic industries indispensable to the economic growth of the nation, Republic Act No. 35 was passed.

Section 1 thereof states that:

> "Any person, partnership, company or corporation who or which shall engage in a new and necessary industry shall for a period of 4 years from the date of the organization of such industry, be entitled to exemption from the payment of all internal revenue taxes directly payable by such person, partnership company or corporation in respect to said industry."

Should the exemption under this law be narrowly interpreted to mean exemption from all internal revenue taxes only with respect to the very materials which go in the making of the article or finished product and to nothing else? Such question was answered in the negative by the Supreme Court in the instant case.

On March 26, 1952 respondent ITEMCO was granted a certificate of tax exemption by the Secretary of Finance pursuant to Republic Act No. 35 for a period of four (4) years on the ground that it is engaged in a new and necessary industry which is the manufacture of jute and burlap bags. Upon the withdrawal of such bags of cement from customshouse, the Collector of Internal Revenue required the ITEMCO to pay the corresponding tax which the latter paid under protest.

The position maintained by the respondent was that the cement which was used in the construction of the buildings, offices, clinics of its personnel and in the paving of its yards and driveways fell within the scope of the exemption.

To this the Collector of Internal Revenue advanced the contrary opinion that the 50,000 bags of cement were not germane to and exclusively used in the manufacture of bags and similar products. He expressed the belief that inasmuch as cement is not a necessary ingredient in the manufacture of bags and similar products (which are made out of burlap, jute, kenaf and saluyot fibers), then it is not within the contemplation of the statutory exemption.

In disposing of the issue before it, the Supreme Court, speaking through Justice Concepcion, defined the scope of the exemption,[1] thus:

> . . . "It is the main purpose of this legislation to encourage the establishment and operation of new and necessary industries. The exemption from internal revenue taxes of materials used in the manufacture of the products of such industries is of course, conducive to the accomplishment of such purpose. But said materials

[1] Exemption statutes, are as a general rule, to be inetrpreted strictly against the parties claiming exemption. Under the liberal interpretation of the Court in this case, considerations of public policy must have guided the Court in reaching such a conclusion.

> constitute only one of the factors necessary for the production. The same generally requires buildings and structures to house the machinery, equipment, tools and materials necessary to manufacture articles, goods and merchandise, the production of which constitute a new and necessary industry. Hence the exemption from internal revenue taxes on the materials used exclusively in the construction of said buildings and structures provided that these are exclusively used in the manufacture of said articles, goods or merchandise and the taxes are otherwise directly payable by the persons, partnerships, company or corporation engaged in said new and necessary industry in respect of the same. Clearly this is within the purview of R.A. No. 35. Otherwise its goal could not possibly be achieved."

Under this decision, the requisites for exemption under R.A. No. 35 would be three-fold; namely, that (1) the person, partnership, or corporation claiming the benefit of exemption is engaged in a new and necessary industry,[2] (2) that such taxes are directly payable by the new and necessary industry, and finally (3) that the articles imported by it are used exclusively either in the construction of its machinery, buildings and appurtenances thereto or in the manufacture of the finished product.

Purita L. Hontanosas

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Taxation—*Liability for the manufacturer's sales tax under the NIRC may be shifted to the buyer by contract.*

CANLUBANG SUGAR ESTATE v. STANDARD ALCOHOL CO. (PHIL.) INC.

Section 186 of the National Internal Revenue Code provides:

> "There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable consideration, intended to transfer ownership of, or title to, the articles not enumerated in sections 184 and 185, a tax equivalent to 7% of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the *manufacturer or producer*."

The liability for manufacturer's sales tax as outlined in the above cited provision maybe modified by agreement.[1] The buyer may expressly assume the obligation of paying such tax, although the law has clearly indicated the person or persons who should satisfy the same. There is nothing in the laws of taxation which would prohibit such shifting of responsibility from the manufacturer or producer to the buyer. This principle was impliedly adopted by our Supreme Court in the case at bar.

The Canlubang Sugar Estate (from now on called the plaintiff-appellee) and the Standard Alcohol Co. of the Philippines (hereinafter designated the defendant-appellant) entered into a contract of sale of several liters of denatured and refined alcohol. Under the terms of original understanding it was provided, *inter alia*, that:

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[2] Under R.A. No. 35, the President of the Philippines shall upon the recommendation of the Secretary of Finance periodically determine the qualifications that the industries should possess to be entitled to the benefits of this Act. Once a given industry has been classified under this category and continues to belong to such class, neither the Secretary of Finance nor the President of the Philippines may impose limitations upon or otherwise qualify the enjoyment of the exemptions granted in section 1 of the same Act.

[1] NCC, Art. 1306 states: The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

> "the buyer shall pay taxes for both denatured and refined alcohol and any other expenses incidental to such payment."

The Bureau of Internal Revenue agents assessed and collected specific taxes on the alcohol sold and withdrawn by the defendant-appellant under section 142(d)[2] of the NIRC. On June 19, 1953, the Collector of Internal Revenue advised the plaintiff-appellee that taxes on the alcohol sold and withdrawn by the defendant-appellant had been incorrectly assessed because it was not subject to the tax under section 142(d) but to the manufacturer's sales tax provided for in section 186 as denatured alcohol sold is not for motive power but for industrial purposes. The plaintiff appellee paid and upon the refusal of the defendant-appellant to reimburse as per contract, instituted an action in the Court of First Instance which rendered a decision favorable to the plaintiff-appellee. Hence this appeal by the defendant-appellant.

The defendant-appellant elevated this case to the Supreme Court on the conviction that its contemporaneous act of paying the taxes under section 142(d) of the NIRC showed that it was the intention of the parties that the defendant-appellant should pay *only*[3] such taxes and nothing more.

To this contention, the Supreme Court answered, thus:

> ". . . The agreement expressly provides that the buyer should pay any and all taxes for both denatured and refined alcohol which agreement is inconsistent with the alleged understanding."

The Supreme Court gave us the inevitable conclusion that contractual stipulations for the shifting of the burden of manufacturer's sales tax or any other similar taxes under the Tax Code, are valid and effectual. Such clear manifestation embodied in a written contract will govern the rights and obligations of the contracting parties. Allegations of a contrary intent by one of the parties will not be admissible to change the effect of the contract.

Purita L. Hontanosas

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Transportation Law—*Charter party; maritime insurance; effects of unseaworthiness.*

MADRIGAL, TIANGCO & CO v. HANSON, ORTH & STEVENSON, INC.
MADRIGAL, TIANGCO & CO. v. MABANTA
G.R. Nos. L-6106 and L-6107, April 18, 1958

A motor launch, owned by the Madrigal, Tiangco & Co., was chartered by Roman Mabanta on January 6, 1948. The charter party[1] required delivery

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[2] NIRC, Sec. 142 (d) provides: On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo; Provided, that if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed.

[3] Italics supplied

[1] A charter party is a specific contract by which the owners of a vessel let the entire vessel, or some principal part thereof, to another person, to be used by the latter in transportation for his own account, either under their charge or his. 80 C.J.S., Sec. 26, 659. Compare this definition with those of Alverez del Manzano, Blanco and Espejo de Hinojosa, and Del Viso, all cited in GUEVARA, HANDBOOK OF COMMERCIAL LAW, 636-637 (9th ed.); I TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES, 122 (7th ed.), and II MARTIN, COMMENTARIES AND JURISPRUDENCE ON THE PHILIPPINE COMMERCIAL LAWS, 91 (1958 ed.), respectively
Thus, a charter party may be either an agreement by which the owner is to carry a cargo which the charterer agrees to provide, in which case it is called a contract of affreightment, or an agreement for the entire surrender of the vessel by the owner to the charterer who hires it.

thereof in seaworthy conditions.[2] On January 29, the motor launch was put to sea, manned by a complement engaged by the charterer. At 5 o'clock a.m. of the next day, she sank off the coast of Limay, Bataan, and was totally lost. The motor launch was covered by a marine insurance policy issued by the Hanson, Orth & Stevenson, Inc. to the shipowner.[3] These two actions were thereupon brought by the Madrigal, Tiangco & Co. against Roman Mabanta and the Hanson, Orth & Stevenson, Inc., in the first, to recover ₱50,000.00, the estimated value of the motor launch, and a monthly rental of ₱1,750.00; and in the second, to recover the amount for which the motor launch was insured. The defendant in the first action set up a counterclaim of ₱5,000.00 for unrealized profits; ₱2,500.00 for equipment and fishing tackle; ₱1,086.16 for cost of repairs of nets and value of the new ropes; and ₱1,485.28 for value of blocks of ice, gallons of crude oil, drums of motor oil, and fish boxes. The trial court dismissed the actions on the ground that the motor launch was unseaworthy. Both the plaintiff and defendant appealed in the first action.[4] In the second action, only the plaintiff appealed.[5]

In the first action, there were several contentions advanced by both parties on appeal. The Supreme Court however, boiled down the issue to the question of whether or not the motor launch was seaworthy at the time of its delivery to the defendant. On this point, it affirmed the findings of the trial court. The Court stated through Justice Padilla:

> ". . . the preponderance of evidence leans toward the conclusion that the motor launch was unseaworthy. . . . It is true that nobody saw the underneath plankings give way; but this fact may be inferred from the established facts that there was no typhoon; that there were no big waves; that the motor launch did not touch bottom or hit anything before she sank; and that the water was bubbling in the engine room."[6]

The board of inquiry of the Bureau of Customs that investigated the sinking of the motor launch with a view to finding the responsibility of the *patron* and which exonerated the latter from any negligence, also found this to be a fact. The Court therefore refused to grant recovery to the plaintiff.[7] With respect to the counterclaim of the defendant, the Court held that the amount of ₱5,000.00 could not be recovered for being speculative.[8] As to the amount of ₱2,500.00, which represents the purchase price of the equipment sold and delivered by the plaintiff to the defendant, no refund thereof was allowed under

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in which case it is called a demise charter. 80 C.J.S., Sec. 26, 659. It is worthwhile to note that the provisions of the Code of Commerce on charter party contemplate the first type of charter party only. See CODE OF COMMERCE, Book III, title III, sec. 1. Some of the provisions of the new Civil Code on lease may apply to a demise charter.

[2] In order that a vessel may be seaworthy, it must be staunch and fit to meet the perils of the sea, and reasonably fit for the receipt and the transportation of the particular cargo or for the performance of the particular service. 80 C.J.S., Sec. 36, 703. Seaworthiness is thus a relative term depending on the nature of the ship, voyage, and service in which she is engaged. 45 C.J.S., Sec. 652, 563.

[3] The shipowner may insure the vessel although it has been chartered by another person. See Insurance Act, Sec. 93.

[4] G.R. No. L-6107.

[5] G.R. No. L-6106.

[6] Although the burden of proving that the vessel is unseaworthy is upon the charterer, he may be aided by proper presumptions. I TOLENTINO, *op. cit., supra* note 1, at 131; 80 C.J.S., Sec. 56, 764. See CIVIL CODE OF THE PHILIPPINES, Art. 1666. And while there is ordinarily a general presumption of the seaworthiness of a chartered vessel, a presumption of unseaworthiness arises where a vessel sinks, or receives injury, under such circumstances that no cause other than unseaworthiness can explain the accident. 80 C.J.S., Sec. 56, 767.

[7] As a general rule, the charterer is under no duty to return an unseaworthy vessel in good condition, and he cannot be held liable for damage to the vessel which is due to its unseaworthiness rather than to any improper handling of the vessel. 80 C.J.S., Sec. 52, 745. This is so because one of the obligations of the shipowner in a charter party is to see to it that the vessel is seaworthy. GUEVARA, *op. cit., supra*, note 1, at 641. See CIVIL CODE OF THE PHILIPPINES, Art. 1654, par. 1, and 1667. Cf. Rocha v. Steamship "Muncaster Castle," et al., 17 Phil. 543 (1910).

[8] Uncertain, contingent, or speculative damages may not be recovered. 25 C.J.S., Sec. 28, 489.

the charter party.[9] And the charter party being silent about the repairs made on old equipment and the acquisition of new ones, the defendant cannot recover as to them.[10]

In disposing of the appeal in the second action, the Supreme Court held:

> "The finding that the motor launch was unseaworthy at the time she sank precludes recovery by the plaintiffs of the amount for which the motor launch was insured under the policy issued by the insurance company." [11]

Lorenzo G. Timbol

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[9] As a rule, the law leaves to the discretion of the contracting parties to provide for the conditions of the charter party. I TOLENTINO, *op. cit., supra*, note 1, at 123. See CIVIL CODE OF THE PHILIPPINES, Arts. 1306 and 1308.

[10] Compare this ruling with the well-established principle in the United States to the effect that a shipowner may be held liable to a charterer for loss of, or injury to, cargo due to unseaworthiness, in the absence of a specific stipulation to the contrary in the charter party. 80 C.J.S., Sec. 34, 700-701, and Sec. 50, 740. Also, under American law, unless otherwise provided in the charter party, all damages which flow naturally from a breach of warranty of seaworthiness may be recovered by the charterer. 80 C.J.S., Sec. 36, 710. See also CIVIL CODE OF THE PHILIPPINES, Arts. 1170 and 1659.

[11] "In every marine insurance upon a ship or freight, or freightage or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy." Insurance Act, Sec. 106. "A ship is seaworthy, when reasonably fit to perform the service and to encounter the ordinary perils of the voyage contemplated by the parties to the policy." *Ibid.*, sec. 107.

The insurer will not be liable for any loss under his policy in case the vessel is unseaworthy at the inception of the insurance. Go Tiaco y Hermanos v. Union Insurance Society, 40 Phil. 40 (1919). See also VANCE, HANDBOOK ON THE LAW OF INSURANCE, 920-921 (3rd ed., Anderson, 1951).