"It is obvious to us that such inference is unwarranted. To begin with, there is absolutely nothing in Act No. 277 to indicate the aforementioned intent. Secondly, repeal or amendments by implication are neither presumed nor favored. On the contrary, every statute should be harmonized with them. Thirdly, the jurisdiction of courts of first instance to hear and determine criminal actions within the original jurisdiction thereof is far from inconsistent with the authority of justices of the peace to make preliminary investigations in such actions. What is more, this authority has been vested to relieve courts of first instance of the duty to hear cases which are devoid of probable cause, thereby paving the way for the effective exercise of the original jurisdiction of said courts and expeditious disposal by the same of criminal cases which are prima facie meritorious. x x x."

"It is apparent, from a perusal of the three (3) provisions aforementioned, that the framers of Article 360 of the Revised Penal Code intended to introduce no substantial change in the existing law, except as regards venue, and that, in all other respects, they meant to preserve and continue the status quo under sections 2 and 11 of Act No. 277. Such was, also the purpose of Congress in passing House Bill No. 2695, which eventually became Republic Act No. 1289."

The Bobon justice of the peace has thus acted within his powers, and this petition will have to be dismissed.

Petitioner here maintains that even if the justice of the peace courts have jurisdiction to conduct preliminary investigations, the venue was improperly laid in Bobon, because neither the complainant nor the defendant resided there. The statute(2) provides that where the libel is published or circulated in a province or city wherein neither the offended party nor the offender resides, the action may be brought therein; and the complaint herein questioned, alleges that the libel had been *published and circulated in Bobon and other municipalities of Samar*. Bobon and Samar, therefore, constituted a proper venue.

Petitioner's last contention that the complaint stated no cause of action, may not be considered now. It is unimportant in a certiorari proceeding, specially because petitioner has the remedy of discussing the issue before the court of first instance, and then if after hearing he is convicted, to appeal in due time.

Petition dismissed. No costs.

Padilla, Bautista Angelo, Labrador, Concepcion, J.B.L. Reyes, Barrera, Paredes and Dizon, JJ., concurred.

IV

Petra Carpio Vda. de Camilo et al., Petitioners-appellees, vs. The Hon. Justice of the Peace Samuel A. Arcamo, Ong Peng Kee and Adelia Ong, Respondents-appellants, G.R. No. L-15653, September 29, 1961, Paredes, J.

INTERPLEADER; WHEN JUSTICE OF THE PEACE COURT HAS NO JURISDICTION.— The complaint asking the petitioners to interplead, practically took the case out of the jurisdiction of the JP court, because the action would then necessarily "involve the title to or possession of real property or any interest therein" over which the CFI has original jurisdiction (par.[b], sec. 44, Judiciary Act, as amended). Then also, the subject-matter of the complaint (interpleader) would come under the original jurisdiction of the CFI, because it would not be capable of pecuniary estimation (Sec. 44, par. [a], Judiciary Act), there having been no showing that rentals were asked by the petitioners from respondents.

D E C I S I O N

This appeal stemmed from a petition for Certiorari and Mandamus filed by Petra Carpio Vda. de Camilo and others, against Samuel A. Arcamo, Justice of the Peace of Malangas, Zamboanga del Sur, Ong Peng Kee and Adelia Ong.

Petitioner Petra Carpio Vda. De Camilo, had been by herself and predecessors-in-interest in peaceful, open and adverse possession of a parcel of public foreshore land situated in Malangas, Zamboanga del Sur, containing an area of about 400 square meters. A commercial building was erected on the property which was declared under Tax Dec. No. 5286 and assessed at ₱7,400.00. Respondent Ong Peng Kee was a lessee of one of the apartments of said commercial building since June 1, 1957.

On August 1 1957, Arthur Evert Bannister filed an unlawful detainer case against both De Camilo and Ong Peng Kee (Civil Case No. 64) with the JP of Malangas. For failure of Bannister and/or counsel to appear at the trial they were declared in default and ₱100.00 was awarded to De Camilo on her counterclaim. The motion for reconsideration presented by Bannister was denied.

The other petitioners, Severino Estrada, Felisa, Susana, Antonio and the minors Isabelo, Rene and Ruben, all surnamed Francisco, the said minors represented by their mother Susana, had also been in possession (in common), peaceful, open and adverse, since 1937, of a parcel of public foreshore land about 185 square meters which is adjoining that land occupied by de Camilo. On this parcel, a commercial building assessed at ₱1,000.00 was erected by the Francisco's, and had the same declared under Tax Dec. No. 4911.

On September 1, 1957, the two commercial buildings were burned down. Two weeks thereafter, respondents Ong Peng Kee and Adelia Ong, constructed a building of their own, occupying about 120 square meters. The building, however, was so built that portions of the lands previously occupied by petitioners (De Camilo and the Franciscos) were encroached upon.

Under date of December 3, 1957, De Camilo filed a Civil Case No. 78 for Forcible Entry against Ong Peng Kee and Adelia Ong with the JP of Malangas with respect to the portion belonging to her wherein the building of Ong Peng Kee was erected. On August 8, 1958, Severino Estrada and the Franciscos filed a similar case (No. 105). In answer to the complaints, the defendants (Ong Peng Kee and Adelia Ong), claimed that the land where they constructed their building was leased to them by the Municipality of Malangas.

Pending trial of the two cases, the respondent Ong Peng Kee and Adelia Ong filed a complaint for Interpleader against De Camilo, Severino Estrada, the Franciscos, Arthur Evert Bannister, the Mayor and Treasurer of Malangas (Civ. Case No. 108), alleging that the filing of the three cases of forcible entry (Civ. Cases Nos. 64, 78 and 105), indicated that the defendants (in the Interpleader) had conflicting interests since they all claimed to be entitled to the possession of the lot in question and they (Peng Kee and Adelia), could not determine without hazard to themselves who of the defendants was entitled to the possession. Interpleader plaintiffs further alleged that they had no interest in the property other than as mere lessees.

A motion to dismiss the complaint for Interpleader was presented by the defendants therein (now petitioners), contending that (1) the JP had no jurisdiction to try and to hear the case; (2) There were pending other actions between the parties for the same cause; and (3) The complaint for Interpleader did not state a cause of action. Peng Kee and Adelia registered their opposition to the motion and on September 30, 1957, respondent Justice of the Peace denied the motion to dismiss and ordered the defendants therein to interplead (Annex D). The two forcible entry cases were dismissed.

The defendants (now petitioners) instituted the present proceedings, for *certiorari and mandamus* before the Court of First Instance of Zamboanga, claiming that respondent JP in denying the motion to dismiss acted without jurisdiction, and for having given due course to the complaint for Interpleader, the respondent JP gravely abused his discretion, and unlawfully neglected the per-

(2) Quoted in the margin, *supra*.

formance of an act which was specifically enjoined by law, and for which there was no plain, speedy and adequate remedy in the ordinary course of law. The Answer of respondents which contained the usual admission and denial, sustained the contrary view. The CFI rendered judgment, the dispositive portion of which reads:—

"IN VIEW OF THE FOREGOING, the Court hereby declares the Justice of the Peace Court of Malangas to be without jurisdiction to try the case for interpleader and hereby sets aside its Order dated September 30, 1958, denying the motion to dismiss the interpleader case; and considering that Civil Cases 78 and 105 have long been pending, the respondent Justice of the Peace of Malangas is hereby ordered to proceed to try the same, without pronouncement as to costs."

The only issue raised in the present appeal is whether or not the Justice of the Peace Court has jurisdiction to take cognizance of the Interpleader case.

The petitioners claimed the possession of the respective portion of the lands belonging to them on which the respondents had erected their house after the fire which destroyed petitioner-appellants' buildings. This being the case, the contention of petitioners-appellants that the complaint to interplead, lacked cause of action, is correct.

Section 1, Rule 14 of the Rules of Court provides —

"*Interpleader when proper.*— Whenever conflicting claims upon the same subject-matter are or may be made against a person, who claims no interest whatever in the subject-matter, or an interest which in whole or in part is not disputed by the ants to compel them to interplead and litigate their several claims among themselves."

The petitioners did not have conflicting claims against the respondents. Their respective claim was separate and distinct from the other. De Camilo only wanted the respondents to vacate that portion of her property which was encroached upon by them when they erected their building. The same is true with Estrada and the Franciscos. They claimed possession of two different parcels of land, of different areas, adjoining each other. Furthermore it is not true that respondents Ong Peng Kee and Adelia Ong did not have any interest, in the subject matter. Their interest was the prolongation of their occupancy or possession of the portions encroached upon by them. It is, therefore, evident that the requirements for a complaint of Interpleader do not exist.

Even in the supposition that the complaint presented a cause of action for Interpleader, still we hold that the JP had no jurisdiction to take cognizance thereof. The complaint asking the petitioners to interplead, practically took the case out of the jurisdiction of the JP court, because the action would then necessarily "involve the title to or possession of real property or any interest therein" over which the CFI has original jurisdiction (par. [b], sec. 44, Judiciary Act, as amended). Then also, the subject-matter of the complaint (interpleader) would come under the original jurisdiction of the CFI, because it would not be capable of pecuniary estimation (Sec. 44, par.[a], Judiciary Act), there having been no showing that rentals were asked by the petitioners from respondents.

IN VIEW OF ALL THE FOREGOING, We find that the decision appealed from is in conformity with the law, and the same should be, as it is hereby affirmed, with costs against respondents-appellants Ong Peng Kee and Adelia Ong.

Bengzon, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes, and De Leon, JJ., concurred.

Bautista Angelo, Barrera and Dizon, JJ., took no part.

V

Delgado Brothers, Inc., Petitioner vs. The Court of Appeals, et al., Respondents, G.R. No. L-15654, December 29, 1960, Bautista Angelo, J.

1. COMMON CARRIER; EXEMPTION FROM RESPONSIBILITY ARISING FROM NEGLIGENCE MUST BE SO CLEARLY STATED IN A CONTRACT.— It should be noted that the clause in Exhibit 1 determinative of the responsibility for the use of the crane contains two parts, namely: one wherein the shipping company assumes full responsibility for the use of the crane, and the other where said company agreed *not to hold* the Delgado Brothers, Inc. liable *in any way*. While it may be admitted that under the first part the carrier may shift responsibility to petitioner when the damage caused arises from the negligence of the crane operator because exemption from responsibility for negligence must be stated in explicit terms, however, it cannot do so under the second part where it expressly agreed to exempt petitioner from liability *in any way* it may arise, which is a clear case of assumption of responsibility on the part of the carrier contrary to the conclusion reached by the Court of Appeals. In other words, the contract in question as embodied in Exhibit 1 fully satisfied the doctrine stressed by said court that in order that exemption from liability arising from negligence may be granted, the contract "must be so clear as to leave no room for the operation of the ordinary rules of liability consecrated by experience and sanctioned by the express provisions of law."
2. ID.; BILL OF LADING; SHIPPER SHALL BE BOUND BY THE CONDITIONS AND TERMS OF BILL OF LADING UPON ACCEPTANCE THEREOF.— 'IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods agree to be bound by all its stipulations, exceptions, and conditions whether written, printed, or stamped on the front or back thereof, any local customs or privileges to the contrary notwithstanding.' This clause says that a shipper or consignee who accepts the bill of lading becomes bound by all stipulations contained therein whether on the front or back thereof. Respondent cannot elude its provisions simply because they prejudice him and take advantage of those that are beneficial. Secondly, the fact that respondent shipped his goods on board the ship of petitioner and paid the corresponding freight thereon shows that he impliedly accepted the bill of lading which was issued in connection with the shipment in question, and so it may be said that the same is binding upon him as if it has been actually signed by him or by any person in his behalf. This is more so where respondent is both the shipper and the consignee of the goods in question.
3. ID.; LAW GOVERNING LIABILITY IN CASE OF LOSS, DESTRUCTION OR DETERIORATION OF GOODS TRANSPORTED.— Article 1753 of the new Civil Code provides that the law of the country to which the goods are to be transported shall govern the liability of the common carrier in case of loss, destruction or deterioration. This means the law of the Philippines, or our new Civil Code.
4. ID.; ID.; LAWS GOVERNING RIGHTS AND OBLIGATIONS OF COMMON CARRIERS; CARRIAGE OF GOODS BY SEA ACT SUPPLETORY TO CIVIL CODE.—Article 1766 of the new Civil Code provides that 'In all matters *not* regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws,' and said rights and obligations are governed by Articles 1736, 1737, and 1738 of the new Civil Code. Therefore, although Section 4(5) of the Carriage of Goods by Sea Act states that the carrier shall not be liable in an amount exceeding ₱500.00 per package unless the value of the goods had been declared by the shipper and inserted in the bill of lading,