PARAS, *C.J., dissenting*:

I am constrained to dissent from the decision of the majority upon the ground that the Municipal Board of Manila cannot outlaw what Congress of the Philippines has already authorized. The plaintiffs-appellants — two lawyers, a physician, an accountant, a dentist and a pharmacist — had already paid the occupation tax under section 201 of the National Internal Revenue Code and are thereby duly licensed to practice their respective professions throughout the Philippines; and yet they had been required to pay another occupation tax under Ordinance No. 3398 for practising in the City of Manila. This is a glaring example of contradiction — the license granted by the National Government is in effect withdrawn by the City in case of non-payment of the tax under the ordinance. If it be argued that the national occupation tax is collected to allow the professional residing in Manila to pursue his calling in other places in the Philippines, it should then be exacted only from professionals practising simultaneously in and outside of Manila. At any rate, we are confronted with the following situation: Whereas the professionals elsewhere pay only one occupation tax, in the City of Manila they have to pay two, although all are on equal footing insofar as opportunities for earning money out of their pursuits are concerned. The statement that practice in Manila is more lucrative than in the provinces, may be true perhaps with reference only to a limited few, but certainly not to the general mass of practitioners in any field. Again, provincial residents who have occasional or isolated practice in Manila may have to pay the city tax. This obvious discrimination or lack of uniformity cannot be brushed aside or justified by any trite pronouncement that double taxation is legitimate or that legislation may validly affect certain classes.

My position is that a professional who had paid the occupation tax under the National Internal Revenue Code should be allowed to practice in Manila even without paying the similar tax imposed by Ordinance No. 3398. The City cannot give what said professional already has. I would not say that this Ordinance, enacted by the Municipal Board pursuant to paragraph 1 of Section 18 of the Revised Charter of Manila, as amended by Republic Act No. 409, empowering the Board to impose a municipal occupation tax not to exceed ₱50.00 per annum, is invalid; but that only one tax, either under the Internal Revenue Code or under Ordinance No. 3398, should be imposed upon a practitioner in Manila.

V

Fortunato Halili, Plaintiff-Appellee, vs. Maria Lloret and Ricardo Gonzales Lloret, Administrator of the Intestate Estate of Francisco A. Gonzales, Defendants-Appellants, G. R. No. L-6306, May 26, 1954, Bautista Angelo, J.

1. OBLIGATIONS AND CONTRACTS; SALE OF PROPERTIES SUBJECT TO JUDICIAL ADMINISTRATION; SALE WITHOUT APPROVAL OF COURT CANNOT SERVE AS BASIS FOR ACTION OF SPECIFIC PERFORMANCE. — The sale of properties subject to judicial administration can not have any valid effect until it is approved by the court. Where the terms that were made to appear in the document of sale differ substantially from the conditions prescribed in the authorization given by the court for the sale of the properties, the document cannot have any binding effect upon parties nor serve as basis for an action for specific performance in the absence of judicial approval.

2. ID.; ID.; RESCISSION OF CONTRACT OF SALE. — Plaintiff's attitude in suspending the payment of the two checks issued in favor of the defendants, in view of the latter's refusal to sign the documents of sale, clearly indicates that the understanding between the parties was merely in the stage of negotiation for otherwise the plaintiff could not have withdrawn legally from a transaction which had ripened into a consummated contract. And even if the transaction had reached the stage of perfection, it became rescinded when plaintiff withdrew from his part in the transaction.

3. ID.; ID.; AMBIGUITY IN A CONTRACT OF SALE. — Where the receipt merely recited the fact of receipt of the two checks without mentioning the purpose for which they were delivered. it cannot be said that the checks were delivered as advance payment of the consideration of the sale of the lands in question Such ambiguity shall be construed against the party who had drafted the receipt in view of the rule that an obscure clause in a contract can not favor the one who has caused the obscurity.

4. ID.; ID.; CONSENT OF CO-OWNERS INDISPENSABLE. — Where the lands subject of the contract of sale are owned *pro-indiviso* by the defendants, the consent of each co-owner to the terms of the sale is indispensable.

5. ID.; ID.; PURCHASE PRICE TO BE RETURNED WHEN TRANSACTION IS CALLED OFF. — Where one of the defendants had received the check representing the value of the purchase price of the lands in question and had deposited the same in his current account and the transaction was called off, the mere offer to return the money cannot relieve him from liability. His duty was to consign the amount in court and his failure to do so makes him answerable therefor to the plaintiff.

M. G. Bustos for the plaintiff and appellee.
Diokno and *Diokno* for the defendant and appellant.

DECISION

BAUTISTA ANGELO, *J.*:

This is an action brought by plaintiff against the defendants to compel the latter to execute a deed of sale of certain parcels of land described in the complaint, and to recover the sum of ₱50,000 as damages.

The lower court decided the case in favor of the plaintiff, and the case is now before us because it involves an amount which is beyond the jurisdiction of the Court of Appeals.

The evidence for the plaintiff discloses the following facts:

The six parcels of land subject of the present action were owned *pro-indiviso* by Maria Lloret and the estate of Francisco A. Gonzales, of which Ricardo Gonzales Lloret is the judicial administrator. On May 8, 1944, the judicial administrator filed a motion in the intestate proceedings praying for authority to sell the said parcels of land for a price of not less than ₱100,000, to which Maria Lloret and the other heirs of the estate gave their conformity. The court granted the motion as requested. Plaintiff became interested in the purchase of said parcels of land and to this effect he sought the services of Atty. Teofilo Sauco who readily agreed to serve him and took steps to negotiate the sale of said lands in his behalf. Sauco dealt on the matter with Ricardo Gonzales Lloret. After several interviews wherein they discussed the terms of the sale, especially the price, Gonzales Lloret told Sauco that if plaintiff would agree to pay the sum of ₱200,000 for the lands, he may agree to carry out the transaction. Sauco broached the matter to plaintiff who thereupon agreed to the proposition, and so, on June 17, 1944, Sauco went to see Gonzales Lloret in his office in Manila wherein, according to Sauco it was agreed between them, among other things, that the lands would be sold to the plaintiff for the sum of ₱200,000 and that, after the execution of the sale, the plaintiff would in turn resell to Ricardo Gonzales Lloret one of the parcels of land belonging to the estate for an undisclosed amount. It was also agreed upon that since the lands subject of the sale were then in litigation between the estate and one Ambrosio Valero, the deed of sale would include a clause to the effect that, if by March, 1945, the vendors would be unable to deliver to the purchaser the possession of the lands peacefully and without encumbrance, said lands would be substituted by others belonging to the estate, of equal area, value, and conditions. It was likewise agreed upon that Sauco would prepare the necessary documents, as in fact he did in the same office of Gonzales Lloret.

After preparing the documents, Sauco gave an account to the plaintiff of the result of his negotiations, and having signified his conformity thereto, plaintiff gave to Sauco two checks, one for the sum of ₱100,000 drawn against the Philippine National Bank in favor of Maria Lloret (Exhibit B), and another for the same amount drawn against the Philippine Trust Co. in favor of Ricardo Gonzales Lloret. With these checks, Sauco returned on the same date to the office of Gonzales Lloret to consummate the transaction, but as Maria Lloret was not then present, Gonzales Lloret told Sauco that he could leave the documents with him as he would take care of having them signed by his mother, Maria, and that he could return the next Monday, June 19, to get them which by then would be signed and ratified before a notary public. Since Sauco was then in a hurry to return to Malolos, and besides he had confidence in Gonzales Lloret, who was his friend, the former agreed and left the two checks with the latter. But before receiving the checks, Gonzales Lloret issued a receipt therefor, which was marked Exhibit A. Of this development, Sauco informed the plaintiff in the afternoon of the same day, emphasizing the fact that he would return to the office of Gonzales Lloret to get the documents on June 19.

Sauco, however, was not able to return as was the understanding because he fell sick, and apprehensive of such failure, plaintiff went on the next day, June 20, to the Philippine National Bank to inquire whether the check he had issued in favor of Maria Lloret had already been collected, and having been informed in the affirmative, he next went to the Philippine Trust Co. to make the same inquiry with regard to the other check he issued against said bank in favor of Ricardo Gonzales Lloret, and when he was informed that the same had not yet been collected, he suspended its payment informing the bank that, should the party concerned execute the deed of sale for which it had been issued, he would reissue the check. The bank accordingly suspended the payment of the check as requested.

On the occasion of a visit which plaintiff paid to Sauco in Malolos, the latter handed over to him the receipt Exhibit A with the request that, in view of his sickness, he take charge of getting the deed of sale from Gonzales Lloret. Plaintiff tried to do so, but when he interviewed Gonzales Lloret, the latter refused to give him but with Sauco intimating that he would just wait until the latter recover from his sickness. When Sauco got well he tried to renew his dealing with Gonzales Lloret in an attempt to get from him the documents duly signed and ratified before a notary public, but the latter at first gave excuses for his inability to do his part as agreed upon until he finally said that he could not carry out the agreement in view of the fact that he had received other better offers for the purchase of the lands among them one for the sum of ₱300,000, plus a vehicle called *dokar* with its corresponding horse. This attitude was taken by the plaintiff as a refusal to sign the deed of sale and so he instituted the present action making as party defendants Maria Lloret and her son Ricardo Gonzales Lloret.

Ricardo Gonzales Lloret denied that a definite understanding had ever been reached between him and the plaintiff or his representative relative to the sale of the lands in question. He testified that the documents marked Exhibits D and D-1 do not represent the agreement which, according to Teofilo Sauco, was concluded between them, intimating the said documents were already prepared when Sauco went to his office to take up with him the matter relative to the sale on June 17, 1944; that Sauco, on that occasion, had already with him the two checks referred to in the receipt Exhibit A, who insisted in leaving them with him because he was in a hurry to return to Malolos, and so he accepted them by way of deposit and deposited them in his current account with the Philippine National Bank in order that they may not be lost; and that sometime in the morning of the succeeding Monday, June 19, a messenger of the Philippine National Bank came to see him to return the check issued in his favor against the Philippine Trust Co. with the information that the same had not been honored by the bank for the reason that the plaintiff had suspended its payment, which act he interpreted as an indication that the plaintiff had decided to call off the negotiation. In other words, according to Gonzales Lloret, when plaintiff suspended the payment of the two checks on June 19, 1944, as in fact one of them had been actually suspended because it had not yet been actually collected from the Philippine Trust Co., the understanding he had with Teofilo Sauco regarding the sale did not pass the stage of mere negotiation, and, as such, it did not produce any legal relation by which the defendants could be compelled to carry out the sale as now pretended by plaintiff in his complaint.

After a careful examination of the evidence presented by both parties, both testimonial and documentary, we are persuaded to uphold the contention of the defendants for the following reasons:

1. According to Teofilo Sauco, representative of plaintiff, his agreement with defendant Gonzales Lloret was that the price of the lands subject of the sale would be ₱200,000 so much so that he delivered to said defendant two checks in the amount of ₱100,000 each issued in favor of each defendant against two banking institutions. On the other hand, in the document Exhibit D, which is claimed to be the one drawn up by Sauco in the very office of defendant Gonzales Lloret and which, according to Sauco, contained the precise terms and conditions that were agreed upon between them, the amount which appears therein as the consideration of the sale is ₱100,000. This discrepancy, which does not appear sufficiently explained in the record, lends cogency to the claim of Gonzales Lloret that when Sauco went to his office to discuss the transaction, he had already with him the document Exhibit D with the expectation that defendants might be prevailed upon to accept the terms therein contained, or with the intention of leaving the document with Gonzales Lloret for his perusal and for such alteration or amendment he may desire to introduce therein in accordance with his interest.

2. Both plaintiff and the defendants knew well that the properties were subject to judicial administration and that the sale could have no valid effect until it merits the approval of the court, so much so that before the lands were opened for negotiation the judicial administrator, with the conformity of the heirs, secured from the court an authorization to that effect, and yet, as will be stated elsewhere, the terms that were made to appear in the document Exhibit D differ substantially from the conditions prescribed in the authorization given by the court, which indicates that said document cannot have any binding effect upon the parties nor serve as basis for an action for specific performance, as now pretended by the plaintiff, in the absence of such judicial approval.

3. It is a fact duly established and admitted by the parties that the plaintiff suspended the payment of the two checks of ₱100,000 each on June 19, 1944 (or June 20 according to plaintiff) in view of the failure of defendants to sign the documents, Exhibits D and D-1 which were delivered to them by Teofilo Sauco, and in fact plaintiff succeeded in stopping the payment of one of them, or the check issued against the Philippine Trust Co. This attitude of the plaintiff clearly indicates that the understanding between the parties was merely in the stage of negotiation for otherwise the plaintiff could not have withdrawn legally from a transaction which had ripened into a consummated contract. And even if the transaction had reached the stage of perfection, we may say that it became rescinded when plaintiff withdrew from his part in the transaction.

4. It should be recalled that when Sauco handed over to defendant Gonzales Lloret the two checks referred to above, the latter was made to sign a receipt therefor, which was marked Exhibit A. This receipt was prepared by Sauco himself, and it merely recited the fact of the receipt of the two checks, without mentioning the purpose for which the checks were delivered. If it is true that those checks were delivered as advance payment of the consideration of the sale referred to in the contract Exhibit D, no reason is seen why no mention of that fact was made in the receipt. This ambiguity cannot but argue against the pretense of Sauco who drafted the receipt in view of the rule that an obscure clause in a contract cannot favor the one who has caused

the obscurity (Article 1288, Old Civil Code.)

5. One of the documents turned over by Sauco to defendant Gonzales Lloret is Exhibit D-1 which represents the resale by the plaintiff to the latter of one of the parcels of land originally included in the sale contained in the document Exhibit D, and, according to Sauco, said document Exhibit D-1 was delivered to defendant Gonzales Lloret for ratification before a notary public. An examination of said document Exhibit D-1 will reveal that it contains many blank spaces intended to be filled out later on, and the same does not bear the signature of the plaintiff. This indicates that said document Exhibit D-1 was but a mere draft and corroborates the statement of Gonzales Lloret that it was given to him, together with the document Exhibit D, merely for his perusal and possible amendment or alteration. And

6. It should be noted that the lands subject of negotiation were owned *pro-indiviso* by Maria Lloret and the estate of Francisco A. Gonzales, and in that negotiation defendant Gonzales Lloret was merely acting in his capacity as judicial administrator. Being a co-owner of the lands, the consent of Maria Lloret to the terms of the sale is evidently indispensable, and yet there is nothing in the evidence to show that she has ever been contacted in connection with the sale, nor is there any proof that Gonzales Lloret had been authorized to conduct negotiations in her behalf. What the record shows was that Gonzales Lloret would take up the matter with Maria Lloret on the date subsequent to that when the two documents were delivered by Sauco to him (June 17, 1944), but this never materialized because of the unexpected sickness of Teofilo Sauco.

Let us now examine the terms of the authorization given by the court relative to the sale of the lands in question, and see if the same had been observed in the preparation of the deed of sale Exhibit D. Let us note, at the outset, that the authorization of the court refers to the sale of certain parcels of land of an area of 20 hectares situated in the *barrio of Sabang*, municipality of Baliuag, province of Bulacan, for a price of not less than ₱100,000, with the express condition that the encumbrance affecting those lands would first be paid. Analyzing now the terms appearing in the document Exhibit D, we find that among the lands included in the sale are lands situated in the *barrio of San Roque*. This is a variation of the terms of the judicial authorization. The document Exhibit D also stipulates that the sale would be free from any encumbrance, with the exception of the sum of ₱30,000 which is indebted to Ambrosio Valero, but said document likewise stipulates that the possession of the lands sold should be delivered to the purchaser sometime in March of the next year and that if this could not be done the lands would be substituted by others of the same area and value, belonging to the estate of Francisco A. Gonzales. This is an onerous condition which does not appear in the authorization of the court. Of course, this is an eventuality which the plaintiff wanted to forestall in view of the fact that the lands subject of the sale were then pending litigation between the estate and Ambrosio Valero, but this is no justification for departing from the precise terms contained in the authorization of the court. And we find, finally, that the authorization calls for the sale of six parcels of land belonging to the estate, but in the document as drawn up by Sauco it appears that only five parcels would be sold to the plaintiff, and the other parcel to Ricardo Gonzales Lloret. Undoubtedly, this cannot legally be done for, as we know, the law prohibits that a land subject of administration be sold to its judicial administrator.

The foregoing discrepancies between the conditions appearing in the document Exhibit D and the terms contained in the authorization of the court, plus the incongruencies and unexplained circumstances we have pointed out above, clearly give an idea that all that had taken place between Sauco and defendant Gonzales Lloret was but mere planning or negotiation to be threshed out between them in the conference they expected to have on June 19, 1944 but which unfortunately was not carried out in view of the illness of Teofilo Sauco. Such being the case, it logically follows that action of the plaintiff has no legal basis.

Before closing, one circumstance which should be mentioned here is that which refers to the delivery by Sauco to Gonzales Lloret of the check in the amount of ₱100,000 drawn against the Philippine National Bank which Lloret deposited in his current account with that institution. According to the evidence, when the transaction was called off because of the failure of Sauco to appear on the date set for his last conference with Lloret, the latter attempted to return the said amount to Sauco on August 2, 1944 who declined to accept it on the pretext that he had another buyer who was willing to purchase the lands for the sum of ₱300,000 and that if that sale were carried out Lloret could just deduct that amount from the purchase price. That offer to return, in our opinion, cannot have the effect of relieving Lloret from liability. His duty was to consign it in court as required by law. His failure to do so makes him answerable therefor to the plaintiff which he is now on duty bound to pay subject to adjustment under the Ballentyne Scale of Values.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs. Defendant Ricardo Gonzales Lloret is ordered to pay to the plaintiff the sum of ₱100,000 which should be adjusted in accordance with the Ballentyne Scale of Values.

Parás, Pablo, Bengzon, Montemayor, Reyes, Jugo, Labrador and *Concepcion, J.J.* concur.

VI

Martina Quizana, Plaintiff and Appellee, vs. Gaudencio Rodugerio and Josefa Postrado, Defendants and Appellants, G. R. No. L-6220, May 7, 1954, Labrador, J.

1. OBLIGATION AND CONTRACTS; ACTIONABLE DOCUMENT; ABSENCE OF LEGAL PROVISION GOVERNING IT. — An agreement whereby the obligors bound themselves to pay their indebtedness on a day stipulated, and to deliver a mortgage on a property of theirs in case they failed to pay the debt on the day fixed, is valid and binding and effective upon the parties. It is not contrary to law or public policy, and notwithstanding the absence of any legal provision at the time it was entered into governing it, as the parties had freely and voluntarily entered into it, there is no ground or reason why it should not be given effect.

2. ID.: FACULTATIVE OBLIGATION, ENFORCEABLE IMMEDIATELY. — The obligations entered into by the parties is what is known as a facultative obligation. It is not provided by the old Spanish Civil Code; it is a new right which should be declared effective at once, in consonance with the provisions of article 2253 of the Civil Code of the Philippines.

Samson and *Amante* for the defendants and appellants.
Sabino Palomares for the plaintiff and appellee.

DECISION

LABRADOR, *J.*:

This is an appeal to this Court from a decision rendered by the Court of First Instance of Marinduque, wherein the defendants-appellants are ordered to pay the plaintiff-appellee the sum of ₱550.00, with interest from the time of the filing of the complaint, and from an order of the same court denying a motion of the defendants-appellants for the reconsideration of the judgment on the ground that they were deprived of their day in court.

The action was originally instituted in the justice of the peace court of Sta. Cruz, Marinduque, and the same is based on an actionable document attached to the complaint, signed by the defendants-appellants on October 4, 1948 and containing the following pertinent provisions:

> Na alang-alang sa aming mahigpit na pangangailangan ay kaming magasawa ay lumapit kay Ginang Martina Quizana, balo, at naninirahan sa Hupi, Sta. Cruz, Marinduque, at kami ay umutang sa kanya ng halagang Limang Daan at Limang Pung Piso (₱550.00), Salaping umiiral dito sa Filipinas na aming tinanggap na husto at walang kulang sa kanya sa condicion