The LAWYERS JOURNAL

MANILA, PHILIPPINES

VOLUME XXVI NOVEMBER 30, 1961 NUMBER 11

In this issue

VICENTE J. FRANCISCO
Editor and Publisher

RICARDO J. FRANCISCO
Assistant Editor

VICTOR O. FRANCISCO
Business Manager

THE LAWYERS JOURNAL is published monthly by Hon. Vicente J. Francisco, former senator and delegate to the Constitutional Convention, practising attorney and president of the Francisco College (formerly Francisco Law School.)

SUBSCRIPTION AND ADVERTISING RATES: Subscription. In the Philippines—P20.00 for one year; P10.00 for 6 months; P2.00 per copy. In the United States and foreign countries—$20.00 for one year; $10.00 for 6 months; $2.00 per copy. Advertising: Full page—P105.00; Half page—P65.00; One-fourth page—P45.00; One-eighth page—35.00; One-sixteenth page—P25.00; Back Issues: In the Philippines—P25.00 — twelve issues; P3.00—per issue. In the United States and foreign countries—$25.00—twelve issues; $3.00—per issue. Entered as second class mail matter at the Post Office.

BUSINESS OFFICE: R-508 Samanillo Bldg. Escolta, Manila — Tel. No. 4-13-18

☆ ☆ ☆

Editorial:

THE ELECTIONS AND THE PROBLEM OF GOOD GOVERNMENT

The concensus of post election analysis is that the incoming administration won its bid for the people's mandate on the issue of graft and corruption. The party of the united opposition concentrated its campaign strategy upon a detailed indictment of the personal actuations that appear to have governed the conduct of administration officials in the discharge of their public functions. The opposition campaigned on the theme that, under the Nacionalista administration, public office has been converted to private use, and responsibility was accordingly laid upon the Executive Department, embodied in the office and person of the Chief Executive.

The electorate crossed party lines. They voted for the men and women whom they deemed deserving of their trust. The elections resulted in a preponderance of Nacionalistas in the lower House. Two Nacionalistas were voted into the Senate. And we dare say that the President-elect, as well as his running mate, was voted to the executive stewardship of the land on the strength of a personal image which satisfied the people's want for integrity in government.

The immediate task before the incoming administration is to translate its campaign cry for good government into a meaningful, practical and enduring political philosophy. In the implementation of this task, the President-elect and his official family will labor under an auspicious and heartening beginning. Before them is the eloquent lesson of the elections. It is not politically expedient to misuse and misapply the trust that inheres in public office: that there is, after all, a promising future in political idealism and the old fashioned virtues.

To carry out the domestic and international policies of his administration the President-elect will need the undivided support of his party. He will need the party to insure organizational support in the implementation of specific policy objectives. And he will need political astuteness of the highest degree if he is to secure the coperation of a Congress dominated by a rival, partisan organization.

Nation building is a national responsibility which must mutually be shared in the political field, by the Executive and Legislative branches of the government.

But on one vital aspect of nation building, on the one pledge which dominated the campaign platform of the President-elect, he and he alone will have to assume the burden of personal responsibility. This is his pledge to restore integrity in the running of government. This is the immediate task before him, for principally upon this pledge was he catapulted to the power, the glory and the promise of supreme political power.

How the President-elect will fare on this vital and particular mission will depend largely upon his understanding of the nature of the presidential office. His personal honesty constitutes only the starting point and minimum requirement of his mission.

From all appearances, however, the President-elect is a man sufficiently aware of the implications and consequences of the Presidency. He has pledged himself to the doctrine of Command Responsibility. While there is nothing novel and original about this doctrine the President-elect, by invoking the same, has demonstrated the intellectuel and moral orientation necessary to a faithful discharge of his high office.

A paper published in the last issue of the Journal amply showed that the doctrine of Command Responsibility is nothing more but the responsibility prescribed by the Constitution upon the presidency for the conduct of the Executive department which he personifies. This responsibility flows by necessary implication from the Constitutional provision which vests control "of all the executive departments, bureaus or offices" *in the President. (Art. VII, sec.* 10 (1)). *Since this provision makés thé Président the head of administration, he cannot escape responsibility for the behaviour and performance of those whom he has designated and accepted into his executive family.*

Viewed in another light, the members of a President's official family are nothing more but the projection and extension of the presidential personality, and for whose actuations, performance and behaviour in the discharge of their public duties he must accept presidential responsibility.

The power of control which the Constitution has vested in the President is a constitutional function. Because it is a function, it is perforce a duty. And if the Chief Executive has the duty to control all agencies of government which comprise the Executive Department he can not avoid assuming responsibility for them.

Official spokesmen of the Nacionalista administration rejected the doctrine of Command Responsibility by laughing it off. In this they showed a profound and irresponsible ignorance of a responsibility prescribed by the Constitution, and explains a basic cause of their failure to provide the nation with an honest and efficient administration.

A President who would deny responsibility for the actuations and behaviour of the members of his executive family cannot, by an equally necessary implication, be expected to provide a climate for sound government. Presidential responsibility is the price exacted by the Constitution from those who would aspire to exercise the vast powers of the Presidency. Presidential power without presidential responsibility can only mean dictatorship.

By enunciating the doctrine of Command Responsibility the President-elect was merely describing a constitutional reality which inheres in the function of the Presidency. By attempting to discredit the doctrine, the official spokesmen of the outgoing administration disclosed a revealing philosophy that may well account for the kind of administration which the people rejected during the last elections.

Precisely because the actuations and behaviour of the executive family is a presidential responsibility, it becomes imperatively necessary for the President-elect to appoint to office only those men and women who will do justice to the responsibility imposed by the Constitution upon the Presidency.

This is the reason why the President-elect must not

(Continued next page)

CHANGES CAUSED IN GRANTING INFERIOR COURTS CONCURRENT JURISDICTIONS WITH THE COURT OF FIRST INSTANCE IN SOME CASES*

By Judge DAMIAN L. JIMENEZ**

Judge Damian Jimenez

Prior to the amendment made on the provisions of the Judiciary Law of 1948 by Rep. Act 2613, specifically Sections 86, 87, 88 and 90, questions on the extent of cases which may be taken cognizant of by courts of limited jurisdiction seem less unsettled than as now obtaining. However, though this is not saying that all the conceivable questions on the jurisdiction of such courts have fully passed judicial interpretative scrutiny, the fact remains, and fact it is that a number of issues raised from without the express language of the Judiciary Act had been laid bare by decisions of the superior courts.[1] On August 1, 1959, when Judges of Municipal Courts and Justices of the Peace Courts of the capital of provinces began re-adjusting themselves to the conformity of Rep. Act 2613, jurisdictional issues which mostly are questions of first impression began asserting themselves in one form or another. A Fiscal, may for instance, file a case before a court only to be tossed back by the Judge on a claim that he is without jurisdiction to try it, or, a Judge of an inferior court after judgment of conviction in a case appealed against, transmits the records thereof to the Court of First Instance only to be remanded upon a resolution that the appeal pertains to the Court of Appeals. These and other similar questions are not infrequent occurences after the amendatory provisions became effective. Therefore, aware as we are of the motive behind the amendment, an outlook to obviate from these sad experiences should be as compelling as the inducement which, by legislative fiat, made the amendment possible. It is to this end that this paper is intended, without assuming that everything will be solved.

Under the Judiciary Reorganization Act of 1948 enacted and made effective upon its approval on June 17, 1948, the jurisdiction of the justices of the peace and Municipal Courts of chartered cities covers those expressly provided in Sections 86, 87, 88 and 90 thereof. In addition, such courts have jurisdiction concurrently with the Courts of First Instance and the Supreme Court "over cases affecting ambassadors, other public ministers and consuls"[2] including, as advanced by some local commentarists. the power of judicial review.[3]

Section 86 of Rep. Act 296 or better known as the Judiciary Law of 1948 as amended by Rep. Act 644, states that justices of the peace and judges of municipal courts of chartered cities have jurisdiction consisting of:

(a) Original jurisdiction to try criminal cases in which the offense charged has been committed within their respective territorial jurisdiction;

(b) Original jurisdiction in civil actions arising in their respective municipalities and cities, and not exclusively cognizable by the Courts of First Instance; and

---

* Speech delivered at the Convention of City Judges held in Baguio City last February 23, 1961.

** Judge Jimenez is presently a Judge of the Municipal Court of Quezon City. a position he has held since 1956. Before the war, he engaged in private practice, holding at the same time the office of the Justice of the Peace of Calauag, Quezon. He subsequently held the positions of special counsel, deputy fiscal and assistant fiscal of Quezon City and Manila. The experience and training gained by him in private practice and in the fiscal's office has earned him the appointment to the office he is presently occupying. A holder of MA, LLB, LLM and DCL degrees, Judge Jimenez is teaching law, philosophy and social science in the University of Santo Tomas, Lyceum of the Philippines and the Philippine College of Criminology.

1. Uy Chin Hua vs. Dinglasan, 47 O.G. 233 (Supplement) No. 12. After holding that destierro though, of long duration than *arresto mayor* is a lighter penalty than the latter, the Supreme Court held that the inferior courts have jurisdiction of cases so penalized saying: "Thus there exists a gap in the law as to which court shall have original jurisdiction over offenses penalized with *destierro* or banishment. Until the law making body should fill that gap by expressly providing otherwise, the Court must do so by reasonable interpretation of the existing law."

2. Concurrent original jurisdiction in this class of cases should mean the sharing of the Supreme Court with the most inferior courts of cases affecting ambassadors, other public ministers and consuls such that the Supreme Court would have concurrent jurisdiction with the lowest courts in our judicial hierarchy, the justice of the peace courts, in a petty case involving for instance, the violation of a municipal ordinance affecting the parties just mentioned. (Concurring Opipnion, Justice Laurel, Schneckenburger vs. Moran, 63 Phil. p. 267-268)

3. That lower courts have the power of judicial review is merely an incident of the power to decide actual cases before the court. Since the function of adjudication imposes on the court the duty of ascertaining the facts and applying the law to such facts and since the constitution where applicable overrides a statutory provision, executive order or municipal ordinance, it does follow that in deciding a case before it, a lower court may have to annul any legislative or executive act in contravention of the constitutional provision. (Constitution of the Philippines annotated, Tañada & Fernando, p. 775) Under Section 10, Art. VIII of the Philippine Constitution, the Supreme Court has the power to declare a law or treaty unconstitutional. There is however, nothing in said section from which it can be concluded that the power to declare a law unconstitutional belongs exclusively to the Supreme Court, this section pro-

---

EDITORIAL . . . *(Continued from page 321)*

hesitate to cross party lines in considering the persons who would reflect his official personality. Virtue is never the monopoly of a political party. Nor, for that matter, is vice.

The President-elect has every right to demand loyalty to the announced policies of his administration. But in justice to himself, he cannot afford to demand political loyalty as a condition precedent to public service. For he, and not his party, will bear the brunt of the public scrutiny that will judge the calibre of the men and women he appoints to office. Responsibility is on him. Not on his party. Appointments to executive and administrative positions in the government must transcend partisan considerations. The only political expedient criteria are competence and integrity, as the catastrophic experience of the outgoing president has indicated. This is the only way by which the President-elect can channel the nation's available intellectual and moral resources of the country into public service. This is the only way he can successfully shoulder the burden of presidential responsibility. He is no longer just the president of a political party. He is now the President of the Philippines, to which he owes, by his own choice, ultimate and supreme fidelity.

(c) The last phrase of par. (e) or (Section forty-four) of this Act, notwithstanding, justices of the peace and judges of municipal courts shall have concurrent jurisdiction with the Courts of First Instance in the appointment of guardians and adoption cases.

This section was not modified by the new amendment, save probably the last paragraph thereof which may be said to have been impliedly repealed by the 2nd paragraph of Section 88, as now read, on appointment of guardians. This conclusion seems clear from the manner the amendment is expressed. Rep. Act 2613 consists of 13 sections. All sections, except the 12th and the 13th, the appropriation and effectivity clauses, are introduced by the phrase "is hereby amended to read as follows," following the citation of the sections modified. Such being the case, the legislature therefore merely intended a change in the provision of the particular section or sections expressly mentioned and not to any other section or sections of the old provisions of the Act.[4] Of the eleven sections in Rep. Act 2613, no mention of Section 86 was ever made. It follows therefore, that the intention of Congress was to retain the original provision of Section 86, and not to suffer it the modifications of the new provisions as set out. However, though this may be so concluded on paragraphs (a) and (b) of Section 86, the same should not be made to apply to par. (c) even in the face of the knowledge that Rep. Act 2613 did not provide for a repealing clause. To hold it so would be to say that Congress intended to make the jurisdiction of the courts referred to in Section 86 uncertain — a supposition which does not deserve even the slightest regard. Therefore, the obvious contrariety between the provisions of par. (c) of Section 86 providing for a concurrent jurisdiction in the appointment of guardians and the provisions of Section 10 of Rep. Act 2613 which do away with such concurrence with the Courts of First Instance, should be reconciled. Since the provisions of Section 10 amending Section 88 of the Act do away with the power of the inferior courts in the appointment of guardians granted them under the provisions of par. (c) of Section 86 of the Act, the conclusion should be that, as a general rule, justices of the peace courts and judges of municipal courts have no jurisdiction in the appointment of guardians, by tacit repeal,[5] the repugnance between the two provisions being irreconcilable.[6] The rule, however, as said, is but general. It cannot be claimed obsolutely that by Section 10 of the amendatory Act, justices of the peace and judges of municipal courts are at present totally divested with such power. Strongly indicating this contention is the force drawn from the fact that Section 90 of the Act has not suffered emasculation by the amendment. Said Section 90, as amended:[7]

"Justices of the peace and judges of municipal courts of chartered cities shall have concurrent jurisdiction with the courts of first instance to appoint guardians or guardian AD LITEM *for persons who are incapacitated by being of minor age or mentally incapable in matters within their respective jurisdiction.*" (Underscoring supplied)

Inasmuch as the provision of Section 10 of Rep. Act 2613, in this regard is couched in general terms, it is believed that it could not affect Section 90 such as to remove the same power of appointment of guardians from the cognizance of the inferior courts to the Courts of First Instance, over specific subjects, and in "matters within their respective jurisdiction." Section 90, like Section 86 of the Act was not treated by the amendment, which, as already noted, only modified isolated sections of the prior provisions of the Act. Untouched, it therefore remains effective as apportioned by Congress to the inferior courts concurrently with the Courts of First Instance. This is one reason for holding this view. Another, and a more compelling one, is the fact that Section 90 covers not the entire field of the power of appointment of guardians but merely some cases of that gamut. Unlike the observation here made between Section 10 of the amendatory law and Section 86 par. (c) of the Act, said Section 10 does not produce any conflict or antagonism with Section 90. On the contrary, the one is the harmonious part of the other,[8] or, gleaned in another light, may be taken to be a case of an exception from a rule.[9] Therefore, Section 10 of the amendment and Section 90 of the Act construed together should make up the following rules:

(1) Where the subject of the proceedings are persons who are incapacitated by being of minor age or are mentally incapable, justices of the peace and judges of municipal courts have jurisdiction in matters within their respective jurisdiction, concurrently with the Courts of First Instance;

(2) Where the subject of the proceedings are the persons above referred to but the matter before said courts are without their respective jurisdiction, there is no concurrence; jurisdiction in the Courts of First Instance is exclusive; and

(3) Where the subject of proceedings are other incompetents (those under civil interdiction, hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who by reason of age, disease and other similar causes, cannot, without outside aid take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation — (See Sec. 2 Rule 93, Rules of Court) the jurisdiction to appoint guardians is exclusive in the Court of First Instance.

(NOTE: The Juvenile and Domestic Relations Court of the City of Manila is of the category of a Court of First Instance.)

Earlier, mention was made that in view of the manner whereby Congress incorporated into the provisions of the Act the present change, Section 86 not thereby included, should not be taken to bend to the new changes save par. (c) on the matter of appoint-

---

vides only for the procedure that the Supreme Court should follow when such question is presented before it. (Espiritu vs. Fugoso, G.R. No. L-1768, Oct. 20, 1948) Furthermore the provisions of the constitution that the Supreme Court shall have exclusive jurisdiction to review, revise, modify, or affirm on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts in all cases in which the constitutionality or validity of any treaty or law is in question, implies that the inferior courts may declare a law or treaty unconstitutional, but their decisions or decrees on the constitutionality or validity of any law or treaty are subject to appeal to the Supreme Court. (Phil. Const. Law by R. Martin, Rev. Ed. 1956, p. 65)

4. Where the specific provision was amended "to read as follows: 'it is a re-enactment of the whole subject in substitution of the previous one which thereafter disappears entirely. The intent of the legislature to set out the original section as amended is most commonly indicated by a statement in the amendatory act that the original section is amended 'to read as follows: "The legislature thereby declares that the new statute is a substitute for the original act or section. Only those provision of the original act or section repeated in the amendments are retained. (Domingo T. Parras vs. Land Registration Commission citing I Sutherland statutory construction, 3rd Ed., p. 420-421) G.R. L-16011; From. July 26, 1960.

5. From the moment there is a conflict between an old law and a new law, so that the observance of one excludes that of the other, the conflict must be resolved in favor of the later law. This implied repeal of an earlier law takes place without any special declaration in the subsequent law. (Calderon vs. Santisimo Rosario 28 Phil., 164; U.S. vs. Chan Tienco, 25 Phil., 89.)

6. Ibid.

7. See Rep. Act 648.

8. Lichauco vs. Apostol, 44 Phil., 138. But in all cases where two statutes cover, in whole or in part, the same matter, but they are not absolutely irreconcilable, the duty of the Court — no purpose to repeal being clearly indicated or expressed — is, if possible, to give effect to both.

9. Ibid. When there are two acts or provisions, one of which is special and particular and includes the matter in question, and the other general, which, if standing alone, would also include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision.

ment of guardians. This statement should be qualified by the effect borne of the provisions that "Justices of the Peace in the capitals of provinces and judges of municipal courts shall have jurisdiction as the Courts of First Instance to try parties charged with an offense *committed within the province* in which the penalty provided by law does not exceed prision correcional or imprisonment for not more than six (6) years or fine not exceeding three thousand pesos (₱3,000.00) or both x x x,[10] on the provisions granting original jurisdiction to try criminal cases in which the offense charged has been committed *within the respective territorial jurisdiction* of justices of the peace and judges of municipal courts.[11] Before the amendment, the respective territorial jurisdiction of the justices of the peace has been understood to extend only over cases committed within the territorial limits of municipality where they sit. Conversely, a justice of the peace would have no power to try a case committed beyond the territory of the municipality where he sits, the reason being that any exercise of jurisdiction by a justice of the peace beyond his prescribed territory is *coram non judice* and void.[12] However, under the present law as modified, justices of the peace courts of the capitals of provinces have jurisdiction to try cases committed within the province where the imposable penalty does not exceed prision correccional or imprisonment for not more than six (6) years or fine not exceeding three thousand pesos (₱3,000.00) or both irrespective of whether the trial be on the merits or merely one preliminary to such trial before the Court of First Instance of the province. Therefore, if the case be one triable by virtue of their authority to conduct preliminary investigations, said justices of the peace courts have jurisdiction "without regard to the limits of punishment x x x." This would seem to be the correct view considering that since Section 10 of Rep. Act 2613 amending Section 87 par. 4 which introduces said paragraph with the words "Said justices of the peace and judges of municipal courts x x x" did not qualify the first of its compound subject, to distinguish or discriminate between justices of the peace courts of the capitals of provinces and the justices of the peace courts of the municipalties other than the capitals of provinces, said phrase (justices of the peace) must be held to include both kinds — *Ubi lex non distinguit nec non distinguere debemus*. Hence, the provisions of Section 86 par. (a) of the Act which grants original jurisdiction to try offenses committed within the respective territorial jurisdiction, should now be understood to have been enlarged at least insofar as the territorial jurisdiction of justices of the peace of capitals of provinces are concerned.

By Section 10 of Rep. Act 2613, the original provisions of Section 87 were replaced. Now, the latter reads:

"Sec. 87. Original jurisdiction to try criminal cases.—Justices of the peace and judges of municipal courts of chartered cities shall have original jurisdiction over:

"(a) All violations of municipal or city ordinances committed within their respective territorial jurisdiction;

"(b) All criminal cases arising under the laws relating to:

"1. Gambling and management or operation of lotteries;

"2. Assaults where the intent to kill is not charged or evident upon the trial;

"3. Larceny, embezzlement and estafa where the amount of money or property stolen, embezzled, or otherwise involved, does not exceed the sum or value of two hundred pesos;

"4. Sale of intoxicating liquors;

"5 Falsely impersonating an officer;

"6. Malicious mischiefs;

"7. Trespass on government or private property;

"8. Threatening to take human life; and

"9. Illegal possession of firearms.

"(c) All other offense except violation of election laws in which the penalty provided by law is imprisonment for not more than six months or a fine of not more than two hundred pesos, or both such fine and imprisonment;

"Said justices of the peace and judges of municipal courts may also conduct preliminary investigation for any offense alleged to have been committed within their respective municipalities and cities, without regard to the limits of punishments, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court.

"Justices of the peace in the capitals of provinces and Judges of Municipal Courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed prision correccional or imprisonment for not more than six years or fine not exceeding three thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear application for bail.

"All cases filed under the next preceding paragraph with Justices of the Peace of capitals and municipal court judges shall be tried and decided on the merits by the respective justices of the peace or municipal judges. Proceedings had shall be appealable direct to the Court of Appeals or the Supreme Court, as the case may be."

By the amending law, the noticeable changes may be summed as follows:

(a) The transposition of par. (b) to (c) and vice versa;

(b) The introduction of par. (b)-9, adding to the list of offense therein enumerated, a charge of illegal possession of firearms;

(c) Violation of election laws have been inserted as an exception to the provisions of par. (c) which embraces all offenses exclusively cognizable by justices of the peace and municipal courts;

(d) A provision giving to justices of the peace of capitals of provinces and municipal courts of chartered cities like authority as the Court of First Instance over criminal cases the penalty of which is limited to prision correcional or its equivalent or a fine not exceeding ₱3 000.00 or both committed within the province.

(e) A provision introducing trial on the merits of the class of cases referred to above (par. 4 hereof), the recording of the same and a direction that such cases shall be appealable to the Court of Appeals or Supreme Court.

(f) The provisions granting like jurisdiction with the Courts of First Instance by assignment of district judges to Justices of the Peace of capitals of provinces to try parties charged with an offense committed within the province in which the penalty does not exceed imprisonment for two years and four months, or a fine of two thousand pesos or both, have been legislated out, save their like jurisdiction with the Court of First Instance within the province to hear applications for bail.

Save the foregoings all others have been retained.

On these observations, it can be said generally, that the jurisdiction of inferior courts have been extended. However, while the jurisdiction of justices of the peace and municipal courts over all violations of municipal or city ordinances committed within their respective territorial jurisdiction have been retained *en toto*, their authority to try parties charged with an offense punishable by an imprisonment of not more than six months or a fine of not more than two hundred pesos or both was constricted to exclude therefrom violations of election laws regardless of the penalties.

By force of par. (c) Section 87 as amended, all offenses which the law assigns a penalty of imprisonment for not more than six

---

10. Section 10 Rep. Act 2613 amending Section 87 par. 5.
11. Section 86 par. (a) Rep. Act 296.
12. 51 C.J.S. 83.

months or a fine of not exceeding ₱200.00 committed within the respective territorial jurisdiction of justices of the peace and municipal courts of chartered cities are exclusively cognizable by them; otherwise they are cognizable by the Courts of First Instance.[13] In such cases the maximum of the penalty whether it be in the form of imprisonment or fine furnishes the test, and the fact that the minimum punishment is within the justice's jurisdiction is immaterial.[14] For instance, if the imposable penalty for the offense is arresto mayor and a fine from 325 to 3,250 pesetas, a sum greater than ₱200.00, conviction thereon by a justice of the peace is null, for want of jurisdiction. [15] So also, if the imposable penalty for the offense is arresto mayor in its maximum to prison correccional in its minimum period and/or a fine not exceeding ₱200.00 pesos, the justice of the peace is without power to try the charge even considering that the alternative or conjuctive penalty of fine imposed by law is within its power to impose. However, justices of the peace courts may not have jurisdiction over a case when, although the penalty prescribed by law is not more than six months imprisonment and two hundred pesos fine, the law prescribes an additional penalty which the justice of the peace courts have no jurisdiction to impose.[16] Accordingly, it has been held where the accused public official was charged for estafa, an offense punishable with the penalty of arresto mayor and the additional penalty of temporary special disqualification in its maximum degree to perpetual special disqualification,[17] or, where the petitioner was charged with a violation of Art. 155 par. (4) of the Revised Penal Code which calls for the additional penalty of two years, four months and one day of prision correcional for habitual delinquency on account of his two previous convictions for the same offense,[18] or, where to impose the penalty of *arresto mayor* upon the accused guilty of seducing a minor, the additional penalty of certain civil obligations which are not really, in a strict sense, accessories of the personal penalty, such as, the acknowledgement and the support of the child begotten,[19] the justice of the peace has no jurisdiction. But it has also been held that where the justice of the peace has jurisdiction over the subject matter as the penalty for the offense brought before him is within his jurisdiction pursuant to law, said justice is not precluded from imposing subsidiary imprisonment consequent upon the inability of the accused to satisfy his pecuniary liabilities even when to do so would distend the penalty of imprisonment to over six months.[20] So also, since the penalty of destierro is not a higher penalty than arresto mayor for the reason that it is merely a restriction on one's liberty of movement and not a complete deprivation of such liberty, the imposition of the same is within the exclusive jurisdiction of the justice of the peace to impose despite that it exceeds the terms of six months.[21] And in another case [22] the jurisdiction of the justice of the peace has been conceded where it ordered the confinement of a minor delinquent in a reformatory for a period exceeding six months.

With respect to the provisions of Section 87 par. (b) as now amended, justices of the peace courts and municipal judges of chartered cities have exclusive jurisdiction over all cases the nature of which are of those specifically enumerated and involving a penalty the term of which does not exceed the limits set out in par. (c). But in those same cases, said justices and judges of municipal courts exercises the authority to try the same concurrently with the Courts of First Instance,[23] where the imposable penalty exceeds the limits set forth in par. (c)[24] since the controlling basis for such jurisdiction lies not on the measure of the imposable penalty but upon the character of the offense,[25] the imposition of additional penalty, such as habitual delinquency, notwithstanding.[26] However, this rule has been qualified by jurisprudence holding that where to try and determine a case either civil or criminal, the justice of the peace has to first decide title to real property necessarily involved therein, he has no jurisdiction.[27] So that, if a criminal case be filed with a justice of the peace or municipal judge for the offense of other forms of swindling defined and punished under Art. 316 of the Revised Penal Code par. (1) said justice or judge is competent to try and hear it, but where to do so, he would have to first resolved title to such real property, then said justice has no jurisdiction. It is well to note that in the former instance, the justice of the peace acquired jurisdiction because of the 3rd par. of Section 87 of the Act, but in the latter it could not try the case though it would have had under the authority conferred to it in pars. (b), or (c) because it has to decide a question of title to real property which is within the exclusive cognizance of the Courts of First Instance. In the same breath, a justice of the peace or municipal court would have no jurisdiction to try prosecutions under the provisions of the Anti-graft Law (Rep. Act 3019), though the imposable penalty therein provided in cases of conviction, would have been well within his competence to impose, the statute itself providing that "all prosecutions under this Act" shall be within the original jurisdiction of the proper Court of First Instance.[28]

However, it should be well to note that the jurisdiction granted the justices of the peace and municipal judges of chartered cities over all criminal cases arising under the laws relating to those enumerated in paragraph (b) of Section 87, concurrently with the Courts of First Instance, refers only to consummated offenses. Where the offense charged recites a mere attempt to commit estafa where the amount involved is ₱202.00 an amount exceeding the limit set forth in Section 87, par. (b) subpar. (3), the judge of the Court of First Instance has no jurisdiction to try it. The Supreme Court in upholding the jurisdiction of the municipal court in this case, disregarded Subsec. (c) (now subsec. (b) declaring that "we should not lose sight of the fact that the offenses mentioned in said subsection (c) refer to *consummated acts* and not merely to those that are attempted or frustrated in nature." A different interpretation, it was further said, would give rise to the incongruous situation where while under subsection (c) the offense does not come with the jurisdiction of the municipal court because the value of the thing stolen is more than ₱200.00 it at the same time comes within its jurisdiction under subsection (b) because the penalty involved is less than six months.[29]

Under the prior provisions of par. (b) of Section 87, was express to read: "All offenses in which the penalty x x x." However under the amendment it is now worded: "all *other* offenses in which the penalty x x x." It is therefore obvious that it was the intention to limit the cases of crimes that may be taken cognizance of by the justices of the peace and municipal courts to those specified, never to any criminal cause not specified — *expressio unius est exclusio alterius*. Following this reasoning, it is conceded that justices of the peace of capitals and municipal courts of chartered cities, may determine all the cases enumerated therein under the authority conferred to them by the provisions of the 3rd. par. of Section 87 of the present Act.

By the language of the 3rd. par. of Section 87 as amended by Section 10, of Rep. Act 2613, justices of the peace of the capitals

13. Section 44 par. (f) Judiciary Act of 1948.
14. 31 Am. Jur. 739.
15. U.S. vs. Almazan and Martinez 20 Phil., 225.
16. U.S. vs. Bernardo, 19 Phil., 265, U.S. vs. Regala 28 Phil., 37; People vs. Costosa, 40 Off. Gaz., 17th Supp. 147.
17. U.S. vs. Figueroa, 22 Phil., 269.
18. Llobrera vs. The Director of Prisons, G.R. No. L-3994, Aug. 16, 1950.
19. U.S. vs. Bernardo, 19 Phil., 265.
20. People vs. Caldito, et al., 40 O.G. 5522.
21. Ibid.
22. Bactoso vs. Governor of Cebu, 28 Phil., 25
23. People vs. Colico XVI, L.J. 508.
24. Ibid.
25. People vs. Palmon G.R. No. L-2860, May 11, 1950.
26. People vs. Blanco G.R. No. L-7200 Jan. 13, 1950.
27. Carroll & Ballesteros vs. Paredes, 17 Phil., 94.
28. Section 10, Rep. Act 3019.
29. People vs. Marita Ocampo y Pure G.R. No. L-10915 Prom. December 18, 1958.

of provinces and municipal courts of chartered cities are now authorized to try criminal cases to which the law assigns the penalty of prision correcional or its equivalent and/or a fine not exceeding P3,000.00 committed within the province. This authority however, is not exclusive, but concurrent with the Courts of First Instance. Jurisdiction of such courts under this paragraph may be exercised by them over said cases not only when committed within the territorial limits of the capital of the province but also committed elsewhere within the province. The same proposition will hold true, where the capital of the province is at the same time a city, but in chartered cities which are not the capitals of the provinces where they are located, the jurisdiction of such courts extend only to criminal offenses committed within the city limits. This would seem to be the meaning of the provision of the 3rd par. of Section 87 when it provides: "Justices of the peace *in the capitals* of provinces and judges of Municipal Courts shall have like jurisdiction as the courts of First Instance to try parties charged with an offense committed *within the province*, x x x." Had the law intended differently, it would have been easy for Congress to provide the same by merely saying "within the province or city, respectively" or by words of like import. More so, to entertain the idea that justices of the peace of the capitals of provinces may try cases committed within the territorial limits of the provinces without however conceding the same authority to judges of municipal courts simply because it happened that the latter sit in cities which are also capitals, would lead to a ludicrous result. Precisely, the intent behind the amendment is to enlarge the jurisdiction of inferior courts in order to ease the clogging of cases in the Courts of First Instance.[30] Considering further, that even Congress is well aware that most of the capitals of the provinces are now cities, it may be assumed that Congress did not intend to discriminate between the territorial jurisdiction of a justice of the peace of the capital of a province and judge of a municipal court of a city where such city is also the capital of the province. Therefore, under the present set up the justice of the peace of Pasig, Rizal, for instance, can take cognizance of a case of "homicide thru reckless imprudence"[31] committed in any municipality embraced in that province. And also, the justice of the peace of Marikina, Rizal, for instance, may remand a case of the same kind, after preliminary inquiry either to the Courts of First Instance or to the justice of the peace stationed at Pasig, Rizal. Since the jurisdiction of justices of the peace of capitals and judges of municipal court under the provisions of the 3rd par. of Section 87, is determined by the penalty therein provided, it follows that the prevailing decisions limiting or qualifying the provisions of par. (c) should be made applicable to them. Hence, justices of the peace of capitals of provinces and judges of municipal courts have no jurisdiction where to try a criminal cause, they would have to impose an additional penalty in certain cases, such as that of habitual delinquency, or, to first resolve title to real property necessarily involved therein, or to require an accused to acknowledge and give support to the child begotten by him with a minor he had seduced.[32]

By the 4th par. of Section 87 as amended, all cases filed with justice of the peace and municipal courts which may be tried by them concurrently with the courts of First Instance "shall" be tried on the merits by the respective justices or municipal judges, and the proceedings therein had *shall* be recorded. By these is meant that when said courts acquire jurisdiction to try and decide a case of the nature mentioned in the 3rd paragraph of Section 87 of the Act, as amended, to the exclusion of the Courts of First Instance, said courts, from the filing of the corresponding complaint or information become courts of record insofar as the case filed is concerned. Therefore the procedure by which a criminal action is tried before the Court of First Instance should be made applicable, recording the proceedings therein had from the beginning to end. The judgment to be promulgated and entered in such cases should also conform to the requirements of stating the facts and the laws applied in the decision which must be in writing, so that if an appeal is raised thereon, the Court of Appeals or the Supreme Court, to which such appeals are made, may have something to appreciate. So also, in cases of appeals, the procedure followed for appeals from the Courts of First Instance to the Court of Appeals or Supreme Court, as the case may be, should be adopted.

The 4th par. of Section 87 of the Act as amended, begins with: "All cases filed under the *next preceding paragraph* x x x." From this is clear that only those cases referred to in the 3rd paragraph thereof are and should be appealed direct to the Court of Appeals or Supreme Court as the case may be in cases, where appeals are raised. This gives rise to the further implication that where a justice of the peace court of the capital of a province or a judge of a municipal court decides a criminal case pursuant to his authority under the cases provided in paragraphs (a), (b) or (c) of Section 87 of the Act as now amended, appeals should be made to the Courts of First Instance. This becomes even more obvious should we consider that in such cases the trial court is not a court of record. Therefore, where the judgment appealed from is one rendered on any of the cases mentioned in par. (b) the appeals should be brought to the Courts of First Instance, even if the sentence therein imposed may well exceed the penalty of prision correcional or a fine of more than P3,000.00 or both. Though in some of these cases the justice of the peace and municipal judge may try and decide them concurrently with the Court of First Instance, the fact of mere concurrence, however, does not bring them within the application of the 4th par. of Section 87 inasmuch as the phrase "All cases filed under the next preceding paragraph" is clearly indicative of the legislative intent to cover only the cases falling in their cognizance under said 4th paragraph to the exclusion of all the other cases.

Because of the amendment distending the power of justices of the peace courts of capitals of provinces and judges of municipal courts of chartered cities, far-reaching implications have insinuated themselves into the field of procedure. A notable instance is the rule to the effect that warrant of arrest issued by the justice of the peace cannot be served or executed outside his province unless the judge of the Court of First Instance of the district or, in his absence, the provincial fiscal shall certify that in his opinion the interest of justice requires such service.[33] Because of the amendment it is now believed that in the cases covered in the provisions of the 3rd par. of Section 87, the named courts may issue warrants without the certification of District Judges or Provincial Fiscal, the service of which may be affected within the Philippines. The consistency of this contention, it is submitted, lies heavily on the rule that when by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by the Rules of Court, any suitable process or mode of proceeding may be

30. "There are now a number of cases that are pending and which cannot possibly be disposed of by the present number of judges of courts of First Instance. Just to see the number of cases pending will convince anyone. There were 74.870 cases pending at the end of the year, last year (1958)." "While all the judges are trying to do their best to dispose of them, yet they cannot cope with the increasing number of cases, which by the year are increasing more than in the past. "We propose to increase in this bill the jurisdiction of the justices of the Peace Courts." Ponencia del Sen. Paredes, p. 1497 to 1498 Cong. Rec. Vol. II, No. 58, 1959.

31. Art. 365, Revised Penal Code, par. numbered 2 as amended by Rep. Act No. 1790.

32. Supra — p. 11.

33. See. 4. Rule 109, Rules of Court.

adopted which appears most conformable to the spirit of said rules.[34] Again, because of the grant to the justices of the peace of capitals and judges of municipal courts of chartered cities like jurisdiction as the Courts of First Instance, it can now be said that in cases of conviction where an appeal is made therefrom, the defendant appealing may be admitted to bail, not as a matter of right but at the discretion of the Court. In the same vein, since the defendant must be personally present at the arraignment where the charge is for an offense within the jurisdiction of the Courts of First Instance,[35] the same must be followed where the defendant is charged for an offense concurrently triable by the former and the latter courts under the provisions of the 3rd par. of Section 87, as amended. For the same reason, an appeal taken from a judgment of conviction rendered by Judges of municipal courts of chartered cities should be made within fifteen days from the rendition of the judgment appealed from, when the judgment rendered by said courts is upon a case cognizable by both the Courts of First Instance and judges of municipal courts. This would seem to be the mode applicable notwithstanding appeals from municipal courts had been, by the respective city charters, made to be done within the day following the rendition or promulgation of the judgment, usually at 4:00 o'clock or 6:00 o'clock post meridian,[36] for the reason that it could not be presumed that Congress intended that said city charters should prevail over a law yet to be made. And by parallel reasoning, it may also be said that justices of the peace courts of the capitals of provinces and municipal courts of chartered cities, when in the exercise of the jurisdiction conferred to them by the provisions of the 3rd par. of Section 87, as amended, may now be competent to act in a summary proceedings for direct contempt under the provisions of Section 1, Rule 64 of the Rules of Court in like manner as the Courts of First Instance to whose province the imposition of a fine of not exceeding two hundred pesos or imprisonment not exceeding ten days or both, has been given. The consideration for this proposition lies on the theory that direct contempts being as they are remedies ancillary to a principal cause should be deemed to be within the sphere of the Court's cognizance, where the principal cause is by law vested in said Court.[37] And, since no appeal lies from a decision of the Court of First Instance in summary proceedings for direct contempt of court,[38] the same is submitted to apply with equal force upon an adjudication for contempt rendered by justices of the peace courts of capitals of provinces and judges of municipal courts of chartered cities in the cases provided in 3rd par. of Section 87. The above are only my humble opinion as there are no precedents yet on the matter.

C I V I L

The authority of inferior courts to hear and decide civil cases under the prior enactment was measured by the value of the subject matter or amount of the demand, exclusive of the costs and interests. Pursuant to the then provisions of Section 88 of the Judiciary Act of 1948, the limit was set at an amount or value not exceeding ₱2,000.00 exclusive of costs and interests. Under the present rule, the value of the subject matter or amount of the demand was fixed at ₱5,000.00, exclusive of interests and costs. Outside of this sum or value, justices of the peace or municipal courts of chartered cities are without authority to act on ordinary civil actions, the power to take action thereon being vested exclusively in the Courts of First Instance.[39] And, in determining this value of the subject matter or amount of said suit or that there are several claims or causes of action between the same parties embodied in the same complaint, the amount of the demand shall be the totality of the demand in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions; but where the claims or causes of action joined in a single complaint are separately owned by or due to different parties, each separate claim shall furnish the jurisdictional test.[40]

The jurisdiction of justices of the peace courts obtaining under the provisions of Section 88 of the Act before the amendment over assigned cadastral or land registration cases was also fixed at ₱2,000.00. This is now fixed at ₱5,000.00. Beyond this value of contested lots, justices of the peace have no jurisdiction to hear and determine cadastral and land registration cases assigned to them by the District Judge and approved by the Secretary of Justice.

Outside of these changes the jurisdiction of inferior courts under the provisions of the Judiciary Law, as to all other matters, have been kept intact, save, as mentioned earlier, their authority to appoint guardians, generally.

---

34. Sec. 6, Rule 124, Ibid.

35. Sec. 2, Rule 112, Rules of Court

36. In Rep. Act 537, as amended, appeals from a judgment of conviction from the municipal courts of Quezon City should be taken before the hour of 4:00 o'clock post meridian of the following day.

In Rep. Act 409, as amended, appeals from a judgment of conviction rendered by a municipal judge should be perfected the day following the rendition at 6:00 o'clock post meridian.

37. The power of courts of justice, whether of record or not, to punish for contempt is an incident essential to the execution and maintenance of judicial authority (12 Am. Jur. 390).

38. People v. Abaya, 43 Phil., 247;

39. Sec. 44 par. (c) as amended by Sec. 3 Rep. Act 2613 of the Judiciary Act of 1948.

40. (a) In general, in an action in which the relief sought is a sum of money, the amount claimed in good faith by plaintiff, the same being well pleaded, determines the amount in controversy for the purpose of determining the court's jurisdiction. This amount is determined without reference to any defense or plea set upon by the defendants, and is not determined by the proof adduced during the trial of the case or by the amount of the recovery. If the amount claimed is such as to bring the case within the jurisdiction of the court, such jurisdiction is not defeated by the fact that the actual recovery is less than the jurisdictional amount; unless it appears that the original demand was fictitious or fraudulent. (21 C.J.S., Sec. 50, p. 65.)

(b) Where there are several claims or causes of action between the same parties embodied in a single complaint, the jurisdiction of the court depends, not upon the value or demand in each single cause or action, but upon the totality of the demand in all the causes of action. In other words, "the amount of the demand" means the total or aggregate amount demanded in the complaint, irrespective of whether the plural causes of action constituting the total claim arose out of the same, or different transactions. This is the ruling of the Supreme Court on the matter and makes obsolete the contrary ruling made in Go vs. Go, G.R. No. L-7020, June 30, 1954, wherein a distinction was drawn between a claim composed of several accounts arising from different transactions, and another which is composed of several accounts which arise out of the same transaction; and it was held that in the first case, the amount of each account furnishes the test of jurisdiction, while in the second, the jurisdiction is determined by the total amount claimed. (Campos Rueda Corp. vs. Sta. Cruz Timber Company et al., G.R. No. L-6994, March 21, 1956.)

(c) When two or more plaintiffs, each having separate and distinct demand, join in a single suit, the demand of each must be of the requisite jurisdictional amount. Aggregation of the claims to make up the jurisdictional amount is permitted only if the claims are of a joint nature, as when it is sought to enforce a single right in which plaintiffs have a common interest. As American Jurisprudence puts it. "Where several claimants have separate and distinct demands against a defendant or defendants, which may properly be joined in a single suit, the claims cannot be added together to make up the required jurisdictional amount; each separate claim furnishes the jurisdictional test." (Hacknes v. Guaranty Trust Co., of New York, 4 Fed. Rules Serv. 378; U.S. Circuit Court of Appeals Second Circuit, Jan. 13, 1941 117 F. (2nd) 95.)

UNITED STATES SUPREME COURT
Advance Opinion

(OPINIONS OF JUSTICES IN CHAMBERS)

I
ROGER S. BANDY
v
UNITED STATES
5 L ed 2d 218, 81 S Ct —
(No. 171, Misc.)
December 5, 1960

SUMMARY

An application for release on "personal recognizance" pending certiorari was denied by DOUGLAS, J., for the reasons stated in headnote 5, infra.

Bail and Recognizance Sec. 6; Criminal Law Sec. 46 — freedom during trial.

1. An accused's traditional right to freedom during trial and pending judicial review has to be squared with the possibility that he may flee or hide himself; bail is the device to reconcile these conflicting interests. (Per Douglas, J., as individual justice.)

Bail and Recognizance Sec. 6 — purpose.

2. The purpose of bail is to insure the defendant's appearance and submission to the judgment of the court, it being assumed that the threat of forfeiture of one's goods will be an effective deterrent to the temptation to break the conditions of one's release. (Per Douglas, as individual justice.)

Bail and Recognizance Sec. 7.5 — excessive bail.

3. It is unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom. (Per Douglas, J., as individual justice.)

Bail and Recognizance Sec. 7 — right to release.

4. An accused's right to release during trial and pending judicial review is heavily favored and the requirement of security for a bond may, in a proper case, be dispensed with. (Per Douglas, J., as individual justice.)

Bail and Recognizance Sec. 7 — hearing — individual justice.

5. A defendant's application for release on "personal recognizance" pending certiorari will be denied by an individual justice of the Supreme Court of the United States without prejudice to an application to the Court of Appeals or the District Court, where the full court decided that the Court of Appeals should hear the accused's appeal. (Per Douglas, J., as individual justice.)

OPINION

Mr. Justice *Douglas*.

On previous application, bail was granted conditioned on the filing of a sufficient bond in the amount of $5,000. Bandy v United States, 5 L ed 2d 34, 81 S Ct 25. Now an application is made to me under Rule 46(a) (2) of the Federal Rules of Criminal Procedure for release on "personal recognizance" pending certiorari. The application recites that the petitioner is unable to give security for the prescribed bond.

The fundamental tradition in this country is that one charged with a crime is not, in ordinary circumstances, imprisoned until after a judgment of guilt. Under Rule 46 a defendant has a right to be released on bail before trial, save in capital cases. Pending review of a judgment of conviction, release on bail may be allowed "unless it appears that the appeal is frivolous or taken for delay." Rule 46(a) (2). See 350 US 1021, 100 L ed 1530.

This traditional right to freedom during trial and pending judicial review has to be squared with the possibility that the defendant may flee or hide himself. Bail is the vice which we have borrowed to reconcile these conflicting interests. "The purpose of bails is to insure the defendant's appearance and submission to the judgment of the court." Reynolds v United States, 4 L ed 2d 46, 80 S Ct 30, 32. It is assumed that the threat of forfeiture of one's goods will be an effective deterrent to the temptation to break the conditions of one's release.

But this theory is based on the assumption that a defendant has property. To continue to demand a substantial bond which the defendant is unable to secure raises considerable problems for the equal administration of the law. We have held that an indigent defendant is denied equal protection of the law if he is denied an appeal on equal terms with other defendants, solely because of his indigence. Griffin v Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585. Can an indigent be denied freedom, where a wealthy man would not, because he does not happen to have enough property to pledge for his freedom?

It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom. Stack v. Boyle, 342 US 1, 96 Led 3, 72 S Ct 1. Yet in the case of an indigent defendant, the fixing of bail in even a modest amount may have the practical effect of denying him release. See Foote, Foreword: Comment on the New York Bail Study, 106 U of Pa L Rev 685; Note, 106 U of Pa L Rev 693; Note U of Pa L Rev 1031. The wrong done by denying release is not limited to the denial of freedom alone. That denial may have other consequences. In case of reversal, he will have served all or part of a sentence under an erroneous judgment. Imprisoned, a man may have no opportunity to investigate his case, to cooperate with his counsel, to earn the money that is still necessary for the fullest use of his right to appeal.

In the light of these considerations, I approach this application with the conviction that the right to release is heavily favored and that the requirement of security for the bond may, in a proper case, be dispensed with. Rule 46(d) indeed provides that "in proper cases no security need be given." For there may be other deterrents to jumping bail: long residence in a locality, the ties of friends and family, the efficiency of modern police. All these in given case may offer a deterrent at least equal to that of the threat of forfeiture.

Here, the Government has admitted that petitioner's appeal is not frivolous. It had no objection to release on a $5,000 bond. But it does oppose release on an unsecured bond. It contends that there is a substantial risk that petitioner would not comply with the conditions of his release. Its showing in this respect troubles me. But I do not reach a decision on the matter. The Court today holds that the Court of Appeals should hear the appeal. Hence I deny the application without prejudice to an application to the Court of Appeals or the District Court where, at a hearing on the matter, the facts can be better explored than at this distance.

II

THOMAS AKEL, Petitioner

v

STATE OF NEW YORK

5 L ed 2d 32, 81 S Ct —

July 18, 1960

SUMMARY

An application for bail pending a proposed petition for certiorari to review a judgment of conviction affirmed in the Court of Appeals of New York (7 NY2d 998, 199 NYS2d 510, 166 NE2d 514) was denied by FRANKFURTER, J., for the reasons stated in the headnote below.

Bail and Recognizance Sec. 7 — pending certiorari in Supreme Court — federal question.

A justice of the Supreme Court of the United States will deny an application for bail pending a petition for certiorari to be filed seeking review of a judgment of conviction affirmed in the highest court of a state, where it appears from the opposing affidavit that at no time in the course of the prosecution was a claim of a federal nature made, that the state court did not certify that any federal question was presented to it, and that the remititur below has not been amended so as to show that in fact a federal claim was considered and rejected by the state court; and where the petition for admission to bail, while claiming that a federal question is to be raised by the proposed petition for certiorari, does not allege any facts contradicting those stated in the opposing affidavit. (Per Frankfurter, J., as individual justice.)

OPINION

Mr. Justice *Frankfurter*, Associate Justice.

This is a motion to fix bail pending a petition for certiorari to be filed seeking review of a judgment of conviction affirmed in the Court of Appeals of New York on March 24, 1960.

When a judge as solicitous as is Judge Stanley H. Fuld to safeguard the interests of defendant in criminal cases denies an application for bail pending a proposed petition for certiorari to this Court on a claim of a substantial federal right, one naturally attributes some solid ground for such denial. To me this is found in the opposing affidavit in which it is deposed that at no time in the course of this prosecution was a claim of a federal nature made, that the New York Court of Appeals did not certify that any federal question was presented to it, and that, although affirmance of the judgment of conviction was rendered on March 24 last, the remititur below has not been amended so as to show that in fact a federal claim was considered and rejected by the New York Court of Appeals. While the petition for admission to bail claims that a federal question is to be raised by a proposed petition for certiorari, it does not allege that such a federal question had been raised before the New York Court of Appeals and was there denied. Nor is there any claim that the remititur was amended so as to set forth that the Court of Appeals did in fact pass on the federal claim. Nor does the memorandum of the Court of Appeals affirming the conviction, 7 NY2d 998, 999, 199 NYS2d 510, 166 NE2d 514, in setting forth the arguments made by defendant Akel in that court, include the claim of a federal right.

In this state of the record before me I am compelled to deny bail pending the filing of a petition for certiorari.

III

ROGER S. BANDY, Petitioner,

v

UNITED STATES

5 L d 2d 34, 81 S Ct

(No. 171, Misc.)

August 31, 1960

SUMMARY

An application for bail pending disposition of the applicant's petition for certiorari was granted by Douglas, J., for the reasons stated in headnote 1, infra.

Bail and Recognizance Sec. 7 — pending certiorari.

1. Although an application for bail pending disposition of the applicant's petition for certiorari had been denied by another justice of the Supreme Court of the United States, such application will be granted where the Solicitor General does not oppose the granting of bail in the suggested amount and the issues are ones on which there may well be a division of views when the merits are reached. (Per Douglas, J., as individual justice.)

Appeal and Error Sec. 910.6 — certiorari — when granted.

2. One of the tests of whether substantial questions justifying the grant of certiorari by the Supreme Court of the United States are presented is whether the issues are one on which there may well be a division of views when the merits are reached. (Per Douglas, J., as individual justice.)

OPINION

Mr. Justice *Douglas*.

An application for bail pending disposition of the applicant's petition for certiorari was denied by my Brother Whittaker on July 20, 1960. Application was then made to me. In view of my Brother Whittaker's denial I was most reluctant to take contrary action. Accordingly I asked that a response from the Solicitor General be requested. In a letter to the Clerk dated August 25, 1960, the Solicitor General stated:

"It is my opinion that the petition and the record present substantial questions of law. For that reason, and in view of the fact that the petitioner has been incarcerated since June, 1959, the Government does not oppose the granting of bail in the suggested amount of $5,000."

My study of the case leads me to the same conclusion. The issues are one on which there may well be a division of views when the merits are reached. But that is one test of whether substantial questions are presented. See Herzog v United States, 99 L ed 1299, 75 S Ct 349. Accordingly I fix bail in the amount of a $5,000 bond to be approved by the U.S. District Court for the District of North Dakota or a judge thereof. Upon such approval this bond is to be filed with the Clerk of that Court.

The pompus old judge glared over the rims of his spectacles at the prisoner before him on a charge of vagrancy. He looked at the report of the arrest again and asked rather scornfully, "Have you ever earned a dollar in your life?"

"Yes, Your Honor," replied the vagrant. "I voted for you at the last election." *Coronet*, February, 1961

A lawyer who was trying a case asked the witness, "Now, Mr. Jones, did you or did you not, on the date in question or at any other time previously or subsequently, say or even intimate to the defendant or anyone else, whether friend or acquaintance or in fact a stranger, that the statement imputed to you, whether just or unjust and denied by the plaintiff was a matter of no moment or otherwise? Answer — did you or did you not?"

The witness pondered for a while and then said, "Did I or did I not what?" *Coronet*, February 1961.

I

George McEntee, Plaintiff-appellant, vs. Perpetua Manotok, Defendant-appellee, G.R. No. L-14968, October 27, 1961, Labrador, J.

1. PLEADING AND PRACTICE; MOTIONS FOR POSTPONEMENT OF TRIAL AND NEW TRIALS; CIRCUMSTANCES TO BE CONSIDERED IN GRANTING OR DENYING THE SAME. — In the consideration of motions for postponement of trials, as well as in those for new trial, two circumstances should be taken into account by the court, namely, first the merits of the case of the movant and second, the reasonableness of the postponement, the rules pointing out to accident, surprise or excusable neglect as reasons therefore. So, with respect to the first circumstance the rules require an affidavit of merits, with respect to the second, an affidavit showing the accident, surprise or excusable neglect. There may be an accident, surprise or excusable neglect justifying postponement or reconsideration, but if movant does not present a meritorious claim or defense, denial of his motion for postponement may not be considered as an abuse of the discretion of the court. Note that discretion is lodged in the presiding judge, and this discretion should be used in considering the circumstances above mentioned.

2. ID.; ID.; SUDDEN ILLNESS OF COUNSEL; ABSENCE OF MEDICAL CERTIFICATE. — In the case at bar, the accident that had prevented appearance of counsel for plaintiff on the day set for trial was sudden illness. There may have been no certificate of illness, but this circumstance is explained by the sudden appearance or aggravation of the illness, rendering it inconvenient if not difficult, for counsel to secure the required certificate of illness. Accidents or illness, if sudden and unexpected, can not always be subject to a certificate; the circumstances may render it impossible to secure in time the medical certificate that is needed, or the person making the affidavit may not be available at the time to prepare opportunely the affidavit explaining the excusable neglect.

3. ID.; ID.; WHEN COURT SHOULD NOT BE TOO STRICT IN DEMANDING THAT ILLNESS OF COUNSEL BE ATTESTED BY MEDICAL CERTIFICATE. — Where plaintiff had asked for postponement of trial for the first time because counsel was ill, and inasmuch as his sickness is an accident that could not have been foreseen at the time of the trial, the court should not have been too strict in demanding that illness be attested by a medical certificate of a competent physician.

4. ID.; RULES OF PAOCEDURE; TECHNICAL, AND RIGID ENFORCEMENT SHOULD NOT BE MADE. — Rules of procedure are used only to help secure substantial justice. (Rule 1, Sec. 2) If a technical and rigid enforcement of the rules is made, their aim would be defeated. In the case at bar, it appears that the rules which are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party.

Pedro Magsalin, for the plaintiff-appellant.
Antonio Gonzales, for the defendant-appellee.

D E C I S I O N

Appeal from a decision dismissing plaintiff's complaint and an order denying his motion for reconsideration and new trial in Civil Case No. 9742 of the Court of First Instance of Laguna. The appeal was originally taken to the Court of Appeals but was endorsed to this Court for decision because the issue raised therein is purely one of law.

George McEntee filed the instant action against Perpetua Manotok to recover the possession of a parcel of land situated in Barrio Bangbang, Los Baños, Laguna. In his amended complaint dated February 26, 1954, plaintiff substantially alleges that he is the registered owner of that parcel of land covered by Original Certificate of Title No. P-56 with an area of 7,273 sq. meters, more or less, which is located in the above-mentioned place; that he acquired his title over the said land by means of a free patent grant from the Government in 1952; that he, personally and through his predecessor in interest, had been in actual, continuous and peaceful possession over the same since 1926 until sometime in the month of November, 1952 when the defendant unlawfully entered and occupied the northern portion of said land of approximately 1,000 sq. meters which is covered within the above-stated certificate of title; that the defendant also gathered and took the harvest of the improvements which he had introduced therein consisting of fruit-bearing trees and plants, and appropriated them for her own use and benefit and that by reason of these alleged illegal acts of defendant, plaintiff also claims to have suffered damages in the amount of ₱1,000 plus a similar sum for attorney's fees.

On March 18, 1954 the defendant answered the complaint setting up, among other things, the defense that plaintiff's free patent title was obtained from the Bureau of Lands through fraud and misrepresentation; that the plaintiff, either personally or thru his predecessor in interest, had never occupied and cultivated the land in question so as to entitle him to a free patent thereto; that he has not posted the corresponding notice of his application as required by law; that he has not caused the same to be investigated by a land inspector, and if there is any investigation, he gave false testimony and caused the report to contain false findings; that the land in question is embraced and included in her (defendant's) prior and subsisting Miscellaneous Lease Application No. V-194 of the Bureau of Lands; and consequently, plaintiff acquired no free patent title or right over the same. By way of counterclaim, defendant reproduced the above-material allegations as integral parts of said counterclaims, and prays that plaintiff's title be annulled and that damages amounting to ₱3,000 be awarded to her. Attached to the answer with counterclaim are the original and supplemental petitions to invalidate and annul plaintiff's title which the defendant filed with the Bureau of Lands and the order of the Director of said Bureau causing the investigation of defendant's charges which consist mostly of those defenses embodied in the answer.

In answer to defendant's counterclaim, plaintiff specifically denied its material allegations, and averred that his title was secured by him through legal proceedings and after he had complied with all requirements of the law for its issuance. He also alleged that his title over the land was acquired for more than one year already, hence it can no longer be revoked or cancelled.

Thereafter, defendant presented a motion for leave to file a supplemental answer which was granted by the trial court. This supplemental answer attaches the order of the Director of Lands finding the charges of defendant adverted to in the original an-

swer well founded. Plaintiff in turn submitted his reply contending that the order of the Director is not yet final and still subject to a motion for reconsideration, and the same is also appealable to the Secretary of Agriculture and Natural Resources. He further alleges that said order was issued without jurisdiction and, is, therefore null and void. In the meantime defendant prayed for the issuance of a preliminary injunction to restrain the plaintiff from disturbing her possession. After a preliminary hearing on May 19, 1955, the trial court granted the injunction.

The trial court set the case for hearing on July 1, 1955 but the hearing was postponed as requested by defendant who claimed that she was going to take the bar examinations to be given on August of that year. The hearing was reset for September 8, 1955 but on this date, plaintiff's counsel, Atty. Bernardo Q. Aldana, failed to appear. Instead he filed an urgent petition for transfer of said hearing on the ground that he is seriously ill and it is physically impossible for him to travel on account of said illness. This petition was however, not verified nor was there a medical certificate attached. On defendant's objection, the trial court denied the motion for continuance and allowed the defendant to present her evidence *ex parte*. Said counsel, upon learning of this incident, moved but failed to have this order reconsidered. Several days later the trial court rendered its decision dismissing plaintiff's complaint for failure to prosecute, i.e., absence of counsel, and making the injunction previously issued permanent.

Upon receipt of the decision, said counsel for plaintiff asked for its reconsideration and new trial on the ground that his failure to appear on the day of trial was due to sickness which constitutes an accident or excusable negligence to warrant the reopening of the case. Furthermore, he asserted the indefeasibility of his free patent title which can no longer be cancelled by the Director of Lands, invoking the case of Sumail vs. Judge of Court of First Instance of Cotabato, G..R. No. L-8278, April 30, 1955. The trial court denied this motion, so plaintiff prosecuted this appeal to the Court of Appeals. Before the said appellate court, plaintiff-appellant presented a new motion for new trial based on the same grounds previously raised in the court below but this time he attached thereto the following as annexes: (a) affidavit of the physician, Dr. Eugenio S. De Leon, who attended to the alleged illness of plaintiff's counsel; (b) a photostatic copy of the permit from the United States Army for plaintiff's predecessor in interest to occupy the land in question; (c) a copy of the decree for the issuance of a free patent by the Director of Lands; and (d) a copy of plaintiff's original certificate of title issued by the Register of Deeds of Laguna.

In his brief, plaintiff-appellant contends that the trial court erred or committed at least a grave abuse of discretion in denying his urgent petition for transfer of hearing on September 8, 1955 and in not giving him an opportunity to present his evidence to support the complaint. He claims that the failure of his former counsel (the late Atty. Bernardo Q. Aldana) to attend said hearing on that date on account of illness is an accident which consitutes a valid ground that would entitle him to a favorable continuance of said hearing; and that this fact had been satisfactorily explained by said counsel in his motion for reconsideration and new trial. Thus, the late Atty. Aldana explained that although he had been sick for about a month he did not present the urgent petition for transfer earlier because he hoped and believed that he will recover and get well before said date, but unfortunately his illness, became more serious and such illness, according to his attending physician, would endanger his life, if he traveled by any means of transportation; that said motion was not accompanied by a medical certificate because he was not able to contact his attending physician at the time he prepared it, and at any rate this defect has been cured or supplied by the affidavit of Dr. De Leon attached to the motion for new trial filed in the Court of Appeals; that although said petition was not verified, the fact that it is the counsel himself who asks for the continuance due to his own illness should have been given merit by the trial court and that said court should have taken and believed his word because it was made by the lawyer himself who is deemed to be an officer of the court. And to demonstrate the seriousness of former counsel's illness, the present counsel for plaintiff has manifested that Atty. Aldana's illness became worse from September to November, 1955 and he was operated on the stomach for cancer of the intestines which eventually caused his death on May, 1956. Furthermore, plaintiff contends that he has a valid and meritorious cause of action against the defendant, the land in question being covered by a Torrens title which has already become indefeasible, and that he should have been respected in his possession. Hence, he concludes that he was deprived of his day in court and should have been granted a new trial because there is a great probability that the judgment will be altered should he be allowed to adduce evidence in his favor.

On the other hand, the defendant-appellee contends that the trial court correctly dismissed the complaint for failure to prosecute on the part of the plaintiff, because the absence of plaintiff's counsel during the hearing is not excusable; that the petition for transfer was presented only during the day of hearing when he could have done it earlier because he received notice thereof as early as July 25, 1955; that said petition was defective because it was not verified and was unaccompanied by a medical certificate. He further maintains that the free patent title issued in plaintiff's favor is no longer effective because the Director of Lands has already recommended its cancellation and the same was later affirmed by the Secretary of Agriculture and Natural Resources.

The principal issue to be resolved in this case is whether the denial of plaintiff's motion for continuance constitute an abuse of discretion which will entitle plaintiff to a grant of new trial.

In the consideration of motions for postponement of trials, as well as in those for new trial, two circumstances should be taken into account by the court, namely, first the merits of the case of the movant and second, the reasonableness of the postponement, the rules pointing out to accident, surprise or excusable neglect as reasons therefor. So, with respect to the first circumstance the rules require an affidavit of merits; with respect to the second, an affidavit showing the accident, surprise or excusable neglect. There may be an accident, surprise or excusable neglect justifying postponement or reconsideration, but if the movant does not present a meritorious claim or defense, denial of his motion for postponement may not be considered as an abuse of the discretion of the court. Note that discretion is lodged in the presiding judge, and this discretion should be used in considering the circumstances above mentioned.

Going now to the case at bar, we find that there was an accident that had prevented appearance of counsel for plaintiff on the day set for trial, and that is, sudden illness. There may have been no certificate of illness, but this circumstances is explained by the sudden appearance or aggravation of the illness, rendering it inconvenient if not difficult, for counsel to secure the required certificate of illness. Accidents or illness, if sudden and unexpected, can not always be subject to a certificate; the circumstances may render it impossible to secure in time the medical certificate that is needed, or the person making the affidavit may not be available at the time to prepare opportunely the affidavit explaining the excusable neglect.

In the case at bar, we also find that while the defendant had been asking for postponement, because he was waiting a certain resolution of the Lands Department, it does not appear that postponement has been granted at any time upon motion of the plaintiff. This fact is apparent from the record on appeal as well as from the decision of the trial judge. Since this was the first time that plaintiff had asked for postponement because counsel was ill, and inasmuch as his sickness is an accident that could not have been foreseen at the time of the trial; the court should not have been too strict in demanding that illness be attested by a

medical certificate of a competent physician.

Going now to the other circumstances, the merits of the cause of action of the plaintiff, the pleadings show that the plaintiff has a certificate of title by reason of the grant of a free patent to him; that the land subject of the action is covered by the patent and the certificate of title; and that the same land is in the possession of the defendant. Not to allow plaintiff an opportunity to present his side of the case would certainly result in a clear injustice to plaintiff. As a matter of fact the decision in itself, which dismisses the action of the plaintiff, causes him an injustice because by an error of the judge, plaintiff has been deprived of the right to possess a certain portion of his titled property. The court reasons out that a certain resolution of the Director of Lands has cancelled the certificate of title. That is a matter which should have been threshed out at the trial or hearing of the case.

At this stage of the proceedings we must remind judges and counsel that the rules of precedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. (Rule 1, Sec. 2) If a technical and rigid enforcement of the rules is made, their aim would be defeated. In the case at bar, it appears that the rules which are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party.

For the foregoing considerations, the decision and the proceedings in the court below are hereby set aside and the case remanded to said court for further preceedings in accordance herewith. No costs.

Bengzon, Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Paredes and De Leon, JJ., concurred.

II

Enrique Icasiano, Plaintiff-Appellee vs. Felisa Icasiano, Defendant-Appellant G.R. No. L-16592, October 27, 1961, *Concepcion, J.*

1. COUNTERCLAIM; ORDER DISMISSING IT INTERLOCUTORY; WHEN APPEALABLE.— The order granting plaintiff's motion to dismiss a counterclaim is interlocutory in nature and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint.
2. COMPENSATION; REQUISITES.— When all the requisites mentioned in Article 1279 of the Civil Code are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors are not aware of the compensation.
3. COUNTERCLAIM; MAY BE SET UP TO REDUCE MONEY CLAIM BY PLAINTIFF.— Counterclaim may be set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful, to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See also Wisdom vs. Guess Drycleaning Co., 5 Fed. Supl., 762-767).

Jaime R. Nuevas for the plaintiff-appellee.
Jose W. Diokno for the defendant-appellant.

D E C I S I O N

Appeal from an order of the Court of First Instance of Manila granting plaintiff's motion to dismiss defendant's first counterclaim and dismissing the latter.

The facts are simple enough. In his complaint, dated July 31, 1959, plaintiff Enrique Icasiano sought to recover ₱20,000, plus interest and attorney's fees, from the defendant, Felisa Icasiano. Within the reglementary period, or on November 9, 1959, the latter filed an answer admitting some allegations of the complaint, denying other allegations thereof and setting up special defenses, as well as two (2) counterclaims — one for the sum of ₱150.00 allegedly borrowed by plaintiff from the defendant, and another for moral and exemplary damages, attorney's fees and expenses of litigation, allegedly suffered and incurred by the defendant in consequence of this suit, in such sum as the court may find just and reasonable.

On November 17, 1959, plaintiff moved (a) to dismiss the first counterclaim; (b) to strike out paragraph (2) of defendant's answer; and (c) to set the case for hearing on the merits. Despite defendant's objection thereto, on December 7, 1959, the lower court granted the first prayer, denied the second prayer and set the case for hearing on a stated date. Notice of the order to this effect was served on the defendant on December 17, 1959, who, three (3) days later, filed her notice of appeal and appeal bond. Plaintiff countered with a motion to strike out defendant's appeal "in so far as said notice refers to the setting for hearing of the above entitled case on January 7, 1960, at 8:30 a.m., for the simple reason that said order, in so far as it sets a date for the hearing of the above entitled case is interlocutory and, therefore, not appealable, and for the further reason that the intended appeal from said setting order is plainly frivolous and interposed only for the purpose of delay". This motion was denied in an order dated December 19, 1959, which allowed defendant's appeal "from the order of December 7, 1959, insofar as it orders the dismissal of defendant's first counterclaim, and setting the hearing of this case on January 7, 1960, at 8:30 a.m." Upon denial by the lower court of plaintiff's motion for reconsideration of its last order, defendant filed her record on appeal, which after its amendment, was approved "there being no opposition thereto."

Sometimes after the transmittal of the amended record on appeal to this Court, or on February 4, 1960, plaintiff filed a motion to dismiss the appeal upon the ground that defendant's appeal "from the order of the trial court dated December 7, 1959, dismissing her first counterclaim is manifestly and palpably frivolous" and that her appeal from said order insofar as it set the case for hearing is "ostensibly dilatory, aside from the fact that such setting order is interlocutory and, therefore, not immediately appealable". This motion was denied by a resolution of this Court dated February 17, 1960. We, likewise, denied plaintiff's motion for reconsideration of said resolution.

The main issue in this appeal is whether or not the lower court erred in holding itself without jurisdiction to entertain defendant's first counterclaim. Before passing upon the merits of such question, it should be noted, however, that the order granting plaintiff's motion to dismiss said counterclaim is interlocutory in nature, and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint (Cuano, et al. vs. Monteblanco, et al., L-14871, April 29, 1961; Villasin vs. Seven-Up Bottling Co. of the Philippines, L-13501, April 28, 1960; Caldera, et al. vs. Balcueba, et al., 84 Phil. 304).

However, plaintiff did not object to defendant's appeal from said order, except *insofar only as it set the case for hearing*. In other words, it acquiesced to said appeal as regard the dismissal of the aforementioned counterclaim. In fact, plaintiff interposed no objection to defendant's amended record on appeal. Hence, even if the lower court should have disapproved it, for the reason that said order of dismissal is interlocutory in character, its order approving the amended record on appeal entailed, at most, an error of judgment that does not affect our jurisdiction to entertain the appeal (Gatmaitan vs. Medina, L-14400, August 5, 1960; Salazar vs. Salazar, L-5823, April 29, 1953). It may not be amiss to add that the allegation in the motion, filed by plaintiff with this Court to dismiss the appeal, to the effect that the same is frivolous insofar as it seeks a review of the order dismissing defendant's first counterclaim, has no merit, not only because a party can not be barred upon such ground from appealing by writ of error, but, also, because we find that the lower court had erred in issuing the order complained of.

Indeed, regardless of whether the court of first instance may entertain counterclaims for less than ₱5,000, it must be noted that

Articles 1278, 1279, and 1286 and 1290 of our Civil Code read:

"ART. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

"ART. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

"ART. 1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment."

"ART. 1290. When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

Pursuant to these provisions, defendant would have been entitled to deduct from plaintiff's claims of ₱20,000 — if the latter were established — the sum of ₱150 involved in her first counterclaim, if the allegation thereof were true, *even if no such counterclaim had been set up in her answer*, for "when all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of"' — and, hence, did not plead — "the compensation". Moreover, it is clear from the record before us that said counterclaim was set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See, also, Wisdom vs. Guess Drycleaning Co., 5 Fed. Supl., 762-767).

WHEREFORE, the order appealed from is hereby reversed, insofar as it dismisses defendant's first counterclaim, and the case, is, accordingly, remanded to the lower court for further proceedings, not inconsistent with this decision, with costs against plaintiff-appellee, Enrique Icasiano.

IT SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, J.B.L. Reyes, Paredes and De Leon, JJ., concurred.

Barrera and Dizon, JJ., took no part.

III

Delfin Mercader, Petitioner, vs. Hon. Francisco Valila of the Justice of the Peace Court of Bobon, Samar and Amancio Balite, Respondents, G.R. No. L-16118, February 16, 1961, Bengzon, J.

1. LIBEL; VENUE FOR CRIMINAL ACTION AND CIVIL ACTION FOR DAMAGES.— The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense. Where the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof. (Art. 360, Rev. Penal Code, as amended by Rep. Act 1289).

2. ID.; VENUE OF CRIMINAL COMPLAINT WHERE LIBEL IS CIRCULATED IN PROVINCE OR CITY WHERE NEITHER OFFENDED PARTY NOR OFFENDER RESIDES.— 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. Article 360 of the Revised Penal Code as amended by Republic Act 1289 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 proper venue.

D E C I S I O N

On April 20, 1959, Amancio Balite, filed with the justice of the peace court of Bobon, Samar, a criminal complaint for libel against Delfin Mercader. After making the preliminary examination, the judge issued the corresponding warrant of arrest. The accused moved to dismiss for lack of jurisdiction and cause of action. Upon denial thereof, the accused filed in September 1959, this petition for certiorari, based mainly on the alleged want of jurisdiction of the aforesaid inferior court.

In ordinary circumstances, the petition would have been dismissed, without prejudice to its presentation before the local court of first instance. But at that time there were pending before this Tribunal some cases involving the jurisdiction, or lack of jurisdiction, of justices of the peace over criminal libel, in the light of Republic Act 1289, approved June 15, 1955.(1) So, we gave due course to this petition. In his answer, the respondent judge explained that he had taken cognizance of the case for purposes of preliminary investigation. In fact, he stated, as the accused had failed to attend the hearing, and there was *prima facie* evidence, he forwarded the *expediente* to the court of first instance for the trial on the merits.

The controversy is thus reduced to the question whether the inferior courts may, after the passage of Republic Act 1289, entertain criminal complaints for written defamation, not for trial on the merits, but for purposes of preliminary investigation. It is contended by those who would deny such authority, that Republic Act 1289 had the effect of depriving justice of the peace courts of their power even to conduct preliminary investigations in the matter of libel or written defamation. The question has been decided in the affirmative in People v. Olarte, L-13027, June 30, 1960. Through Mr. Justice Concepcion, this Court said:

> "Can we justly hold that by fixing for said offense a penalty falling under the original jurisdiction of courts of first instance, the framers of section 2 of Act No. 277 had evinced the intent,, either to establish an exception to the provisions of Act No. 194, authorizing every justice of the peace, to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law x x x vested in the judges of Courts of First Instance,' or to divest justice of the peace of such authority, as regards the crime of libel?"

(1) Amending Art. 360 of the Revised Penal Code to read as follows:

"x x x The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense; Provided, however, that where the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof. x x x."

"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,

said section is merely suppletory to the provisions of the Civil Code.

DECISION

Richard A. Klepper brought this action before the Court of First Instance of Manila to recover the sum of ₱6,729.50 as damages allegedly sustained by his goods contained in a lift van which fell to the ground while being unloaded from a ship owned and operated by the American President Lines, Ltd. to the pier, plus the sum of ₱2,000.00 as sentimental value of the damaged goods and attorney's fees.

It appears that on February 17, 1955, Klepper shipped on board the S. S. President Cleveland at Yokohama, Japan one lift van under bill of lading No. 82, containing personal and household effects. The ship arrived in the port of Manila on February 22, 1955 and while the lift van was being unloaded by the gantry crane operated by Delgado Brothers, Inc., it fell on the pier and its contents were spilled and scattered. A survey was made and the result was that Klepper suffered damages totalling ₱6,729.50 arising out of the breakage, denting and smashing of the goods.

The trial court, on November 5, 1957, rendered decision ordering the shipping company to pay plaintiff the sum of ₱6,729.50, value of the goods damaged, plus ₱500.00 as their sentimental value, with legal interest from the filing of the complaint, and the sum of ₱1,000.00 as attorney's fees. The court ordered that, once the judgment is satisfied, co-defendant Delgado Brothers, Inc. should pay the shipping company the same amount by way of reimbursement. Both defendants appealed to the Court of Appeals which affirmed *in toto* the decision of the trial court. Delgado Brothers, Inc. interposed the present petition for review.

The main issue which this Court needs to determine is whether petitioner may be held liable for the damage done to the goods of respondent Richard A. Klepper subsidiarily to the liability attached to its co-defendant American President Lines, Ltd. as held by the trial court and affirmed by the Court of Appeals.

Petitioner disclaims liability upon the ground that it has been expressly relieved therefrom by its co-defendant shipping company under a contract entered into between them relative to the gantry crane belonging to petitioner which was used by said shipping company in unloading the goods in question. Petitioner plants its case on Exhibit 1 (Delgado) which reads:

"Please furnish us ONE gantry to be used on hatch #2 of the S/S PRES. CLEVELAND Reg. from 1300 hrs. to FINISH hrs. on 22 February 1955.

"We hereby assume full responsibility and liability for damages to cargoes, ship or otherwise arising from use of said crane and we will not hold the Delgado Brothers, Inc. liable or responsible in any way thereof.

"We hereby agree to pay the corresponding charges for above-requested services."

The Court of Appeals, in holding that petitioner cannot disclaim liability under the terms of the above contract because it cannot elude responsibility for the negligence of its own employee, made the following comment:

"This appellant asserts that negligence of its employee, the crane operator, is within the coverage of the foregoing document. Exhibit 1-Delgado calls for one gantry 'to be used' on hatch No. 2 of the vessel. The American President Lines, Ltd., only answered 'for use of said crane.' The phraseology thus employed would not induce a conclusion that the American President Lines, Ltd. assumed responsibility for the negligence of the crane operator who was employed by the other appellant, Delgado Brothers, Inc. Responsibility was not shifted to the steamship company.

"Exhibit 1-Delgado was prepared in mimeographed form by Delgado Brothers, Inc. At best, the stipulation therein are obscure. That is a count against Delgado Brothers, Inc. And again, it must answer for the damages. O.B. Ferry Service Co. vs. P.M.P. Navigation C., 50. O.G. No. 5, pp. 2109, 2113.

"A familiar legal precept is that which states that a person is liable for the negligence of his employees. That is a duty owing by him to others. To exculpate him from liability for such negligence, the contract must say so in express terms. The contract conferring such exemption '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.' The Manila Railroad Co. vs. La Campaña Trasatlantica and the Atlantic, Gulf & Pacific Co., 38 Phil., 875, 886. The time honored rule still is *Renuntiatio non praesumitir*. Strictly construed and giving every reasonable intendment against the party claiming exemption, we hold that Exhibit 1-Delgado affords no protection for Delgado Brothers, Inc."

We cannot agree with the finding that the phraseology employed in Exhibit I would not "induce a conclusion that the American President Lines Ltd. assumed responsibility for the negligence of the crane operator who was employed by the other appellant, Delgado Brothers, Inc." and that for that reason the latter should be blamed for the consequence of the negligent act of its operator, because in our opinion the phraseology thus employed conveys precisely that conclusion. It should be noted that the clause 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 satisfies 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."

The case of The Manila Railroad Co. v. La Campaña Trasatlantica et al., 38 Phil., 875, invoked in the appealed decision, is not, therefore, in point. In the latter case, the evidence adduced is not clear as to the exemption of responsibility. Here the contrary appears. Hence, the doctrine therein laid down is not controlling.

With regard to the errors assigned relative to the disregard made by the Court of Appeals of clause 17 of the bill of lading which limits the amount of liability of the carrier, as well as the non-application of the Carriage of Goods by Sea Act, particularly Section 4(5) thereof, we don't deem necessary to discuss them here. The same have already been disposed of in the appeal taken by the shipping company from the same decision, docketed as G.R. No. L-15671 (promulgated November 29, 1960), wherein we held the following:

"We are inclined to agree to this contention. Firstly, we cannot but take note of the following clause printed in red ink that appears on the very face of the bill of lading: '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 is very revealing. It 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. These circumstances take this case out of our ruling in the Mirasol case (invoked by the Court of Appeals) and place it within our doctrine in the case of Mendoza v. Philippine Air Lines Inc., L-3678, promulgated on February 29, 1952, x x x.

x x x x x x

"With regard to the contention that the Carriage of Goods by Sea Act should also control this case the same is of no moment. Article 1753 (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. Under Article 1766, '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 here we have provisions that govern said rights and obligations (Articles 1736, 1737, and 1738). 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, said section is merely suppletory to the provisions of the Civil Code. In this respect, we agree to the opinion of the Court of Appeals.

Wherefore, the decision appealed from is modified in the sense that petitioner Delgado Brothers, Inc. should not be made liable for the damage caused to the goods in question, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador, J.B.L. Reyes, Barrera, Gutierrez David and Paredes, JJ., concurred.

VI

Paz Fores, Petitioner, vs. Ireneo Miranda, Respondent, G.R. No. L-12163, March 4, 1959, Reyes, J.B.L., J.

1. PUBLIC SERVICE COMMISSION; APPROVAL OF CONVEYANCE OR ENCUMBRANCE OF PROPERTIES OF OPERATOR OF PUBLIC SERVICE. — The provisions of Section 20 of the Public Service Act (Commonwealth Act 146) prohibit the sale, alienation, lease, or encumbrance of the property, franchise, certificate, privileges or rights, or any part thereof, of the owner or operator of the public service without approval or authorization of the Public Service Commission.

2. ID.; ID.; PURPOSE OF THE LAW. — The law was designed primarily for the protection of the public interest; and until the approval of the Public Service Commission is obtained, the vehicle is, in contemplation of law, still under the service of the owner or operator standing in the records of the Commission, to which the public has right to rely upon.

3. MORAL DAMAGES; CANNOT BE RECOGNIZED IN DAMAGE ACTION BASED ON A BREACH OF CONTRACT OF TRANSPORTATION.—It has been held in Cachero vs. Manila Yellow Taxicab Co., Inc., G.R. No. L-8721, May 23, 1957; Necesito, et al vs. Paras, G.R. No. L-10605-10606, June 30, 1958, that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code.

4. ID.; REQUISITE TO JUSTIFY AN AWARD. — In cases of breach of contract, including one of transportation, proof of bad faith or fraud (dolus), i.e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages.

5. ID.; BREACH OF CONTRACT NOT INCLUDED IN THE TERM "ANALOGOUS CASES" USED IN ARTICLE 2219, CIVIL CODE. — A breach of contract can not be considered in the descriptive term "analogous cases" used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by the contractual breach, but because the definition of quasi-delict in Art. 2176 of the Code expressly excludes the cases where there is a "preexisting contractual relation between the parties."

6. ID.; MERE CARELESSNESS OF CARRIER'S DRIVER DOES NOT PER SE CONSTITUTE AN INFERENCE OF BAD FAITH OF CARRIER.—The mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier.

7. ID.; AWARD OF MORAL DAMAGES FOR BREACH OF CONTRACT WITHOUT PROOF OF BAD FAITH WOULD BE A VIOLATION OF LAW. — To award moral damages for breach of contract, without proof of bad faith or malice would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

8. ID.; PRESUMPTION OF LIABILITY OF CARRIER; BURDEN OF PROOF. — The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforeseen event or to *force majeure* (Cangco vs. Manila Railroad Co., 38 Phil. 768, 777).

DECISION

Defendant-petitioner Paz Fores brings this petition for review of the decision of the Court of Appeals (C. A. Case No. 1437-R) awarding to the plaintiff-respondent Ireneo Miranda the sums of ₱5,000.00 by way of actual damages and counsel fees, and ₱10,000.00 as moral damages, with costs.

Respondent was one of the passengers on a jeepney driven by Eugenio Luga. While the vehicle was descending the Sta. Mesa bridge at an excessive rate of speed, the driver lost control thereof, causing it to swerve and to hit the bridge wall. The accident occurred on the morning of March 22, 1953. Five of the passengers were injured, including the respondent who suffered a fracture of the upper high humoruz. He was taken to the National Orthopedic Hospital for treatment, and later was subjected to a series of operations: the first on May 23, 1953, when wire loops were wound around the broken bones and screwed into place; a second, effected to insert a metal splint, and a third one to remove such splint. At the time of the trial, it appears that respondent had not yet recovered the use of his right arm.

The driver was charged with serious physical injuries through reckless imprudence, and upon interposing a plea of guilty was sentenced accordingly.

The contention that the evidence did not sufficiently establish the identity of the vehicle as that belonging to the petitioner was rejected by the appellate court which found, among other things, that it carried plate No. TPU-1163, series of 1952, Quezon City, registered in the name of Paz Fores, (appellant herein) and that the vehicle even had the name of "Doña Paz" painted below its windshield. No evidence to the contrary was introduced by the petitioner, who relied on an attack upon the credibility of the two

A point to be further remarked is petitioner's contention that on March 21, 1953, or one day before the accident happened, she allegedly sold the passenger jeep that was involved therein policemen who went to the scene of the incident.
to a certain Carmen Sackerman.

The initial problem raised by the petitioner in this appeal may be formulated thus — "Is the approval of the Public Service Commission necessary for the sale of a *public service vehicle* even without conveying therewith the authority to operate the same?" Assuming the *dubious* sale to be a fact, the Court of Appeals answered the query in the affirmative. The ruling should be upheld.

Section 20 of the Public Service Act (Commonwealth Act No. 146) provides:

"Sec 20. Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the previous approval and authority of the Commission previously had —

x x x

(g) To sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with those of any other public service. The approval herein required shall be given, after notice to the public and after hearing, if it be shown that there are just and reasonable grounds for making the mortgage or encumbrance for liabilities of more than one year maturity, or the sale, alienation, lease merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of sale, the date on which the same is to be consummated shall be fixed in the order of approval: *Provided, however*, That nothing herein contained shall be construed to prevent the transaction from being negotiated or completed before its approval or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of its business."

Interpreting the effects of this particular provision of law, we have held in the recent cases of Montoya vs. Ignacio, 50 Off. Gaz. No. 1. p. 108; Timbol vs. Osias, et al al, G.R. No. L-7547, April 30, 1955, and Medina vs. Cresencia, G. R. No. L-8193, 52 Off. Gaz. No. 10, 4606, that a transfer contemplated by the law, if made without the requisite approval of the Public Service Commission, is not effective and binding in so far as the responsibility of the grantee under the franchise in relation to the public is concerned. Petitioner assails, however, the applicability of these rulings to the instant case, contending that in those cases, the operator did not convey, by lease or by sale, the vehicle independently of his rights under the franchise. This line of reasoning does not find support in the law. The provisions of the statute are clear and prohibit the sale, alienation, lease or encumbrance of the property, franchise, certificate, privileges or rights, or any part thereof of the owner or operator of the public service without approval of the Public Service Commission. The law was designed primarily for the protection of the public interest, and until the approval of the Public Service Commission is obtained, the vehicle is, in contemplation of law, still under the service of the owner or operator standing in the records of Commission, to which the public has a right to rely upon.

The *proviso* contained in the aforequoted law, to the effect that nothing therein shall be construed "to prevent the transaction from being negotiated or completed before its approval" means only that the sale without the required approval is still valid and binding between the parties (Montoya vs. Ignacio, *supra*). The phrase "in the ordinary course of its business" found in the other *proviso* "or to prevent the sale, alienation, or lease by any public service of any of its property", as correctly observed by the lower court, could not have been intended to include the sale of the vehicle itself, but at most may refer only to such property that may be conceivably disposed of by the carrier in the ordinary course of its business, like junked equipment or share parts.

The case of Indalecio de Torres vs. Vicente Ona (63 Phil. 594, 597) is enlightening; and there, it was held:

"Under the law, the Public Service Commission has not only general supervision and regulation of, but also full jurisdiction and control over all public utilities including the property, equipment and facilities used, and the property rights and franchises enjoyed by every individual and company engaged in the performance of a public service in the sense this phrase is used in the Public Service Act or Act No. 3108 (sec. 1308). By virtue of the provisions of said Act, *motor vehicles used in the performance of a service, as the transportation of freight* from one point to another, have to this date been considered — and they cannot but be so considered — *public service property;* and by reasons of its own nature, a TH truck, which means that the operator thereof places it at the disposal of anybody who is willing to pay a rental for its use, when he desires to transfer or carry his effects, merchandise or any other cargo from one place to another, is necessarily a public service property." (Emphasis supplied)

Of course, this Court has held in the case of Bachrach Motor Co. vs. Zamboanga Transportation Co., 52 Phil. 244, that there may be a *nunc pro tunc* authorization which has the effect of having the approval retroact to the date of the transfer, but such outcome cannot prejudice rights intervening in the meantime. It appears that no such approval was given by the Commission before the accident occurred.

The ₱10,000.00 actual damages awarded by the Court of First Instance of Manila were reduced by the Court of Appeals to only ₱2,000.00, on the ground that a review of the records failed to disclose a sufficient basis for the trial court's appraisal, since the only evidence presented on this point consisted of respondent's bare statement that his expenses and loss of income amounted to ₱20,000.00. On the other hand, "it cannot be denied," the lower court said, "that appellee (respondent) did incur expenses." It is well to note further that respondent was a painter by profession and a professor of Fine Arts, so that the amount of ₱2,000.00 awarded cannot be said to be excessive (see Art. 2224 and 2225, Civil Code of the Philippines). The attorney's fees in the sum of ₱3,000.00 also awarded to the respondent are assailed on the ground that the Court of First Instance did not provide for the same, and since no appeal was interposed by said respondent it was allegedly error for the Court of Appeals to award them *motu proprio*. Petitioner fails to note that attorney's fees are included in the concept of actual damages under the Civil Code and may be awarded whenever the court deems it just and equitable (Art. 2208, Civil Code of the Philippines). We see no reason to alter these awards.

Anent the moral damages ordered to be paid to the respondent, the same must be discarded. We have repeatedly ruled (Cachero vs. Manila Yellow Taxicab Co. Inc., G.R. No. L-8721, May 23, 1957, Necesito, et al vs. Paras, G.R. No. 10605-10606, June 30, 1958, that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code, which provide as follows:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

x x x x x

"Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that under the circumtances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

By contrasting the provisions of these two articles it immediately becomes apparent that:

(a) In cases of breach of contract (including one of transportation) proof of bad faith or fraud (dolus). i.e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages: and

(b) That a breach of contract can not be considered included in the descriptive term, "analagous cases" used in Art. 2219, not only because Art. 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of *quasi delict* in Art. 2176 of Code expressly excludes the cases where there is a "pre-existing contractual relation between the parties."

"Art. 2176. Whoever by act or omission causes damages to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Art. 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to "demand moral damages for mental anguish by reason of the death of the deceased" (Necesito vs. Paras, G. R. No. L-10605, Resolution on Motion to reconsider, September 11, 1968). But the exceptional rule of Art. 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier; and in the case at bar there is no other evidence of such malice to support the award of moral damages by the Court of Appeals. To award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by Art. 2220, would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

The Court of Appeals has invoked our rulings in Castro vs. Acro Taxicab Co. R. G. No. 4815, December 14, 1948 and Layda vs. Court of Appeals, G. R. No. L-4487, January 29, 1952; but these doctrines were predicated upon our former law of damages, before judicial discretion in fixing them became limited by the express provisions of the new Civil Code (previously quoted). Hence, the aforesaid rulings are now inapplicable.

Upon the other hand, the advantageous position of a party suing a carrier for breach of the contract of transportation explains, to some extent, the limitations imposed by the new Code on the amount of the recovery. The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforseen event or to *force majeure* (Cangco vs. Manila Railroad Co., 38 Phil. 768, 777). Moreover, the carrier unlike in suits for quasi-delict, may not escape liability by proving that it has exercised due diligence in the selection and supervision of its employees (Art. 1759, new Civil Code; Cangco vs. Manila Railroad Co.. *supra;* Prado vs. Manila Electric Co., 51 Phil. 900).

The difference in conditions, defenses and proof, as well as the codal concept of *quasi-delict* as essentially *extra-contractual* negligence, compel us to differentiate between actions *ex contractu*, and actions *quasi ex delicto*, and prevent us from viewing the action for breach of contract as simultaneously embodying an action on tort. Neither can this action be taken as one to enforce on employer's liability under Art. 103 of the Revised Penal Code, since the responsibility is not alleged to be subsidiary, nor is there on record any averment or proof that the driver of appellant was insolvent. In fact, he is not even made a party to the suit.

It is also suggested that a carrier's violation of its engagement to safely transport the passenger involves a breach of the passenger's confidence, and therefore should be regarded as a breach of contract in bad faith, justifying recovery of moral damages under Art. 2220. This theory is untenable, for under it the carrier would always be deemed in bad faith, in every case its obligation to the passenger is infringed, and it would be never accountable for simple negligence; while under the law (Art. 1756), the presumption is that common carriers acted *negligently* (and not maliciously), and art 1762 speaks of *negligence* of the common carrier.

"Art. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinarily diligence as prescribed in articles 1733 and 1755."

"Art. 1762. The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced."

The distinction between fraud, bad faith or malice (in the sense of deliberate or wanton wrongdoing) and negligence (as mere carelessness) is too fundamental in our law to be ignored (Art. 1170-1172); their consequences being clearly differentiated by the Code.

"Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or written attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

It is to be presumed, in the absence of statutory provision to the contrary, that this difference was in the mind of the lawmakers when in Art. 2220 they limited recovery of moral damages to breaches of contract in bad faith. It is true that negligence may be occasionally so gross as to amount to malice; but that fact must be shown in evidence, and a carrier's bad faith is not to be lightly inferred from a mere finding that the contract was breached through negligence of the carrier's employees.

In view of the foregoing considerations, the decision of the Court of Appeals is modified by eliminating the award of ₱5.000.00 by way of moral damages (Court of Appeals Resolution of May 5, 1957). In all other respects, the judgment is affirmed. No costs in this instance.

So Ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, A. Reyes, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concurred.

VII

Bartolome San Diego, Petitioner, vs. Eligio Sayson, Respondent, G.R. No. L-16258, August 31, 1961, *Labrador, J.*

1. CIVIL CODE; ART. 1724 OF THE NEW CIVIL CODE AND ART. 1593, OLD CODE COMPARED. — Article 1724 of the new Civil Code is a modified form of Article 1593 of the Spanish Civil Code. It will be noted that under Article 1593 of the old Civil Code recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, while article 1724 of the new Civil Code requires that instead of merely proving authorization, such authorization by the proprietor must be made *in writing*.
2. ID.; AUTHORIZATION FOR RECOVERY OF ADDITIONAL COSTS BY REASONS OF CHANGES IN PLAN IN CONSTRUCTION CONTRACT BE IN WRITING; PURPOSE OF THE AMENDMENT.— The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. That the requirement for a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party, can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article

1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery.

The new provision was evidently adopted to prevent misunderstandings and litigations between contractors and owners. Clearly it was the intention of the legislature in making the amendment to require authorization in writing before costs of additional labor in a contract for the construction of a buliding may be demanded.

D E C I S I O N

This is a petition for certiorari to review a decision of the Court of Appeals affirming a judgment of the Court of First Instance of Manila which sentenced petitioner Bartolome San Diego to pay respondent Eligio Sayson the sum of ₱5,541.75 with legal interest thereon from September 10, 1956, plus ₱500 as attorney's fees and costs. In the action brought by respondent Eligio Sayson in the Court of First Instance of Manila, he alleged that in November, 1954, he and San Diego entered into an agreement whereby Sayson would furnish labor for the construction of a building at 1200 Arlegui, Farnecio, Quiapo, Manila, in accordance with the plans approved by the city engineer, at the price of ₱15,000; that in the course of the construction the plans approved by the city engineer were modified and changes were made not called for in the approved plans, for which plaintiff had to perform and/or furnish labor valued at ₱6,840.31; and that San Diego has refused to pay this additional sum. In a special defense, San Diego alleged that even granting that additional work had been performed, he may not held liable for the same in view of the provisions of Article 1724 of the Civil Code.

At the trial the Court of First Instance of Manila found the following extra or additional work performed by Sayson:

> "x x x he testified that the width of the building was increased from 13.80 meters in the plan as approved to 14.30 meters; the party wall of hollow blocks as appearing in the plan was changed to reinforced concrete; that although the mezzanine was ordered eliminated in the plan and therefore not included in the contract, defendant had it constructed; that after the stairs were constructed, it was ordered removed (Exhibit A-1-a); that the partitions were enlarged (Exhibit A-1-b); that the partitions on the second floor was raised, the transom was removed and the partition elevated to the ceiling (Exh. A-1-c); that all the partitions which were single in the plan were ordered made into double wall; the wooden flooring in Section 22 in the plan was changed to reinforced concrete (Exhibit A-3-a); that the eaves facing Farnecio Street although crossed out by the City Engineer were ordered made (Exh. A-1-d); that the walls had "costura" only under the plan but were ordered plastered and ceilings were ordered although not included in the plan (Exh. A-1-e). These changes which were ordered by defendant and his engineer are summarized on page 8 of Exhibit B as follows:
>
> x x x x
>
> For additional work performed ₱6,840.31." (Record on Appeal, pp. 18, 19-20.)

Judgment for Sayson having been rendered for this amount the case was appealed to the Court of Appeals. In said court petitioner herein again raised as his defense the provision of Article 1724 of the Civil Code, but this court held:

> "We do not see any plausible reason why defendant should not compensate plaintiff for the alterations done by the latter at the instance of the former who was benefited thereby. Bid for such alterations were not included in the amount of ₱15,000. which amount was computed and submitted in the light of the approved plans. And since those alterations undoubtedly entailed expenses, time and efforts on the part of the contractor, then he should be in justice and equity to him paid for by defendant as owner of the building where they were done. It is true that there was no written agreement for such alterations but the absence thereof should not be allowed to make the contractor poorer and the owner of the building richer. Defendant in trying to justify his refusal to pay plaintiff for the latter's claim cites the following article of the Civil Code."
>
> "Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowners can neither withdraw from the contract nor demand increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
>
> (1) Such change has been authorized by the proprietor in writing; and
>
> (2) The additional price to be paid to the contractor has been determined in writing by both parties.
>
> "Obviously, the aforequoted provision of law is not applicable on the claim of defendant."

The decision was affirmed. Hence the case was brought here on an appeal by certiorari.

Article 1724 of the Civil Civil Code is a modified form of Article 1593 of the Spanish Civil Code, which provides as follows:

> "No architect or contractor who, for a lump sum, undertakes the construction of a building, or any other work to be done in accordance with a plan agreed upon with the owner of the ground, may demand an increase of the price, even if the cost of the materials or labor has increased; but he may do so when any change increasing the work is made in the plans, provided the owner has given his consent thereto."

In his commentaries on this Article, Manresa said:

> "El articulo 1.793 del Codigo frances es mas provisor que al que comentamos, pues exigo para que el aumento de precio pueda pedirse, que los cambios o ampliaciones del plan se hayan autorizado por escrito y que se haya convenido el precio con el proprietario." (X Manresa, Fifth ed., p. 926.)

Obviously influenced by the above criticism of the article, the Code Commission recommended and the legislature approved the provision as it now stands. It will be noted that whereas under the old article recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, the amendment evidently requires that instead of merely proving authorization, such authorization by the proprietor must be made in writing. The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. Is this additional requirement of a written authorization to be considered as a mere extension of the Statute of Frauds, or is it a substantive provision. That the requirement for a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party, can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article 1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery.

Our duty in this respect is not to dispute the wisdom of the provision; we should only limit ourselves to inquiring into the legislative intent, and once this is determined to make said intent effective. The new provision was evidently adopted to prevent misunderstandings and litigations between contractors and owners. Clearly it was the intention of the legislature in making the amendment to require authorization in writing before costs of additional labor in a contract for the construction of a building may be demanded. We find that the provision is applicable to the circumstances surrounding the case at bar, and we are in duty bound to enforce the same. The trial court should have denied the demand for

additional costs as directed by the provisions of Article 1724 of the Civil Code.

WHEREFORE, the writ is hereby granted, the decision of the Court of Appeals reversed, and the action of respondent dismissed. Without costs.

Bengzon, C.J., Padilla, J.B.L. Reyes, Paredes, Dizon and De Leon, JJ., concurred.

Barrera, Natividad and Concepcion, JJ., took no part.

VIII

La Mallorca Bus Co., et al., Petitioners-appellees, vs. Nicanor Ramos, et al., Respondents; Fuentes and Plomantes, Respondents-appellants, G.R. No. L-15476, September 19, 1961, Natividad, J.

1. DEPARTMENT OF LABOR; REORGANIZATION PLAN NO. 20-A; JUDICIAL POWER CONFERRED TO REGIONAL OFFICES ORIGINAL AND EXCLUSIVE JURISDICTION OVER MONEY CLAIMS OF LABORERS IS NULL AND VOID.— The provisions of Reorganization Plan No. 20-A, undertaken under the provisions of Republic Act No. 997, as amended, insofar as they confer judicial power upon the Regional Offices thereby created and give said offices original and exclusive jurisdiction over money claims of laborers other than those falling under the Workmen's Compensation Law, are null and void and of no effect. Corominas, et al. vs. Labor Standard Commission, G.R. No. L-14837, and companion cases, June 30, 1961; Miller vs. Mardo, G.R. No. L-15138, and companion cases, July 31, 1961; Caltex (Phil.) Inc. vs. Villanueva, et al., August 21, 1961.

2. WORKMEN'S COMPENSATION LAW; APPLICABILITY TO CLAIM FOR COMPENSATION FOR DISABILITY DUE TO TUBERCULOSIS. — The claim for disability due to tuberculosis, allegedly to have been caused and aggravated by the nature of plaintiff's employment in the petitioners' service, falls squarely under Section 2 of the Workmen's Compensation Law (Act No. 3423, as amended by Act No. 3812, Commonwealth Act No. 210 and Republic Act Nos. 772 and 889).

3. WORKMEN'S COMPENSATION COMMISSION; JURISDICTION WHICH IS NOT REPEALED BY REP. ACT 992; REGIONAL OFFICES; JURISDICTION OVER CLAIMS FOR COMPENSATION FALLING UNDER WORKMEN'S COMPENSATION LAW.— As the jurisdiction vested by Act No. 3428, as amended, on the Workmen's Compensation Commission to hear and decide claims for compensation coming under its provisions has not been revoked, either expressly or by necessary implication, by Republic Act No. 992, as amended, or by any other subsequent statute, and the regional offices created under Reorganization Plan No. 20-A in the Department of Labor partake of the nature of referees which the Workmen's Compensation Commission had the right to appoint and clothe with jurisdiction to hear and decide such claims (Sec. 48, Act No. 3428, as amended), the provisions of said organization plan, insofar as they confer on said regional offices jurisdiction over claims for compensation falling under the Workmen's Compensation Law, is perfectly legal, and their decisions on such claims are valid and binding.

D E C I S I O N

This action for prohibition with preliminary injunction, initiated in the Court of First Instance of Manila to enjoin the respondents from enforcing a decision of the Regional Office No. 3 of the Department of Labor which ordered the petitioners to pay to respondent Nicanor Ramos the sum of P1,862.00 as compensation for disability due to tuberculosis, plus P19.00 as fees, is now before this Court on the appeal interposed by the respondents from the judgment therein entered by that Court granting the writ therein prayed for, on the ground that said regional office was without jurisdiction to hear and determine the claim therein involved.

It appears that respondent Nicanor Ramos was a driver of the petitioners La Mallorca and Pampanga Bus Co., Inc. Sometime prior to November 19, 1958, said respondent filed against the latter with the Regional Office No. 3 of the Department of Labor a complaint asking for payment of compensation for disability due to tuberculosis allegedly contracted by him as a result of his employment in said concerns. The petitioners resisted the action. After hearing, the Regional Office No. 3 of the Department of Labor, on November 19, 1958, rendered a decision ordering the petitioners to pay to said respondent the sum of P1,862.00 as disability compensation, and to said office the amount of P19.00 as fees.

Notified of this decision the petitioners, on January 23, 1959, filed in the Court of First Instance of Manila the instant action, wherein they asked that the enforcement of said decision of the Regional Office No. 3 be restrained, alleging that it is null and void *ab initio* as said regional office had no jurisdiction to hear and decide the claim which was the subject-matter thereof. Respondents filed an answer to the petition. When the case was called for hearing on February 13, 1959, the parties submitted the same for judgment on the pleadings. The trial court took the case under advisement, and on March 12, 1959, rendered judgment on the pleadings, vacating and setting aside the decision of the Regional Office No. 3 of the Department of Labor complained of, on the ground that said regional office was without jurisdiction to hear and decide the claim therein involved, and granting the writ of prohibition applied for.

From this judgment, the respondents appealed to this Court. They contend in this instance that the trial court committed error in granting, on the ground invoked, the writ of prohibition applied for by the petitioners. It is claimed that the decision of the Regional Office No. 3 of the Department of Labor complained of is legal and binding, for the Reorganization Plan No. 20-A, undertaken pursuant to Republic Act No. 997, as amended, gives said regional office jurisdiction to hear claims for compensation under the Workmen's Compensation Act.

The issues raised has already been the subject of previous pronouncements made by this Court. In three recent decisions on the subject, this Court held that the provisions of Reorganization Plan No. 20-A, undertaken under the provisions of Republic Act No. 997, as amended, insofar as they confer judicial power upon the Regional Offices thereby created and give said offices original and exclusive jurisdiction over money claims of laborers other than those falling under the Workmen's Compensation Law, are null and void and of no effect. Corominas, et al. vs. Labor Standard Commission, G.R. No. L-14837, and companion cases, June 30, 1961; Miller vs. Mardo, G.R. No. L-15138, and companion cases, July 31, 1961; Caltex (Phil.) Inc. vs. Villanueva, et al., August 21, 1961. In the Corominas case, *supra*, this Court said:

> "The provision of Reorganization Plan No. 20-A, particularly Section 23, which grants to the regional offices original and exclusive jurisdiction over money claims of laborers, is null and void, said grant having been made without authority by Republic Act No. 997."

In that of Miller vs. Mardo, *supra*, this Court held:

> "On the basis of the foregoing consideration, we hold and declare that Reorganization Plan No. 20-A, insofar as it confers judicial power to the Regional Offices over cases other than those falling under the Workmen's Compensation Law, is invalid and of no effect."

And in the Caltex case *supra*, this Court said:

> "From the foregoing provision of law and rules, it may be gathered that a regional office of the Department of Labor has original jurisdiction to hear and determine claims for compensation under the Workmen's Compensation Act. If a claim is controverted it shall be heard and decided only by a reg-

ularly appointed hearing officer or any other employee duly designated by the Regional Administrator to act as hearing officer. But when the claim is uncontroverted and there is no necessity of requiring the claimant to present further evidence, the Regional Administrator may enter an award or deny the claim."

As we analyze the facts of the present case, appellants' contention is not without merits. The claim involved in this action is for compensation for disability due to tuberculosis, alleged to have been caused and aggravated by the nature of plaintiff's employment in the petitioners' service. It is then a claim which falls squarely under Section 2 of the Workmen's Compensation Law (Act No. 3428, as amended by Act No. 3812, Commonwealth Act No. 210 and Republic Act Nos. 772 and 889), which provides:

"Sec. 2. *Grounds for compensation.*— When an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illnes directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the person hereinafter specified. The right to compensation as provided in this Act shall not be defeated or impaired on the ground that the death, injury or disease was due to the negligence of a fellow servant or employee, without prejudice to the right of the employers to proceed against the negligent party."

And, as the jurisdiction vested by Act No. 3428, as amended, on the Workmen's Compensation Commission to hear and decide claims for compensation coming under its provisions has not been revoked, either expressly or by necessary implication, by Republic Act No. 992, as amended, or by any other subsequent statute, and the regional offices created under Reorganization Plan No. 20-A in the Department of Labor partake of the nature of referees which the Workmen's Compensation Commission had the right to appoint and clothe with jurisdiction to hear and decide such claims (Sec. 48, Act No. 3428, as amended), the provisions of said reorganization plan, insofar as they confer on said regional offices jurisdiction over claims for compensation falling under the Workmen's Compensation Law, is perfectly legal, and their decisions on such claims are valid and binding.

The petitioner cannot claim, to bolster their stand, that the Regional Office No. 3 that rendered said decision had no authority to enforce said decision directly. The records do not disclose that said regional office had made any attempt to do so. Immediately after the petitioners were notified of the decision, they brought this action. Under the circumstances, it cannot be assumed that the Commissioner who is presumed to know the law, would make any such attempt. Rather, it must be assumed that in enforcing said decision said Commissioner and the parties will follow the procedure prescribed in Section 51 of the Workmen's Compensation Law, Act No. 3428, as amended.

The trial court, therefore, committed error in issuing the writ of prohibition restraining enforcement of the decision of the Regional Office No. 3 in question.

For the foregoing, we find that the judgment appealed from is contrary to law. Hence, the same is reversed, and another is hereby entered dismissing the petition by which this action was initiated, with the costs in both instances taxed against the petitioners-appellees.

IT IS SO ORDERED.

Bengzon, C.J., Padilla, Labrador, J.B.L. Reyes, Barrera, Paredes, Dizon and De Leon, JJ., concurred.

Concepcion, J., took no part

IX

Porfirio Diaz and Juanito Elechicon, Petitioners, vs. Hon. Egmidio Nietes and Daniel Evangelista, Defendants, G. R. No. L-16521, Dec. 31, 1960, Reyes, J.B.L., J.

1. RECEIVER; CASES WHEN APPOINTMENT BE MADE BY THE COURT.—It has been repeatedly ruled that where the effect of the appointment of a receiver is to take real estate out of the possession of the defendants before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefore in order to save the plaintiff from grave and irremediable loss of damage.

2. ID.; REASON FOR THE RULE. — The power to appoint a receiver is a delicate one; that said power should be exercised with extreme caution and only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavoring to avoid that the injury thereby caused be greater than the one sought to be averted. For this reason, before the remedy is granted, the consequences or effects thereof should be considered or, at least, estimated in order to avoid causing irreparable injustice or injury to others who are entitled to as much consideration as those seeking it.

D E C I S I O N

This is a petition for certiorari with a prayer for a writ of preliminary injunction to annul the order of the Court of First Instance of Iloilo in its Civil Case No. 5313 appointing a receiver of the property in litigation and of the products thereof.

Civil Case No. 5313 is an action filed by Daniel Evangelista on October 7, 1959 against Porfirio Diaz and Juanito Elechicon for the recovery of the possession of a portion of 12 hectares out of Lot No. 4651 of the Dumangas, Iloilo, Cadastre. The amended complaint alleges that plaintiff is the owner of the aforesaid lot, the same having been adjudicated to him in the project of partition in Special Proceedings No. 815 of the same Court, which partition the probate court has already approved and under which the adjudicatees have already received their respective shares; that defendants are in the possession of the property in question under an unlawful claim of ownership; that defendants have heeded none of the demands made by plaintiff for them to vacate the premises; that said property is first-class riceland, with a net yearly produce of 200 bultos of rice equivalent to P3,000; that the produce of said land for the crop year 1959-60 is about to be harvested; and that the appointment of a receiver is necessary, and the most convenient and peaceable means to preserve, administer, and dispose of the property in question and its 1959-60 harvest.

In answer, defendants aver that they are not claiming the land in question as owners but as lessees thereof for a period of five years, in accordance with a contract of lease signed by them with the administratrix of said property, Rosario Evangelista (plaintiff's daughter), on March 30, 1959; that said land pertains to Group I of the project of partition in Special Proceedings No. 815 and for that reason, the Court did not have jurisdiction to appoint a receiver over the same in this case; and that the allegations of the complaint do not warrant the appointment of a receiver.

The opposition to the motion for receivership notwithstanding, the lower court, on November 14, 1959, issued an order placing the property in litigation and its produce under receivership. This order reads:

"It appearing that the verified complaint and from Annexes 'A', 'A'-1, 'A'-2, and 'B' that the plaintiff-petitioner for the appointment of Receiver has an interest in the property described in the complaint as owner thereof, the same being a part of his share in the partition of the intestate estate of his father (Special Proceedings No. 815 of the Court of First Instance of Iloilo) and, therefore, entitled to the products of the said property; and it being alleged that the said products

are in imminent danger of being lost or removed unless a Receiver is appointed to take charge of and preserve the same, GERUNDIO DIASNES, of Dumangas, Iloilo, is hereby appointed as RECEIVER of the property in litigation as well as the products thereof, and upon putting up a bond of SIX THOUSAND PESOS (₱6,000.00), approved by this Court, the said RECEIVER may qualify and assume his duties as such."

Defendants moved for the reconsideration of the above order, claiming that the lot in question is in *custodia legis* in Special Proceedings No. 815 and can not, therefore, be the subject of a receivership in this case; that while it is true that said lot had been assigned to plaintiff in the project of partition in said proceedings, the probate court, in approving said partition, withheld the order of distribution and the closing of the estate "pending the submission by the administration and the heirs of the written conformity of the creditors, namely, the RFC and the PNB to such distribution and eventual assumption by the heirs of the liabilities of the estate"; and finally, that it does not appear from the complaint that plaintiff has such interest in the property in litigation and its produce, and that such property is in danger of being lost, removed, or materially injured, as to justify the appointment of a receiver. This motion having been denied, defendants filed the present petition for certiorari reiterating substantially their arguments in their motion for reconsideration in the court below, and urging that the order appointing a receiver was issued in grave abuse of discretion and in excess of jurisdiction by the court a quo. Upon petitioners' filing of a bond in the amount of ₱2,000.00, we issued a writ of preliminary injunction to restrain the lower court from enforcing the order complained of.

We see no sufficient cause or reason in the instant case to justify placing the land in question in receivership. While it does appear from the pleadings in the court below that title or ownership over said land is with plaintiff by virtue of the order of partition in Special Proceedings No. 815 adjudicating said property to him, it likewise appears, however, that petitioners are in the material possession thereof, not under any claim of title or ownership, but pursuant to a lease contract signed with them by plaintiff's daughter, Rosario Evangelista, the former administrator or agent of plaintiff over said property. In fact, plaintiff admitted in his answer to the present petition that he did "let his daughter manage the said property" (par. 1 of Affirmative and Special Defenses, Answer, p. 2). Until, therefore, the lease agreement signed between Rosario Evangelista, as agent of plaintiff, and defendants is judicially declared void for want of authority of the agent to execute the same, defendants are entitled to continue in the possession of the premises in question, unless powerful reasons exist for the lower court to deprive them of such possession and appoint a receiver over said property. These powerful reasons are wanting in this case. Indeed, there is even no showing here that the property in question and its pending harvest are in danger of being lost, or that defendants are committing acts of waste thereon or that defendants are insolvent and cannot repair any damage they cause to plaintiff's rights. In truth, the complaint alleges no interest on the part of the plaintiff in the crops subjected to receivership.

Upon the other hand, defendants occupied and planted the land in question in good faith as lessees, and it is only just and equitable that they be allowed to continue in their possession and harvest the fruits of their labor (subject to their obligation to pay their lessor his due share in the harvest) until the respective rights of the parties in this case to the possession of the land in question are finally resolved and adjudicated. This Court has repeatedly ruled that where the effect of the appointment of a receiver is to take real estate out of the possession of the defendants before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefore in order to save the plaintiff from grave and irremediable loss of damage (Mendoza v. Arellano, 36 Phil. 59; De la Cruz v. Guinto, G.R. No. L-1315, Sept. 25, 1947; Calo and San Jose v. Roldan, 76 Phil. 455; Municipality of Camiling v. De Aquino, G.R. No. L-11476, Feb. 28, 1958; De los Reyes v. Bayona, G.R. No. L-13832, March 29, 1960).

Moreover, the trial court seems to have overlooked that as has often been held, "the power to appoint a receiver is a delicate one; that said power should be exercised with extreme caution and only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavoring to avoid that the injury thereby caused be greater than the one sought to be averted. For this reason, before the remedy is granted, the consequences or effects thereof should be considered or, at least, estimated in order to avoid causing irreparable injustice or injury to others who are entitled to as much consideration as those seeking it", (Velasco & Co. v. Gochico & Co., 28 Phil. 39; Claudio, et al. vs. Zandueta, 64 Phil. 812; Calo v. Roldan, 76 Phil. 454).

WHEREFORE, the orders of November 14, 1959 and December 10, 1959 are set aside, and the writ of preliminary injunction issued by this Court on February 3, 1960 is made permanent. Costs against respondent Daniel Evangelista.

Bengzon, Padilla, Bautista Angelo, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concurred.

X

Concordia Cagalawan, Plaintiff-appellant, vs. Customs Canteen, et al., Defendants-appellees, G.R. No L-16031, October 31, 1961, *Paredes, J.*

1. COURT OF INDUSTRIAL RELATIONS; JURISDICTION; WHEN IT HAS NO JURISDICTION OVER MONEY CLAIMS.— Under the law and jurisprudence the Court of Industrial Relations' jurisdiction extends only to cases involving (a) labor disputes affecting an industry which is indispensable to the national interest and is so certified by the President to the Court (Sec. 10, Rep. Act No. 875); (b) controversy about the minimum wage, under the Minimum Wage Law, Rep. Act No. 602; (c) hours of employment, under the Eight-Hour Labor Law, Comm. Act No. 444 and (d) unfair labor practice (Sec. 5 [a], Rep. Act No. 875). And such disputes, to fall under the jurisdiction of the CIR, must arise while the employer-employee relationship between the parties exists or the employee seeks reinstatement. When such relationship is over and the employee does not seek reinstatement, all claims become money claims that fall under the jurisdiction of the regular courts (Sy Huan vs. Judge Bautista, et al., G.R. No. L-16115, Aug. 29, 1961; and cases cited therein).

2. ID.; ID.; WHEN IT HAS NO POWER TO GRANT REMEDY UNDER ITS POWER OF MEDIATION AND CONCILIATION.— In the absence of unfair labor practice, the CIR has no power to grant remedy under its general powers of mediation and conciliation, such as reinstatement or back wages.

3. ID.; ID.; NO JURISDICTION ON VIOLATION OF SEPARATION PAY LAW; ORDINARY COURT, JURISDICTION OF.— A violation of the law on separation pay (Rep. Act No. 1052, as amended by Rep. Act No. 1787), involves, at most, a breach of an obligation of the employer to his employee or vice versa, to be prosecuted like an ordinary contract or obligation — a breach of a private right which may be redressed by a recourse to the ordinary court.

D E C I S I O N

On December 24, 1957, Concordia Cagalawan, filed a claim against the Manager, Customs Canteen (Ramona Pastoral), before the Regional Office No. 8, Department of Labor, Davao City for

Separation Pay, Overtime Pay and underpayment (Case No. LSV-23), The hearing officer held that the claim for overtime pay and underpayment did not lie and dismissed the same for lack of merit, but ordered the payment of separation pay in the sum of P104.00, if she would not be reinstated, and recommended the filing of an action for a violation of section 11(b) and 4(c) of the Women and Child Labor Law. No appeal was taken from this ruling to the Labor Standard Commission.

On January 16, 1958, the same Concordia Cagalawan filed a complaint against the Customs Canteen, Francisco Yu and Ramona Pastoral, before the CFI of Davao (Civil Case No. 2554).

She alleged in her complaint that on February 20, 1957, defendants contracted her to work on the Customs Canteen, as a waitress; that she was receiving a monthly salary of P30.00, much below the minimum required by the Minimum Wage Law (Rep. Act No. 602); that she had rendered overtime work for which she was not paid compensation (Com. Act No. 444); that in June, 1957, she complained with the Police Department of Davao City regarding a quarrel she had with one of the boys in the canteen, which act displeased the manager, defendant Yu who, without cause, compelled her to leave her employment; that she was not formally and actually notified by defendants at least one month in advance that her services was to be terminated, "in gross violation of Republic Act No. 1052, as amended and as such, she is entitled to reinstatement, including back salaries until she is returned to her work"; and that due to the refusal of defendants to pay her claim, despite demands, she was compelled to hire a lawyer to protect her interest for P200.00 and that she suffered moral damages in the sum of P1,000.00. Plaintiff prayed that defendants be ordered: (1) to pay her the amount corresponding to her overtime pay and and the differential pay between her actual salary and the minimum provided for by Act No. 602; (2) to pay "her one month separation pay or in the alternative, back salaries and wages until her reinstatement"; and (3) to pay her the sum of P200.00 and P1,000.00 for attorney's fees and moral damages, respectively.

Defendants moved to dismiss the complaint on the grounds that (1) the value of the subject matter sought to be recovered is less than the minimum requirement; and (2) even assuming the value is more than P2,000.00, the Court has no jurisdiction over the action (amended petition to dismiss). It is contended that the subject matter of the complaint being money claim, such as separation pay, overtime pay and underpayment, the regular courts of justice have no original jurisdiction and that the Regional Office No. 8 of Davao City should try and determine such claims, as such office alone has the original and exclusive jurisdiction on all money cases.

The court dismissed the case, without costs, holding that "the claim of the plaintiff here does not fall under the original jurisdiction of the Court of First Instance because the claim is less than P2,000.00" and suggesting that what the plaintiff should have done "was to elevate the case to the Labor Standard Commission and after the final decision in accordance with the Rules and Regulations I, an appeal can be interposed to the Court of First Instance".

The appeal taken from said judgment by the plaintiff to the Court of Appeals, was elevated up to Us, as the same involves the question of jurisdiction.

We recently held: —

"x x x . So that it was not the intention of Congress, in enacting Rep. Act No. 997, to authorize the transfer of powers and jurisdiction granted to courts of justice from these, to the officials to be appointed or offices to be created by the Reorganization Plan. x x x. The Legislature could not have intended to grant such powers to the Reorganization Commission, an executive body, as the Legislature may not and cannot delegate its powers to legislate or create courts of justice to any other agency of the Government. x x x *the provision of Reorganization Plan No. 20-A, particularly Sec. 25, which grants to the regional offices original and exclusive jurisdiction over money claims of laborers, is null and void, said grant having been made without authority by Rep. Act No. 997*" (Corominas, Jr., et al. vs. Labor Standard Commission, et al., L-14837; MCU, vs. Calupitan, et al., L-15483, Wong vs. Carlim, et. al., L-13940; Balrodgan Co. et al., vs. Fuentes, et al. L-5105, June 30, 1961.) (See also Pitogo vs. Lee Bee Trading Co., et al., G.R. No. L-15693, July 3, 1961).

As the provision of Reorganization Plan No. 20-A which grants to the regional offices (in this case Regional Office No. 8, Department of Labor, Davao City), original and exclusive jurisdiction over money claims of laborers, is null and void, what court, should entertain the present claim?

Under the law and jurisprudence the Court of Industrial Relations' jurisdiction extends only to cases involving (a) labor disputes affecting an industry which is indispensable to the national interest and is so certified by the President to the Court (Sec. 10, Rep. Act No. 875); (b) controversy about the minimum wage, under the Minimum Wage Law, Rep. Act No. 602; (c) hours of employment, under the Eight-Hour Labor Law, Comm. Act No. 444 and (d) unfair labor practice (Sec 5[a], Rep. Act No. 875). And such disputes, to fall under the jurisdiction of the CIR, must arise while the employer-employee relationship between the parties exists or the employee seeks reinstatement. When such relationship is over and the employee does not seek reinstatement, all claims become money claims that fall under the jurisdiction of the regular courts (Sy Huan vs. Judge Bautista, et al., G.R. No. L-1611; and cases cited therein).

In the case at bar, admittedly there is no labor dispute; no unfair labor practice is denounced by any of the parties; the cause of the dismissal of the petitioner was the displeasure caused upon the respondent manager, by the act of the petitioner for having brought a quarrel between her and another employee, to the attention of police authorities; and when the claim was filed, there was no longer any employer-employee relationship between the parties. While it may be true that the complaint, alleged that she was not notified by defendants, at least one month in advance, that her services were to be terminated "in gross violation of Republic Act No. 1052, as amended, and as such she is entitled to reinstatement, including back salaries until he is returned to her work" and that in her prayer she asked for the granting of such relief, it is equally true that it is not within the authority of the Court of Industrial Relations, to reinstate her and pay her back wages, in the event that she had a right to a separation pay, there being no allegation nor proof that defendant had committed unfair labor practice. In the recent case of National Labor Union vs. Insular-Yebana Tobacco Corporation, L-15363, July 31, 1961, it was ruled that in the absence of unfair labor practice, the CIR has no power to grant remedy under its general power of mediation and conciliation, such as reinstatement or back wages. Moreover, a violation of the law on separation pay (Rep. Act No. 1052, as amended by Rep. Act No. 1787), involves, at most, a breach of an obligation of the employer to his employee or vice versa, to be prosecuted like an ordinary contract or obligation — a breach of a private right which may be redressed by a recourse to the ordinary courts. Hence, the case at bar is cognizable by an ordinary court, the Court of First Instance of Davao, in this particular case, it appearing that the amount involved herein is within the jurisdiction of said court, as per findings of the Court of Appeals.

IN VIEW HEREOF, the order appealed from, dismissing the case for lack of jurisdiction, is reversed, and the same is remanded to the lower court for further proceedings, without pronouncement as to costs.

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

Barrera, J. took no part.

XI

Emiliano M. Perez, Petitioner-appellant, vs. The City Mayor of Cabanatuan, et al., Respondent-appellees, G.R. No. L-16786, October 31, 1961, De Leon, J.

1. SECRETARY OF HEALTH; SUPERVISION AND CONTROL OF GOVERNMENT HOSPITALS; AND REGULATIONS TO GOVERN HOSPITAL FINANCING.— Section 7 of the Hospital Financing Law (Republic Act No. 1939) vests upon the Secretary of Health the supervision and control over all the government hospitals established and operated under the Act and empowers him to promulgate rules and regulations to implement its provisions. Pursuant to this section, the said Secretary has promulgated rules and regulations, (Circular No. 262 of the Department of Health, dated July 24, 1958) to govern hospital financing.
2. ID.; FUNDS FOR THE CONSTRUCTION OF PROVINCIAL HOSPITAL; MANDAMUS; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— Circular No. 262, Department of Health, dated July 24, 1958 clearly specifies the proper course and the particular official of the Department of Health who, with the Auditor General, may pursue the said course whenever any province, city and/or municipality fails to provide and remit their respective contributions under the Hospital Financing Law. There is no mention whatsoever that the chief of a provincial hospital may bring any action against the province, city and/or municipality concerned in order that the latter may be made to give their contributions. Under the circumstances of the present case, the most that the herein petitioner could do is to report to his superior official the failure of respondents to set aside the amount that the City of Cabanatuan is obliged to give for the support of the provincial hospital of which he is the chief. The record does not show that petitioner had taken this step before coming to court.

HELD: There being an appropriate administrative remedy — plain, speedy and adequate — that could have first been availed of by petitioner, his action for mandamus is, therefore, premature. Special civil actions have been held not entertainable if superior administrative officers could grant relief (Peralta vs. Salcedo, G.R. No. L-10771, April 30, 1957). In other words, no recourse to the courts can be had until all administrative remedies have been exhausted.

D E C I S I O N

This is an appeal from a decision of the Court of First Instance of Nueva Ecija, dismissing a petition for mandamus seeking to compel the respondents to appropriate the sum of P24,983.12 from the general fund of Cabanatuan City to be paid to the Nueva Ecija Provincial Hospital.

In his petition, the Chief of the Nueva Ecija Provincial Hospital, who claims to be the officer bound by law to administer and protect the interests of said hospital alleged that under section 2(a) of Republic Act No. 1939, otherwise known as the Hospital Financing Law, which took effect on June 22, 1957, the City of Cabanatuan is under obligation to appropriate by ordinance at least 7% of its annual general income as contribution for the support of the hospital; that, accordingly, for the fiscal year 1957-58, the amount of P34,983.12 should have been appropriated by the city council for that purpose because the city then had an annual general income of P555,700.00, but only P10,000.00 of said amount was set aside, leaving a deficiency of P24,983.12. It is this last mentioned amount that is the object of the action for mandamus against the City Mayor, the Municipal Board and the City Treasurer of Cabanatuan.

After the filing of the answer by the respondents, the case was submitted for judgment on the pleadings. Whereupon, the lower court rendered judgment dismissing the petition on the ground that the petitioner is not the real party in interest. Insisting that he has the right to bring the action for mandamus, the petitioner has appealed directly to this Court.

The appeal cannot prosper.

Section 7 of the Hospital Financing Law vests upon the Secretary of Health the supervision and control over all the government hospitals established and operated under the Act and empowers him to promulgate rules and regulations to implement its provisions. Pursuant to this section, the said Secretary has promulgated rules and regulations (Circular No. 262 of the Department of Health, dated July 24, 1958) to govern hospital financing. It is provided under section 3(c) thereof that:

> "(c) In case of failure on the part of the province, city and/or municipality concerned to provide for and remit their respective obligations, as provided for in sections 2(a) and 2 (2) of the Act, the Secretary of Finance, upon recommendation of the Secretary of Health and the Auditor General, shall order the withholding of the amount needed from their respective shares in the Internal Revenue allotments."

The above-quoted rule clearly specifies the proper course and the particular official of the Department of Health who, with the Auditor General, may pursue the said course whenever any province, city and/or municipality fails to provide and remit their respective contributions under the Hospital Financing Law. There is no mention whatsoever that the chief of a provincial hospital may bring any action against the province, city and/or municipality concerned in order that the latter may be made to give their contributions. Under the circumstances of the present case, the most that the herein petitioner could do is to report to his superior official the failure of respondents to set aside the amount that the City of Cabanatuan is obliged to give for the support of the provincial hospital of which he is the chief. The record does not show that petitioner has taken this step before coming to court. There being an appropriate administrative remedy — plain, speedy and adequate — that could have first been availed of by petitioner, his action for mandamus is, therefore, premature. Special civil actions have been held not entertainable if superior administrative officers could grant relief (Peralta vs. Salcedo, G.R. No. L-10771, April 30, 1957). In other words, no recourse to the courts can be had until all administrative remedies have been exhausted (Peralta vs. Salcedo, G.R. No. L-10771, *supra;* Panti vs. The Provincial Board of Catanduanes, G.R. No. L-14047, January 30, 1960; Booc vs. Osmeña, Jr., G.R. No. L-14810, May 31, 1961; De la Torre vs. Trinidad, G.R. No. L-14907, May 31, 1960).

In view of the foregoing, the decision of the lower court dismissing the petition for mandamus is hereby affirmed, without pronouncement as to costs.

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

Barrera, J., took no part.

XII

Board of Liquidators, Petitioner-Appellant, vs. Exequiel Floro, et al., Oppositors-Appellees, G.R. No. L-15155, Dec. 29, 1960, Reyes, J.B.L., J.

1. BOND; IT STANDS AS GUARANTY FOR A PRINCIPAL OBLIGATION.— A bond merely stands as guaranty for a principal obligation which may exist independently of said bond, the latter being merely an accessory contract.
2. NOVATION; REQUISITES. — Novation is never presumed, it being required that the intent to novate be expressed clearly and unequivocally, or that terms of the new agreement be incompatible with the old contract.
3. ID.; EXTENSION OF PERIOD OF PAYMENT OR PERFORMANCE NOT NOVATION.— A mere extension of the term (period) for payment or performance is not novation.
4. INSOLVENCY; PROCEEDINGS TO SET ASIDE FRAUDULENT TRANSFERS BE BROUGHT BY ASSIGNEE.—Under section 36, No. 8, of the Insolvency Act, all proceedings to set aside fraudulent transfers should be brought and prosecuted by the assignee, who can legally represent all the credit-

ors of the insolvent (Maceda, et al. v. Hernandez, et al., 70 Phil. 261).

5. ID.; ID.; REASON OF THE LAW.—To allow a single creditor to bring such a proceeding would invite a multiplicity of suits, since the resolution of his case would not bind the other creditors, who may refile the same claim independently, with diverse proofs, and possibly give rise to contradictory rulings of the courts.

D E C I S I O N

From an order of the Court of First Instance of Manila, dated August 10, 1955, denying its petition to exclude certain pieces of steel matting from the assets of the insolvent M. P. Malabanan, the Board of Liquidators appealed to the Court of Appeals. The latter certified the case to this Court on the ground that only questions of law are involved.

The Board of Liquidators (hereinafter referred to as the Board) is an agency of the Government created under Executive Order No. 372 (November 24, 1950), and, pursuant to Executive Order No. 377 (December 1, 1950), took over the functions of defunct Surplus Property Liquidating Committee.

On June 14, 1952, Melecio Malabanan entered into an agreement with the Board for the salvage of surplus properties sunk in territorial waters off the provinces of Mindoro, La Union, and Batangas (Exhibit "A"). By its terms, Malabanan was to commence operations within 30 days from execution of said contract, which was to be effective for a period of not more than six (6) months. On June 10, 1953, Malabanan requested for an extension of one (1) year for the salvage in waters of Mindoro and Batangas; and the Board extended the contract up to November 30, 1953. On November 18, 1953, Malabanan requested a second extension of one (1) more year for the waters of Occidental Mindoro, and the Board extended the contract up to August 31, 1954. Malabanan submitted a recovery report dated July 26, 1954, wherein it is stated that he had recovered a total of 13,107 pieces of steel mattings, as follows:

1—December, 1953-April 30, 1954	2,555
2—May 1, 1954-June 30, 1954	10,552
	13,107 (pieces)

Four months previously, Malabanan had entered into an agreement with Exequiel Floro, dated March 31, 1954 (Exhibit 1, Floro), in which among other things, it was agreed that Floro would advance to Malabanan certain sums of money, not to exceed ₱25,000.00, repayment thereof being secured by quantities of steel mattings which Malabanan would consign to Floro; that said advances were to be paid within a certain period, and upon default at the expiration thereof, Floro was authorized to sell whatever steel mattings were in his possession under said contract, in an amount sufficient to satisfy the advances. Pursuant thereto, Floro claims to have made total advances in the sum of ₱24,224.50.

It appears that as Malabanan was not able to repay Floro's advances, the latter, by a document dated August 4, 1954, sold 11,047 pieces of steel mattings to Eulalio Legaspi for the sum of ₱24,303.40.

Seventeen days later, on August 21, 1954, Malabanan filed in the Court of First Instance of Manila a petition for voluntary insolvency, attaching thereto a Schedule of Accounts, in which the Board was listed as one of the creditors for ₱10,874.46, and Exequiel Floro for ₱24,220.50, the origin of the obligations being described as "Manila Royalty" and "Salvaging Operations", respectively. Also attached was an inventory of Properties, listing certain items of personal property allegedly aggregating ₱33,707.00 in value. In this list were included 11,167 pieces of steel mattings with an alleged estimated value of ₱33,501.00.

Soon after, the Board, claiming to be the owner of the listed steel matting, filed a petition to exclude them from the inventory; and to make the insolvent account for a further 1,940 pieces of steel matting, the difference between the number stated in the insolvent's recovery report of July 26, 1954 and that stated in the inventory. Exequiel Floro opposed the Board's petition and claimed that the steel matting listed had become the property of Eulalio Legaspi by virtue of a deed of sale in his favor, executed by Floro pursuant to the latter's contract with Malabanan on March 31, 1954. The court below, after reception of evidence as to the genuineness and due execution of the deed of sale to Legaspi, as well as of the contract between Malabanan and Floro, denied the Board's petition, declaring that Malabanan had acquired ownership over the steel mattings under his contract with the Board; that Exequiel Floro was properly authorized to dispose of the steel mattings under Floro's contract with Malabanan; and that the sale to Eulalio Legaspi was valid and not contrary to the Insolvency Law.

In this appeal, the Board contends that Malabanan did not acquire ownership over the steel mattings due to his failure to comply with the terms of the contract, allegedly constituting conditions precedent for the transfer of title, namely: payment of the price; audit and check as to the nature, quantity and value of properties salvaged; weighing of the salvaged properties to be conducted jointly by representatives of the Board and of Malabanan; determination of the site for storage; audit and verification of the recovery reports by government auditors; and filing of performance bond.

We are of the opinion, and so hold, that the contract (Exhibit "A") between Malabanan and the Board had the effect of vesting Malabanan with title to, or ownership of, the steel mattings in question as soon as they were brought up from the bottom of the sea. This is shown by pertinent provisions of the contract as follows:

> "10. For and in consideration of the assignment by the BOARD OF LIQUIDATORS to the CONTRACTOR (Malabanan) of all right, title and interest in and to all surplus properties salvaged by the CONTRACTOR under this contract, the CONTRACTOR shall pay to the Government NINETY PESOS (₱90.00) per long ton (2,240 lbs.) of surplus properties recovered.
>
> "11. Payment of the agreed price shall be made monthly during the first ten (10) days of every month on the basis of recovery reports of sunken surplus properties salvaged during the preceding month, duly verified and audited by the authorized representative of the BOARD OF LIQUIDATORS."

That Malabanan was required under the contract to post a bond of ₱10,000.00 to guarantee compliance with the terms and conditions of the contract; that the operations for salvage were entirely at Malabanan's expense and risk; that gold, silver, copper, coins, currency, jewelry, precious stones, etc. were excepted from the contract, and were instead required to be turned over to the Board for disposition; that the expenses for storage, including guard service, were for Malabanan's account—all these circumstances indicated that ownership of the goods passed to Malabanan as soon as they were recovered or salvaged (i.e., as soon as the salvor had gained effective possession of the goods), and not only after payment of the stipulated price.

While there can be reservation of title in the seller until full payment of the price (Article 1478, N.C.C.), or until fulfillment of a condition (Article 1505, N.C.C.); and while execution of a public instrument amounts to delivery only when from the deed the contrary does not appear or cannot clearly be inferred (Article 1498, supra.) there is nothing in the said contact which may be deemed a reservation of title, or from which it may clearly be inferred that delivery was not intended.

The contention that there was no delivery is incorrect. While there was no physical tradition, there was one by agreement (tradition *longa manu*) in conformity with Article 1499 of the Civil Code.

> "Article 1499 — The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale. x x x"

As observed earlier, there is nothing in the terms of the public instrument in question from which an intent to withhold delivery or transfer of title may be inferred.

The Board also contends that as no renewal of the bond required was filed for the extension of the contract, it ceased to have any force and effect; and, as the steel mattings were recovered during the extended period of the contract, Malabanan did not acquire any rights thereto. The pertinent portion of the contract provides:

"12. Jointly with the execution of this contract, the CONTRACTOR SHALL file a bond in the amount of TEN THOUSAND (₱10,000.00) PESOS to guarantee his faithful compliance with the terms and conditions herein; Provided, that this contract shall not be considered to have been executed notwithstanding the signing hereof by the parties until said bond shall have been properly filed."

Malabanan filed a bond dated June 10, 1952, effective for one (1) year, or up to June 10, 1953. The principal contract, executed on June 14, 1952, was first extended to November 30, 1953, and finally, to August 31, 1954. As can be seen, there was no longer any bond from June 11, 1953 to August 31, 1954.

The lapse of the bond did not extinguish the contract between Malabanan and the Board. The requirement that a bond be posted was already complied with when Malabanan filed the bond dated June 10, 1952. A bond merely stands as guaranty for a principal obligation which may exist independently of said bond, the latter being merely an accessory contract (Valencia v. RFC & C.A., L-10749, April 25, 1958). Significantly, its purpose, as per the terms of the contract, was "to guarantee his (Malabanan's) faithful compliance with the terms and conditions herein"; and, for violation of the contract, the Board may declare "the bond forfeited" (par. 13). Being for its benefit, the Board could legally waive the bond requirement (Valencia v. RFC, et al., supra), and it did so when, the bond already having expired, it extended the contract not only once, but twice. In none of the resolutions extending the contract (Annexes "C" & "E", pp. 108-112; Record on Appeal) was there a requirement that the bond be renewed, in the face of the first indorsement by the Executive Officer of the Board (Annex "F", pp. 112-113, Record on Appeal) recommending that Malabanan's request for a second extension be granted 'provided the bond he originally posted should continue."

There is no merit to the suggestion that there being a novation, Article 1299 of the Civil Code should govern. Novation is never presumed, it being required that the intent to novate be expressed clearly and unequivocally, or that the terms of the new agreement be incompatible with the old contract (Article 1292, N.C.C.; Martinez v. Cavives, 25 Phil. 581; Tiu Siuce v. Habana, 45 Phil. 707; Pablo v. Sapungan, 71 Phil. 145; Young v. Villa, L-5331, May 13, 1953). Here there was neither express novation nor incompatibility from which it could be implied. Moreover, a mere extension of the term (period) for payment or performance is not novation (Inchausti v. Yulo, 34 Phil. 978; Zapanta v. De Rotaeche, 21 Phil. 154; Pablo v. Sapungan, supra); and, while the extension covered only some of the areas originally agreed upon, this change did not alter the essence of the contract (cf. Romas v. Gibbon, 67 Phil. 371; Bank of P.I. v. Herridge, 47 Phil. 57).

It is next contended that the sale by Floro to Legaspi on August 4, 1954 (within 30 days prior to petition for insolvency) was void as a fraudulent transfer under Section 70 of the Insolvency Law. The court below held that the sale to Legaspi was valid and not violative of Section 70; but there having been no proceedings to determine whether the sale was fraudulent, we think it was premature for the court below to decide the point, especially because under section 36, No. 8, of the Insolvency Act, all proceedings to set aside fraudulent transfers should be brought and prosecuted by the assignee, who can legally represent all the creditors of the insolvent (Maceda, et al, v. Hernandez, et al., 70 Phil. 261). To allow a single creditor to bring such a proceeding would invite a multiplicity of suits, since the resolution of his case would not bind the other creditors, who may refile the same claim independently, with diverse proofs, and possibly give rise to contradictory rulings by the courts.

The order appealed from is hereby affirmed in so far as it declares the disputed goods to be the property of the insolvent; but without prejudice to the right of the assignee in insolvency to take whatever action may be proper to attack the alleged fraudulent transfer of the steel matting to Eulalio Legaspi, and to make the proper parties account for the difference between the number of pieces of steel matting stated in the insolvent's recovery report, Annex "B" (13,107), and that stated in his inventory (11,167). Costs against appellant.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concurred.

Padilla, J., took no part.

XIII

Lao Lian Su alias Lorenzo Ting, Petitioner-appellant, vs. Republic of the Philippines, Oppositor-appellee, G.R. No. L-15543, September 29, 1961, Reyes, J.B.L., J.

NATURALIZATION; EVASION IN PAYMENT OF TAXES AS GROUND FOR DENIAL OF APPLICATION.— In the case at bar, it appears that in the verified income tax returns filed by petitioner and that of his wife for the years from 1951 to 1957, the contents of which he ratified under oath while on the witness stand, the spouses appear to have claim exemption for a *fourth* child by the name of Ting Kock King, supposedly born on 10 October 1948. Of the inconsistency between the sworn statements, petitioner proferred no explanation whatsoever, although counsel for appellant insinuates in the brief that Ting Kock King could be an adopted child of the spouses; but the insinuation is totally devoid of proof, which the applicant was duty bound to submit to the Court. *Held*: The contradictory statements under oath can only lead to the conclusion either that petitioner tried to evade lawful taxes due from him or that he has concealed the truth in his application. Either alternative would be sufficient to disqualify him for admission to Philippine citizenship.

D E C I S I O N

Appeal from a decree of the Court of First Instance of Rizal, denying the application of petitioner-appellant Lao Lian Su *alias* Lorenzo Ting for admission to Philippine citizenship, because of applicant's failure to observe irreproachable conduct in his relations with constituted authorities during the entire period of his residence in the Philippines.

We see no merit in the appeal. In his sworn petition for naturalization as well as in his testimony, petitioner stated that he has only three children with his wife Chua Kim Tia, namely:

Besie Ting, born	11/25/39
Esteban Ting, born	4/11/46
Betty Ting, born	8/16/51.

Yet in the verified income tax returns filed in his name and that of his wife for the years from 1951 to 1957, the contents of which he ratified under oath while on the witness stand, the spouses appear to have claim exemption for a *fourth* child by the name of Ting Kock King, supposedly born on 10 October 1948. Of the inconsistency between the sworn statements, petitioner proferred no explanation whatsoever, although counsel for appellant insinuates in the brief that Ting Kock King could be an adopted child of the spouses; but the insinuation is totally devoid of proof, which the applicant was duty bound to submit to the Court. As the record now stands, the contradictory statements under oath can only lead to the conclusion either that the petitioner tried to evade lawful taxes due from him or that he has concealed the truth in his application. Either alternative would be sufficient to disqualify him for admission to Philippine citizenship.

For all the foregoing considerations, the decision appealed from is affirmed, with costs against the appellant.

Bengzon, C.J., Padilla, Labrador, Concepcion, Paredes and De Leon, JJ., concurred.

Bautista Angelo, J., took no part.

1961 BAR EXAMINATION QUESTIONS
(Conclusion)

REMEDIAL LAW

I. (a) Distinguish; (1) "admission" from "declaration against interest", (2) action from special proceeding, (3) *Factum probans* from *factum probandum*, (4) preventive injunction from mandatory injunction, and (5) amended pleading from a supplemental pleading.

(b) In civil cases, when may a pleading in the CFI be amended as a matter of course and when may it be amended only by leave of court?

II. FACTS: After the plaintiff rested his case in an ordinary civil action in the Court of First Instance, the defendant filed a motion to dismiss for insufficiency of evidence, reserving the right to present his evidence in case his motion is denied.

QUESTIONS: (1) Suppose the court finds that the plaintiff's evidence is sufficient to prove a *prima facie* case, and consequently denies the motion, may the court forthwith render judgment in favor of the plaintiff or should the court allow the defendant to present his evidence first? Reason out your answer.

(2) Suppose the Court of First Instance grants the defendant's motion, but on appeal to the Court of Appeals, the latter finds that the lower court erred, should the Court of Appeals proceed to render judgment in favor of the plaintiff, or should it remand the case to the lower court for reception of the defendant's evidence and further proceedings?

III. (a) When and under what circumstances: (1) may a defendant file a third party complaint? (2) may a person be permitted to intervene in a civil action? (3) may a person file an action for interpleader?

(b) Over what cases does the Juvenile and Domestic Relations Court have exclusive original jurisdiction?

IV. (a) A group of 40 laborers had been in the employ of a corporation for many years until they resigned in December, 1959. At the time of their separation from the service, they were each entitled to receive from the corporation the sum of P6,000.00 representing their overtime pay arising from the Eight-Hour Labor Law, as well as their gratuity arising from a collective bargaining agreement, which the corporation refused to pay despite repeated demands therefor. Hence, they filed a petition with the Court of Industrial Relations against the corporation for the collection of the above-stated sum. But the defendant's counsel filed a motion to dismiss, contending that it is the Court of First Instance which had jurisdiction over the subject matter. Decide the motion. Reason briefly.

(b) Point out four (4) instances when a witness may be interrogated by leading questions on direct examination.

V. (a) In the special proceeding on the intestate of San Jose, a parcel of land is adjudicated pro-indiviso to heirs Juan and Pedro, and Juan wants to compel immediate partition thereof. As Juan's lawyer, what would you do. Reason briefly.

(b) In a certain civil case, Armando, an official of the BIR, was utilized as the sole witness for the plaintiff, and the defendant's counsel wanted to adduce evidence to prove the bad moral character of Armando for truth, honesty and integrity, in order to discredit his testimony. Hence, defendant's counsel called on Toribio to testify that on two different occasions, Armando solicited bribes from Toribio in connection with the latter's tax case pending with the BIR. But the plaintiff's counsel objected to Toribio's testimony. Rule on the objection. Reason briefly.

VI. (a) Point out three (3) ways of impeaching a judicial record.

(b) What are the requisites in order that an admission of a partner may be admissible in evidence against his co-partner?

VII. (a) In criminal actions, when may a mere summons be issued instead of warrant of arrest?

(b) Cite three (3) instances where final judgment in civil cases may be executed, as of right, before the expiration of the time to appeal.

VIII. (a) State fully the rules on venue in inferior courts regarding civil actions.

(b) FACTS: Lazaro was an insurance agent assigned to Davao, with the obligation to turn over to his principal's office in Manila all the premiums collected by him. As such agent, Lazaro was able to collect premiums in Davao in the total sum of P10,000, but he misappropriated the entire amount in Davao. QUESTION: Where is the *venue* of the criminal action that may be possibly instituted against Lazaro for his above-described acts? Reason briefly.

IX. FACTS: Victor was the Director, and Lucas the Assistant Director, of the Bureau of Forestry. Victor met accident, lost his right arm and left leg, and was hospitalized for six months, during which period, Lucas assumed the position of Director of Forestry. On the seventh (7) month, Victor wanted to resume his office as Director but Lucas refused to relinquish the position, claiming that Victor had been permanently incapacitated to discharged the duties of the office. QUESTIONS: (a) What judicial remedy may Victor avail of in order to establish his right to the office of Director of Forestry?

(b) Does Victor have to bring the matter to the Office of the Secretary of Agriculture, and if not satisfied therein, then to the Office of the President, for administrative remedy before he goes to Court? Why?

(c) Within what period of time may Victor possibly bring an action aginst Lucas for the recovery of whatever damages he may have suffered by reason of the above-described acts of Lucas?

X. (a) State or explain two different general rules of *"Res Inter Alios Acta"*.

(b) When is a case considered as presenting a moot question?

(c) May the attorney of the plaintiff or of the appellant, as the case may be, be ordered to pay the costs of the suit, and if so, when?

———oOo———

LEGAL ETHICS AND PRACTICAL EXERCISES

(Warning: Use letter X, never your own name, as signature of attorney or notary public on any pleading or form called for in these questions.)

I. (a) What is the power of the Court of Appeals or a Court of First Instance upon the existence of any of the grounds for suspension or disbarment against a lawyer?

(b) State the effect, and the subsequent proceeding to be taken, when such power is exercised.

II. Discuss the liability of an Attorney-at Law to his client for mistakes or errors on matters of law, and for negligence in filing necessary pleadings and briefs, or in taking the steps necessary to perfect an appeal within the time fixed by statute or the Rules of Court.

III. (a) Upon what grounds does a lawyer find justification in representing an accused who has confessed his guilt to him, or whom he knows to be guilty from the facts disclosed to him. Explain your answer.

(b) A lawyer was convicted of the crime of bigamy. Subsequently, the President of the Philippines pardoned him unconditionally. May this lawyer still be disbarred "for having been convicted of a crime involving moral turpitude"? Give reasons.

(Continued next page)

COURT OF APPEALS DIGEST OF DECISIONS

CERTIORARI; EXECUTION OF JUDGMENT; EXAMINATION OF JUDGMENT DEBTOR; CONTEMPT; EXCESS OF JURISDICTION.— A judgment debtor can only be required to appear and answer concerning his property and income before the Court of First Instance of the province in which he resides or is found, so that an order issued by any other Court of First Instance declaring such judgment debtor in contempt and ordering his arrest for failure to appear for such examination is null and void as issued in excess of jurisdiction. *Chiong Bu Hong, vs. Bienvenido Tan, et al., CA G.R. No.* 27345-*R, June* 23, 1960, *Angeles, J.*

CERTIORARI; CONTEMPT; LACK OF JURISDICTION OF COURT ISSUING ORDER; EFFECT; WAIVER.—The power to punish for contempt should be used sparingly, with caution, deliberation, and with due regard to the provisions of the law and the constitutional rights of the individual. Disobedience of, or resistance to, a void mandate, order, judgment, or decree, or one issued by a court without jurisdiction of the subject-matter and parties-litigant, is not contempt, and where the court has no jurisdiction to make the order, no waiver can cut off the rights of the party to attack its validity. (U.S. Federal Trade Commission vs. Fairfoot Products Co., 94 F. 3d, 844; 17 C.J.S. p. 19, note 34.) *Ibid.*

CRIMINAL LAW; MITIGATING CIRCUMSTANCE; PLEA OF GUILTY, WHEN NOT MITIGATING.— A judicial plea of guilty after the prosecution had introduced its evidence is no longer a mitigating circumstance (People vs. de la Peña, 66 Phil. 459). Besides, a plea of guilty as a mitigating circumstance is not applicable to a prosecution under special laws (Article 10, Revised Penal Code; People vs. Ramos, 44 O. G. 3288; U. S. Barba 29 Phil. 206, U. S. vs. Santiago, 35 Phil. 20; People vs. Maiquez CA-47 O.G. 4226). *People vs. Custodio Tecson, CA-G.R. No.* 18256-*R, June* 30, 1960, *Piccio,* J.

CRIMINAL PROCEDURE; PLEA OF GUILTY.— Upon a judicial plea of guilty (Sec. 3 Rule 114, Rules of Court), interposed by the accused generally upon arraignment (before trial on the merits), the court, when satisfied that same had been interposed freely and voluntarily by the defendant who was well aware of its nature and consequences, may pronounce said accused "guilty" and forthwith convict him without requiring the prosecution to introduce its evidence. And it makes no difference that such plea was made after the introduction of prosecution's evidence. The effect is the same. *Ibid.*

ACTIONS; ACTION FOR PARTITION; PRESCRIPTION. — Generally, an action for partition among co-heirs and co-owners does not prescribe. This rule, however, applies only to "actions wherein the rights of all parties to their respective shares of the inheritance is taken for granted but not to an action wherein the plaintiff's right to participate in the inheritance is denied." (Bargayo vs. Camumot, 40 Phil. 857, 870). *Julio Dolar et al., vs. Eliseo Depasucat, et al., CA-G.R. No.* 24528-*R, July* 18, 1960, *Amparo,* J.

JUDGMENT; ENFORCEMENT; PRESCRIPTIVE PERIOD.— A valid judgment may be enforced either by motion within five years after entry or by action after the lapse of said period but before it is barred by any statute of limitations, and a valid execution issued and levy made within the five-year period after entry of judgment may be enforced by the sale of the property levied upon, provided the sale is made within ten years after entry of such judgment. *Nestora Rigor Vda. de Quiambao, et al., vs. Manila Motor Company, Inc., et al., CA-G.R. No.* 17031-*R, July* 23, 1960, *Natividad,* J.

OBLIGATIONS AND CONTRACTS; VESTED RIGHT, MEANING OF.— Vested right has been defined as accrued, fixed, settled, absolute, having the character or giving the rights of absolute ownership, not contingent, not subject to be defeated by a condition precedent. Primarily, "vested" is to be interpreted as meaning free from all contingency. In this sense, it is nearly equivalent to "possessed." However, the word is often used in a different sense from its technical or strictly legal meaning; thus, "vested" has been construed to mean not subject to be divested or indefeasible; transmissible. It has also been construed to mean payable. 67 C.J., pp. 239-240. *The United States of America vs. Pedro Vergel de Dios, et al, CA-G.R. No.* 21474-*R, July* 25, 1960, *Sanchez,* J.

CRIMINAL PROCEDURE; ORAL MOTION TO QUASH; EFFICACY; SECTION 3, RULE 113, RULES OF COURT.— Section 3 of Rule 113 of the Rules of Court states that a motion to quash shall be in writing, signed by the defendant or his attorney", and "shall specify distinctly the ground of objection" relied upon. However, an oral motion to quash presented in open court, at an opportune time, that is, before arraignment, and based on the ground that more than one offense was charged in the information, should be considered as effectively placed before the court for its consideration and decision as if it had been in writing. To deny the motion for being void and inefficacious because it was not reduced to writing, is to place inordinate importance on the shadow rather than on the substance of the law, and to stress technicality while denying justice. Hair-splitting technicalities should be frowned upon and avoided if they do not square with the ends of justice. *People vs. Manuel Ballena, CA-G.R. No.* 20810-*R, July* 25, 1960, *Castro,* J.

1961 BAR . . . (Continued from page 348)

IV. A files an action to recover a parcel of land from B based upon a notarial deed of sale and A attaches a copy of the deed of sale to his complaint. B claims that he did not sell his property to A, and that the signature purporting to be his on the deed is a forgery. As lawyer for B, prepare an answer, supplying other details.

V. (a) Define and distinguish attorney's contingent fee and champertous fee.

(b) In the absence of a written contract between attorney and client, what factors are to be considered in determining the amount of attorney's fees?

VI. (a) In the event that several lawyers representing a party in a case should act differently on any matter relating to the litigation, which of these may properly claim the right to bind the client?

(b) What duties, if any, does an attorney owe to a client, after the termination of the relationship of attorney and client?

VII. Draft a motion for leave to intervene in a civil case. Supply necessary details.

VIII. (a) Draw an information for filing in the Court of First Instance, charging an accused for estafa. Supply the necessary details.

(b) Prepare a motion to quash said information on any of the grounds provided by law.

IX. What inhibitions, if any, are imposed upon members of the Bar who are likewise members of Congress in the practice of the law profession and why?

X. Prepare the following: (a) Jurat; (b) acknowledgement in a deed of sale consisting of more than two pages and covering three parcels of land; (c) attestation clause in a last will and testament; (d) affidavit of Good Faith in a Chattel Mortgage.

RULES OF THE ELECTORAL TRIBUNAL OF THE HOUSE OF REPRESENTATIVES

RULE I
THE MEETINGS

SECTION 1. Upon the designation of the Justices of the Supreme Court and the Members of the House of Representatives who are to compose the Electoral Tribunal in pursuance of section 11, Article IV of the Constitution of the Philippines, the Electoral Tribunal shall meet for its organization and the adoption of such resolutions as it may deem proper.

Upon the expiration of the term of the Members of the House of Representatives, who are members of the Tribunal, and, before the designation of the new members who are to succeed them, as members of the Electoral Tribunal, the Justices of the Supreme Court who are members of the Electoral Tribunal, shall constitute themselves as a Division, to act on interlocutory matters that may be submitted to the Tribunal, subject to the approval of the Tribunal upon its organization.

SEC. 2. The Electoral Tribunal shall meet on such days and time as it may designate or at the call of the Chairman or of a majority of its Members. The presence of a majority with at least one Justice shall be necessary to constitute a quorum. In the absence of the Chairman, the next senior Justice shall preside, and in the absence of both, the Justice present will take the chair, in both of which cases the acting Chairman shall also exercise the powers and duties of the Chairman.

SEC. 3. The Electoral Tribunal and its divisions and committees shall meet in the Session Hall of the Supreme Court or at such other place in the City of Manila as may be designated. When in their judgment the interests of justice require, they may also hold sessions outside of Manila. For the reception of evidence or the hearing of oral arguments, and when deemed convenient they may meet in the Session Hall of the Supreme Court or at such other place as may be designated.

RULE II
THE CHAIRMAN

SECTION 1. The powers and duties of the Chairman of the Electoral Tribunal shall be as follows:

(a) To issue calls for the sessions of the Tribunal;

(b) To preside over the sessions of the Tribunal;

(c) To preserve order and decorum during the session and for that purpose take such steps as may be convenient or as the Tribunal may direct;

(d) To decide all questions of order, subject to appeal by any member to the Tribunal;

(e) To enforce the orders, resolutions, and decisions of the Tribunal; and

(f) With the approval of the Electoral Tribunal and in accordance with the provisions of the Civil Service Law, to appoint or remove any employee of the Electoral Tribunal.

RULE III
CONTROL OF OWN FUNCTIONS

SECTION 1. The Electoral Tribunal shall have the exclusive control, direction, and supervision of all matters pertaining to its own internal operation.

RULE IV
THE CLERK OF COURT, STENOGRAPHERS AND OTHER EMPLOYEES

SECTION 1. In addition to the Clerk of Court, Deputy Clerks of Court and Stenographers, the Electoral Tribunal shall have such other employees as may be authorized by law.

SEC. 2. The Clerk of Court of the Electoral Tribunal shall keep office at such place as may be assigned to him by the Tribunal, and shall have the following duties:

(a) To execute the orders, resolutions, decisions and processes issued by the Electoral Tribunal;

(b) To receive and file all pleadings, and other papers properly presented, endorsing on each such paper the date when it was filed, and to attend all of the sessions of the Tribunal and enter its proceedings for each day in a minute book to be kept by him;

(c) To keep a judicial docket wherein shall be entered in chronological order election contests and the proceedings had thereon;

(d) To issue under his signature and the seal of the Electoral Tribunal the notices, orders, resolutions and decisions which are to be given due course;

(e) To safely keep all records, papers, files, exhibits, and public property committed to his charge, including the library of the Tribunal, and the seals belonging to his office;

(f) To keep an account of the funds set aside for the expenses of the Electoral Tribunal when so directed;

(g) To perform such duties as are prescribed by law for Clerks of Superior Court;

(h) To keep a judgment book containing a copy of each judgment rendered by the Tribunal in the order of its date, and a book of entries of judgments containing at length in chronological order entries of all final judgments or orders of the Court;

(i) To keep an execution book in which is recorded at length in chronological order each execution, and the officer's return thereon, by virtue of which real property has been sold;

(j) To keep such other books and perform such other duties as the Tribunal may direct.

SEC. 3. It shall be the duty of the stenographer who has attended a session to deliver immediately at the close of such session, all the notes he has taken, to the Clerk of Court who shall stamp the date of receipt thereon, and when such notes are transcribed, the transcript shall likewise be delivered to the clerk, duly initialed on each page thereof. It shall be the duty of the Clerk of Court to demand that the stenographer comply with said duty.

SEC. 4. Subject to the supervision of the Chairman, the Clerk of Court shall be the chief of the personnel of the Electoral Tribunal and shall be responsible for the faithful and proper performance of their official duties.

RULE V
THE SEAL

SECTION 1. The seal of the Electoral Tribunal shall be circular in shape and shall contain in the upper part the words "Electoral Tribunal of the House of Representatives," in the center, the coat of arms of the Republic of the Philippines, and at the base, the word "Philippines."

RULE VI
ELECTION CONTESTS

SECTION 1. Election contests shall be filed with the office of the Clerk of Court of the Electoral Tribunal, or mailed at the post office as registered matter addressed to the Clerk of Court of the Electoral Tribunal, together with twelve legible copies thereof, within fifteen days following the proclamation of the result of the election by the provincial board of canvassers by any candidate voted for in said election and who has presented a certificate of candidacy. It shall be the duty of the Clerk of Court to serve notice and a copy of the contest upon each respondent within five days after the filing thereof.

SEC. 2. All contests and counter contests shall be sworn to by the parties filing them or their attorneys.

RULE VII
ANSWERS AND COUNTER CONTESTS

SECTION 1. Within ten days after service of notice of the filing of the contest, the respondent shall file his answer thereto specifying the nature of his defense, and serve copy thereof upon the contestant. If no answer is filed to the protest or to the counter-protest, within the time limits respectively fixed, a general denial shall be deemed to have been entered. A counter contest, if any, must be filed within the same period. No demurrers shall be entertained.

RULE VIII
REPLIES

SECTION 1. Within five days after the receipt of copy of the answer, the contestant may file a reply. A counter-contest, if any, must be answered within ten days after the receipt of copy thereof by the contestant.

RULE IX
PLEADINGS

SECTION 1. All other pleadings of the contestant or the contestee shall be filed with the Office of the Clerk of Court of the Electoral Tribunal, together with twelve legible copies thereof. Any petition based on facts which ought to be proved shall be sworn to.

RULE X
AMENDMENTS

SECTION 1. After the period for receiving the evidence has commenced, no amendment to the allegations affecting the merits of the controversy shall be allowed except when, for some special reasons and because of the exigencies of the public interest, the filing of such amendment is permitted by the Electoral Tribunal. Any amendment in matters of form may be submitted at any stage of the proceedings.

RULE XI
FILING FEES AND BONDS

SECTION 1. No contest shall be registered without the payment of filing fee in the amount of ₱50 for each contest.

SEC. 2. In a contest or a counter-contest not requiring ballot revision, the contestant or the counter-contestant, as the case may be, shall make a cash deposit in the amount of ₱200; if a revision of the ballots must be made, the cash deposit shall be in the sum of ₱500. The amount shall be deposited with the disbursing officer of the Electoral Tribunal, unless otherwise specifically provided, within ten days, after the filing of a contest or a counter-contest and shall be applied to the payment of all expenses incidental to such contest or counter-contest. When the circumstances so demand, additional cash deposits may be required. Failure to make the cash deposit herein provided, within the prescribed time limit, shall result in the automatic dismissal of the contest or counter-contest, as the case may be, unless the Tribunal shall otherwise resolve.

RULE XII
PRODUCTION AND EXAMINATION OF ELECTION DOCUMENTS AND REVISION OF BALLOTS

SECTION 1. Where allegations in a contest or counter-contest so warrant, or whenever in the opinion of the Electoral Tribunal, the interest of justice so demands, it shall immediately order the list of voters, ballot boxes and their keys, ballots and other documents used in the election to be brought before the Electoral Tribunal and revised, and, for such purpose, it may appoint a committee on revision of ballots, composed of a chairman and two members, the appointment of which one member and his substitute shall be proposed by the contestant, and the other member and his substitute shall be proposed by the contestee, and fix the compensation of each which shall not exceed fifteen (₱15) pesos for every election precinct which they may completely revise and report upon.

The revision of the ballots should be completed within three months from the date of the order, unless otherwise directed by the Electoral Tribunal.

SEC. 2. The list of voters, the documents used in the election, ballots, ballot boxes and their keys, shall be kept and held secure in the "vault" of the Electoral Tribunal, or in such other place as may be designated, in the care and custody of the Clerk of Court of the Electoral Tribunal and under the authority of the Chairman. The revision of the ballots by the committee on revision shall be made in the office of the Electoral Tribunal or at such other place as may be designated by the Chairman of the Electoral Tribunal.

SEC. 3. The committee on revision shall make a statement of the condition in which the ballot boxes and their contents were found upon the opening of the same; and shall classify the ballots so examined and set forth clearly any objection that may have been offered to each ballot in the report to be submitted by them. Disputed ballots shall be numbered consecutively with colored pencil, for purposes of identification, in the presence and under the direction of the official designated by the Electoral Tribunal. After examination, the ballots and other election documents shall be returned to their respective boxes under lock, but disputed ballots shall be placed in a separate envelope duly sealed and signed by the member of the committee which shall then be returned to the box. For purposes of making said report which shall be submitted in 12 legible copies, only the prescribed form prepared by the Tribunal shall be followed.

During the revision of ballots, no person other than the members of the committee on revision of ballots and the Clerk of Court of the Electoral Tribunal or the latter's authorized representatives, and the parties, their attorneys or duly authorized representatives shall have access to the place where said revision is taking place.

RULE XIII
SUBPOENAS

SECTION 1. Subpoenas shall be issued by the Clerk of Court of the Electoral Tribunal to compel the attendance of witnesses who should testify before the Tribunal and may be enforced by him or any of his assistants, or through the sheriff of the province where such witness reside.

SEC. 2. A witness who after being duly subpoenaed shall fail to appear or testify without good cause, may be tried and punished for contempt in accordance with the provision of the Rules of Court in the Philippines.

RULE XIV
EVIDENCE

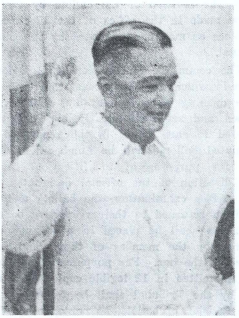
SECTION 1. All evidence shall be received by the Electoral Tribunal sitting in banc or by a division or committee thereof or by Commissioners authorized by the Tribunal. Any Division of the Tribunal can designate any member thereof to act as a committee of one to receive evidence. Oral evidence may be received in the form of a deposition. The original copy of the deposition, together with twelve legible copies thereof shall be forwarded by registered mail to the Clerk of Court of the Electoral Tribunal by the official who took the deposition. Unless otherwise provided, the presentation of evidence shall be terminated within ninety days from the date of the commencement thereof.

RULE XV
VOTING

SECTION 1. In passing on all questions submitted to the Electoral Tribunal, all the Members present, including the Chairman, shall vote. For the adoption of resolutions of whatever nature, the concurrence of five Members shall be necessary.

SEC. 2. During the hearings held for the reception of evidence, the presiding officer of the Electoral Tribunal, whether sitting in banc, in division, or in committee, shall decide all questions raised in connection with the examination of witnesses and the admission of evidence, and his rulings shall be deemed as made by the Electoral Tribunal. If a Member should ask that a question

(*Continued next page*)



Judge CONRADO M. VASQUEZ

Graduating valedictorian (*Cum laude*) of the College of Law, University of the Philippines, in 1937, there was little doubt that, sooner or later, Judge Conrado M. Vasquez would be appointed in the judiciary. For it is in the judicial department that our people expect and get scholarship. It is also because of the reputation of the Philippine judiciary for scholarship that Filipinos, to the wonder of the world, have accepted judicial pronouncements as guiding principles in their way of life.

The position of the Philippine judiciary in world law is unique. It is here where the way of life under the civil law of Rome and Spain merged with the Anglo Saxon law of England and America. The conflicts between civil law and Anglo Saxon law were many, often critical, hence the early demand for scholarship among the judges. Philippine judicial decisions on this conflict are therefore studied and often cited by the world's bar.

The career of Judge Conrado M. Vasquez reads like a highway to the judiciary. He was born in Biñan, Laguna, 48 years ago, son of Castor Vasquez and Vicenta Moravilla, both of Biñan. He graduated valedictorian of the Biñan Elementary School, 1928; valedictorian of the U.P. High School in 1931; A.A. (*Cum laude*) College of Liberal Arts, U.P., in 1933; and valedictorian (*Cum laude*) of the U.P. College of Law in 1937. He was admitted to the Philippine Bar the same year.

He engaged in private law practice in 1937 to 1939, and 1942 to 1945. In 1939, he was appointed attorney in the Department of Justice. From here, he rose up to the judiciary.

He was chief, legal research division, Department of Justice, in 1946; chief, law division, Department of Justice, in 1948, and technical assistant to the Secretary of Justice, in 1951.

In 1954, Judge Conrado M. Vasquez was appointed judge of the Court of First Instance of Batangas. In 1960, he was chosen "Provincial Judge of the Year" by the Justice and Court Reporters Association of the Philippines.

In 1961, Judge Vasquez was appointed to the Court of First Instance of Manila, Branch V, along with seven other judges.

He is a professor of law in the F.E.U. Institute of Law. He also served as professor in other law colleges such as the National University College of Law, the Philippine Law School, and the U.E. College of Law.

The opinions he prepared in the Department of Justice, and the decisions he rendered in the courts of Batangas and Manila reflect the judicial quality of a brilliant mind. He does not have any specialty in law, and brings to every case before him a warm and sympathetic personality and a brilliant intellect.

At age 48, Judge Vasquez is one of the youngest judges in the judiciary. The path that was drawn for him in Biñan, and through the University of the Philippines and Department of Justice, keeps extending towards higher and higher responsibilities.

RULES OF THE ELECTORAL . . . (*Continued from page 351*)

be previously decided in consultation, the presiding officer shall act only after the matter has been voted upon.

RULE XVI
DECISIONS

SECTION 1. In deciding contests, the Electoral Tribunal shall follow the procedure prescribed for the Supreme Court in sections 11 and 12, Article VIII of the Constitution of the Philippines, and allow any member of the Tribunal, after a matter has been deliberated upon and vote taken, a period not to exceed ten days from the date the decision is signed by the majority within which to present a dissenting opinion, if so desires. His failure to do so within the period above stated, will authorize the Tribunal to promulgate the said decision, without prejudice to any member filing any dissenting opinion subsequent to the promulgation.

SEC. 2. The decisions of the Electoral Tribunal shall become final ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegram. No motion shall be entertained for the reopening of a case except for the reconsideration of a decision under the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon and received by the adverse party within ten days after promulgation, who shall answer it within five days after the receipt thereof.

SEC. 3. As soon as a decision becomes final, notice thereof shall be sent to the Secretary of the House of Representatives, the President of the Phliippines, and the Auditor General. The originals of the decisions of the Electoral Tribunal shall be kept in bound form in the files of the Tribunal. Decisions shall be published in the Official Gazette and printed like the decisions of the Supreme Court.

RULE XVII
SUPPLEMENTARY RULES

SECTION 1. In so far as they may be applicable and are not inconsistent with these rules and with the orders, resolutions and decisions of the Electoral Tribunal, the following shall be in force as supplementary rules of its proceedings namely:

(a) The Rules of Court in the Philippines; and

(b) The decisions of the Supreme Court and the Rules of the Courts of Justice.

RULE XVIII
EFFECTIVITY

SECTION 1. These Rules shall take effect upon its approval and, notwithstanding the periodic dissolution of the Electoral Tribunal, shall be operative until amended or substituted by a newly constituted Electoral Tribunal.

Adopted, February 14, 1958.

Lawyers *Directory*

In view of the present difficulty of locating the office of practicing attorneys, the Journal publishes this directory to acquaint not only their clients but also the public of their address. Lawyers may avail themselves of this service upon payment of Two Pesos for each issue of this publication or Six Pesos for one year—12 issues—payable in advance.

ALMACEN, VICENTE RAUL LAW OFFICES
Suite 806 Mannattan Bldg.,
418 Nueva St., Manila
Residence: Tels. 7-22-58, 4-32-41
Office: Tel. 4-75-81 Local — 16

ANTONIO, ROMAN B.
R-420 Roman Santos Bldg.
Plaza Goiti Manila
Off. Tels. 3-91-80
3-64-49
Res. Tel. 2-46-36

ARANAS, JOSE
R-301 Bank of the Phil. Island Bldg.
Plaza Cervantes, Manila
Tels.: 3-69-55
3-87-49

ARTURO A. ALAFRIZ & ASSOCIATES
Attorneys & Counsellors at Law
Suite 406-408 Regina Bldg.
Escolta, Manila
Tels.: 3-33-38
3-48-57

ASA. LEON L.
Francisco Law Offices
R-201 Samanillo Bldg.
Escolta, Manila
Tel. 3-33-64

BERNALDO, RICARDO MAG.
Asst. Attorneys:
Leonardo S. Balan
Ramon N. Bernaldo
Suite 303 Cu Unjieng Bldg.
208 Dasmariñas, Manila
Residence: Aurora Blvd. corner Leonor
Rivera, Sta. Cruz, Manila

BUENDIA, JIMENEZ B.
Office: Suite 303, Samanillo Bldg
Escolta, Manila
Tel. 3-94-54
Residence: 2416 Radium St., Manila
Tel. 5-32-49

CHIPECO & ALETA LAW OFFICES
Suite 404 FCI Building
416 Dasmariñas, Manila
Tel. 3-44-46
Govt. 22-02-80

FERNANDEZ, ESTANISLAO
R-420 Roman Santos Bldg.
Plaza Goiti, Manila
Tels. 3-91-80
3 64-49

FRANCISCO, ALBERTO J.
R-201 Samanillo Building
Escolta, Manila
Tel. 3-33-64

FRANCISCO, RICARDO J.
R-201 Samanillo Building
Escolta, Manila
Tel. 3-33-64

FRANCISCO, RODOLFO J.
R-201 Samanillo Building
Escolta, Manila
Tel. 3-33-64

FRANCISCO, VICENTE J.
R-201 Samanillo Building
Escolta, Manila
Tel. 3-33-64
3-83-58

GARCIA, BIENVENIDO L.
210 Calvo Bldg.
Escolta, Manila
Tel. 3-68-33

GONZALES, RAFAEL CASTILLO
259 Sta. Teresita, Sampaloc
Manila
Tel. 6-80-94

GUTIERREZ, VALENTIN C.
Rms. 409-411 Borja Bldg
641 Rizal Ave., Manila
Tel. 3-71-97

GUZMAN, DOMINGO F. DE
Suite 312 FCI Bldg.
416 Dasmariñas St.
Manila
Tel. 3-45-51

GUZMAN, PRUDENCIO DE, SR.
BENITO, JUSTINO Z.
GUZMAN, PRUDENCIO DE, JR.
R-204 Leyba Bldg.
381 Dasmariñas, Manila
Tel. No. 3-21-79

IBAÑEZ, BENEDICTO T.
Rm. 420 Republic Super Market
Rizal Avenue, Manila
Tel. No. 4-33-84

JORDAN TECHICO LAW OFFICES
Associates: Casimiro S. Pe
Judge L. J. Mancenido
Suite 201-202 Ban Chuan Bldg.,
614 T. Pinpin
Corner Ongpin, Manila
Tel. 2-87-24
Res.: 1387 E. de los Santos
Caloocan, Rizal
Tel. 2-38-75

LEON O. TY, OLIVER BANAYO GESMUNDO, VEDASTO B. GESMUNDO, BAYANI MA. RINC & ROSEL E. RAMOS—c/o Confederation of Citizens Labor Union (CCLU) Rm. 303 Free Press Bldg., 708 Rizal Ave., Manila, Tel. 3-88-71, 2-29-37. Branch Office: 5 Rizal Ave., San Pablo City (c/o Federation of Coconut Workers (San Pablo City Chapter) — CCLU)

LORENZO J. LIWAG LAW OFFICE
Suite 302 Free Press Bldg.
708 Rizal Avenue, Manila

MENDIOLA, MARCIAL G.
S-203 Quinpo Building
758 Hidalgo, Plaza Miranda
M a n i l a
Tel. 3-73-88

MORALES, ERNESTO T.
424 Singson Building
Plaza Moraga, Manila
Tels 3-52-86 & 4-25-65
Res. 1921 Dakota, Malate, Manila
Tel. 5-25-34

OLIVEROS LAW OFFICE
Teotimo T. Oliveros
845 Geronimo St.
Sampaloc, Manila
Tel. 6-41-15

REYES, MARIO RAMOS
716 Roman Santos Bldg.
Plaza Goiti, Manila
Tels.: 22-0196, 3-90-60 & 3-24-65

RIEL, TEODORO T.
Res. 12 Vancouver Street
Cubao, Quezon City
Tel. 7-41-23
Office Tel. 07-50-80

T. AYSON ROSARIO
Office: Rm. 217 Great Eastern Hotel Bldg.
Echague, Manila
Tel. 3-30-70
Residence: 243 Roosevelt Avenue
San Francisco del Monte
Quezon City
Tel. 7-85-32

ROXAS, RUBEN L.
202 Calvo Bldg.
Escolta, Manila
Tel. 3-56-08

SAN JUAN, AFRICA & BENEDICTO
LAW OFFICES
480 Padre Faura, Ermita, Manila
Tels.: 5-70-72 & 5-70-75

SANTOS, JOSE T. DE LOS
SANTOS, CIRIACO T. DE LOS
SANTOS, JOAQUIN T. DE LOS
2nd Floor EMA Bldg. No. III
Quiapo, Manila
Tel. 3-34-49

SAYSON, CIRIACO C.
Office: R-506 Burke Bldg.
Escolta, Manila
Tel. 3-58-10
Residence: 58 San Antonio
San Francisco del Monte
Quezon City

SYCIP, SALAZAR & ASSOCIATES
6th Floor, Trade and Commerce Bldg.
215 Juan Luna, Manila
Tels. 2-60-36, 2-60-37 & 2-69-68

SYQUIA LAW OFFICE
ENRIQUE P. SYQUIA
Andres L. Baltazar
Conrado O. Villanueva, Jr.
Jose J. Ferrer, Jr.
Rms. 324 & 326 Samanillo Bldg.
Escolta, Manila
Tels. 3-77-52 & 4-19-70

EMERENCIANA S. PACHECO-TIGLAO
2441-B San Anton, Manila
Tel. 3-85-29

VALMONTE, LEONARDO P.
Office: Francisco Law Offices
R-201 Samanillo Building
Escolta, Manila
Res.: 2380-C Pennsylvania
Malate, Manila
Tel. 5-56-12

Compliments of

The refreshment of friendship