Another thing: whereas defendants' land is served by Reparo Street, the Victoneta Inc. lot does not enjoy that advantage (Exh. 3).

But most significant is the admitted fact that one-third of defendants' land has permanent improvements, made by the U. S. Army, consisting of good paved roads, playgrounds, water system, sewerage, and general levelling of the land suitable for residential lots (p. 214 Record on Appeal) together with electric installations and buildings (p. 206 Record on Appeal).

Considering the above circumstances, in relation to the price of ₱2.50 paid for the Manila Golf Club by J. M. Tuason & Co., we do not feel justified to declare that the price of ₱1.50 is excessive. Neither is it too low. Two defendants, at least, admitted it was just and reasonable (p. 274 Record on Appeal).

Wherefore, on the question of just compensation, the trial judge's assessment has to be approved.

Yet there is one point on which defendants' appeal should be heeded. The Government deposited ₱20,850 and entered the premises by virtue of a court order, under Act No. 2826. The Rural Progress Administration took possession on or about Jan. 25, 1947. Defendants lost the control and use of their property as of that date. Their counsel now claim legal interest on the amount of compensation; and the plaintiff agrees, as it has to. In Philippine Railway v. Solon 13 Phil. 34 we held that in condemnation proceedings "the owner of the land is entitled to interest, on the amount awarded, from the time the plaintiff takes possession of the property."

Another assignment of error of the defendants is that the lower court failed to make the plaintiff pay the costs. The plaintiff appellee acknowledges this, in view of section 13, Rule 69. The last part of the section is not applicable, because the plaintiff appealed and lost.

Wherefore the decision of the court *a quo* will be affirmed as to the value to be paid by the plaintiff for the expropriated land. It is of course understood that the money already deposited and taken by defendants should be discounted. Said decision, however, will be modified by awarding interest to defendants at six per cent from Jan. 25, 1947 until the date of payment. Costs will be chargeable to the plaintiff. So ordered

Paras, Pablo, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, J.J.* concur.

III

Ex-Meralco Employees Transportation Co., Inc., Petitioner-Appellant, vs. Republic of the Philippines, Respondent-Appellee. G. R. No. L-5953, May 26, 1954, Jugo, J.

MASTER AND SERVANT; MASTER'S LIABILITY FOR DAMAGES CAUSED BY HIS SERVANT IS DIRECT AND NOT SUBSIDIARY. — The liability of a master for damages caused by his employee or agent in a business enterprise is primary and direct and not subsidiary. Subsidiary liability of the employer takes place only when the action is brought under the provisions of the Revised Penal Code.

DECISION

JUGO, *J.*:

On July 26, 1951, the Republic of the Philippines, represented by the Solicitor General, filed in the Municipal Court of the City of Manila (Civil Case No. 16716 of said court), a complaint against the corporation, known as Ex-Meralco Employees Transportation Company, Inc., for the recovery of damages in the sum of ₱1,332.17, alleging that:

" x x x the plaintiff is the owner of a Ford Service Truck bearing Plate No. T.P.I.—875 assigned for the use of one of its instrumentalities, the Bureau of Telecommunications, Manila;

"That on January 10, 1951, while plaintiff's service truck was at full stop near a safety island in the middle of España Boulevard, it was bumped by a passenger truck bearing Plate No. T.P.U.—5112 belonging to and operated by the defendant corporation and driven by defendant's employee one 'Pakia Adona' who fled immediately after the collision."

The defendant corporation filed the following answer:

"What actually happened was that while the defendant's bus was heading toward Quiapo along the España Avenue, all of a sudden, the plaintiff's service truck, without making any sign on the part of its driver, unexpectedly, and instantly swerved to the left toward the front of defendant's bus for a U turn at the safety island at the intersection of España and Miguelin streets, without first taking necessary precaution, and violating thru street traffic rules and disregarding the stream of vehicles flowing along the thru España street or avenue, so sudden and swift and without clear distance that to evade the collision was physically and materially impossible on the part of the defendant's driver, although the latter tried to evade it, in vain, by immediately applying the brakes and at the same time swerving to the left as to swerve it to the right was impossible and fatal to the plaintiff's truck, so that the collision was absolutely due to the fault, recklessness, and omission of thru street traffic rules on the part solely of the plaintiff's driver, and without any fault on the part of the driver of the defendant; and defendant's driver fled due to threat of bodily harm shown by plaintiff's personnel on the spot."

On the date set for the trial, the defendant's (herein petitioner's) counsel objected to the trial because, as he alleged, there were sufficient ground for the dismissal of the complaint. On January 16, 1952, he filed a formal motion to dismiss on the ground that "the plaintiff's complaint was without any cause of action as the driver concerned had not as yet been adjudged liable for the damages, if any, complained of." The motion was denied.

The defendant (Petitioner herein) filed in the Court of First Instance of Manila a petition for certiorari and preliminary injunction, praying said court to annul the order of the municipal court denying the dismissal of the case for the reason that the latter acted in excess or abuse of discretion.

The Court of First Instance denied the petition for certiorari in the following language:

" x x x The facts alleged by the petitioner in its petition, and admitted by the respondents in their answer, cannot be the basis for the issuance of a writ of certiorari against the respondents, as prayed for by the petitioner, because it is within the power and jurisdiction of the respondent Judge to hear and decide Civil Case No. 16716 of the Municipal Court of the City of Manila, and that the said respondent Judge committed no abuse of discretion or excess of jurisdiction in denying petitioner's motion for the dismissal of said case."

The above order of the Court of First Instance is correct. The remedy of the petitioner should be a regular appeal filed in due time to the Court of First Instance. The ground that the complaint did not state facts sufficient to constitute a cause of action is not jurisdictional. The allegation that a criminal information should have been filed previously against the driver is, besides not being jurisdictional, untenable for the reason that the liability of a master for damages caused by his employee or agent in a business enterprise is primary and direct and not subsidiary. Subsidiary liability of the employer takes place only when the action

is brought under the provisions of the Revised Penal Code.

In view of the foregoing, the decision appealed from the Court of First Instance is affirmed, with costs against the petitioner.

IT IS SO ORDERED.

Paras, Bengzon, Reyes, Labrador, Pablo, Montemayor, Bautista Angelo and *Concepcion, J.J.*, concur.

IV

Silvestre M. Punsalan, et al., Plaintiffs-Appellants, vs. The Municipal Board of the City of Manila, et al., Defendants-Appellants, G. R. No. L-4817, May 26, 1954, Reyes, J.

1. TAXATION; LEGISLATIVE DEPARTMENT DETERMINES WHAT ENTITIES SHOULD BE EMPOWERED TO IMPOSE OCCUPATION TAX.—It is not for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it.

2. ID.; DOUBLE TAXATION.—There is no double taxation where one tax is imposed by the state and the other is imposed by the city, it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof. (Citing 1 Cooley on Taxation, 4th ed., p. 492 and 51 Am Jur., 341.)

Calanog and *Alafriz* for the plaintiffs and appellants.
City Fiscal Eugenio Angeles and *Assistant Fiscal Eulogio S. Serrano* for the defendants and appellants

DECISION

REYES, *J.*:

This suit was commenced in the Court of First Instance of Manila by two lawyers, a medical practitioner, a public accountant, a dental surgeon and a pharmacist, purportedly "in their own behalf and in behalf of other professionals practicing in the city of Manila who may desire to join it." Object of the suit is the annulment of Ordinance No. 3398 of the city of Manila together with the provision of the Manila charter authorizing it and the refund of taxes collected under the ordinance but paid under protest.

The ordinance in question, which was approved by the municipal board of the city of Manila on July 25, 1950, imposes a municipal occupation tax on persons exercising various professions in the city and penalizes non-payment of the tax "by a fine of not more than two hundred pesos or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court." Among the professions taxed were those to which plaintiffs belong. The ordinance was enacted pursuant to paragraph (1) of section 18 of the Revised Charter of the city of Manila (as amended by Republic Act No. 409), which empowers the Municipal Board of said city to impose a municipal occupation tax, not to exceed ₱50.00 *per annum*, on persons engaged in the various professions above referred to.

Having already paid their occupation tax under section 201 of the National Internal Revenue Code, plaintiffs, upon being required to pay the additional tax prescribed in the ordinance, paid the same under protest and then brought the present suit for the purpose already stated. The lower court upheld the validity of the provision of law authorizing the enactment of the ordinance but declared the ordinance itself illegal and void on the ground that the penalty therein provided for non-payment of the tax was not legally authorized. From this decision both parties appealed to this Court, and the only question they have presented for our determination is whether this ruling is correct or not, for though the decision is silent on the refund of taxes paid plaintiffs make no assignment of error on this point.

To begin with defendants' appeal, we find that the lower court was in error in saying that the imposition of the penalty provided for in the ordinance was without the authority of law. The last paragraph (kk) of the very section that authorizes the enactment of this tax ordinance (section 18 of the Manila Charter) in express terms also empowers the Municipal Board *"to fix penalties for the violation of ordinances which shall not exceed to (sic) two hundred pesos fine or six months' imprisonment, or both such fine and imprisonment, for a single offense."* Hence, the pronouncement below that the ordinance in question is illegal and void because it imposes a penalty not authorized by law is clearly without basis.

As to plaintiffs' appeal, the contention in substance is that this ordinance and the law authorizing it constitute class legislation, are unjust and oppressive, and authorize what amounts to double taxation.

In raising the hue and cry of "class legislation," the burden of plaintiffs' complaint is not that the professions to which they respectively belong have been singled out for the imposition of this municipal occupation tax; and in any event, the Legislature may, in its discretion, select what occupations shall be taxed, and in the exercise of that discretion it may tax all, or it may select for taxation certain classes and leave the others untaxed. (Cooley on Taxation, Vol. 4, 4th ed., pp. 3393-3395.) Plaintiffs' complaint is that while the law has authorized the city of Manila to impose the said tax, it has withheld that authority from other chartered cities, not to mention municipalities. We do not think it is for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it. Moreover, as the seat of the National Government and with a population and volume of trade many times that of any other Philippine city or municipality, Manila, no doubt, offers a more lucrative field for the practice of the professions, so that it is but fair that the professionals in Manila be made to pay a higher occupation tax than their brethren in the provinces.

Plaintiffs brand the ordinance unjust and oppressive because they say that it creates discrimination within a class in that while professionals with offices in Manila have to pay the tax, outsiders who have no offices in the city but practice their profession therein are not subject to the tax. Plaintiffs make a distinction that is not found in the ordinance. The ordinance imposes the tax upon every person "exercising" or "pursuing" — in the city of Manila naturally — anyone of the occupations named, but does not say that such person must have his office in Manila. What constitutes exercise or pursuit of a profession in the city is a matter for judicial determination.

The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city (1 Cooley on Taxation, 4th ed., p. 492), it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof. (51 Am. Jur., 341.)

In view of the foregoing, the judgment appealed from is reversed in so far as it declares Ordinance No. 3398 of the city of Manila illegal and void and affirmed in so far as it upholds the validity of the provision of the Manila charter authorizing it. With costs against plaintiffs-appellants.

Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador and *Concepcion, JJ.*, concur.
Padilla, J., did not take part.