I

Andres Pitargue, plaintiff-appellee, vs. Leandro Sorilla, defendant-appellant, G. R. L-4302, September 17, 1952, Labrador, J.

1. POSSESSORY ACTION; FORCIBLE ENTRY AND DETAINER; RECOVERY OF POSSESSION OF REAL PROPERTY.— Under the Civil Code, either in the old, which was in force in this country before the American occupation, or in the new, we have a possessory action, the aim and purpose of which is the recovery of the physical possession of real property, irrespective of the question as to who has the title thereto.

2. PUBLIC LANDS; COURTS; JURISDICTION OF COURTS OVER POSSESSORY ACTIONS.— The vesting of the Lands Department with authority to administer, dispose, and alienate public lands must not be understood as depriving the other branches of the Government of the exercise of their respective functions or powers thereon, such as the authority to stop disorders and quell breaches of the peace by the police, and the authority on the part of the courts to take jurisdiction over possessory actions arising therefrom not involving, directly or indirectly, alienation and disposition.

3. ID.; ID.; PREJUDICIAL INTERFERENCE; DISPOSITION OR ALIENATION OF PUBLIC LANDS.— The determination of the respective rights of rival claimants to public lands is different from the determination of who has the actual physical possession or occupation with a view to protecting the same and preventing disorder and breaches of the peace. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, can never be "prejudicial interference" with the disposition or alienation of public lands.

4. FORCIBLE ENTRY AND UNLAWFUL DETAINER; NATURE OF ACTION OF FORCIBLE ENTRY.— The action of forcible entry is a summary and expeditious remedy whereby one in peaceful and quiet possession may recover the possession of which he has been deprived by a stronger hand, by violence or terror. its ultimate object being to prevent breach of the peace and criminal disorder. The basis of the remedy is mere possession as a fact, of physical possession, not a legal possession. The title or right to possession is never in issue in an action of forcible entry; as a matter of fact, evidence hereof is expressly banned, except to prove the nature of the possession.

5. PUBLIC LANDS; COURTS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; JURISDICTION OF COURTS OVER FORCIBLE ENTRY AND UNLAWFUL DETAINER NOT AN INTERFERENCE WITH ALIENATION OF PUBLIC LANDS.— The grant of power and duty to the Lands Department to alienate and dispose of public lands does not divest the courts of their duty or power to take cognizance of actions instituted by settlers or occupants or applicants against others to protect their respective possessions and occupations, more especially the actions of trespass, forcible entry and unlawful detainer, and the exercise of such jurisdiction is no interference with the alienation, disposition, and control of public lands.

6. ID.; ID; ID.; RIGHTS OF APPLICANT FOR PUBLIC LANDS PROTECTED BY POSSESSORY ACTION OF FORCIBLE ENTRY.— Even pending the investigation of, and resolution on, an application for a public lands by a *bona fide* occupant, by the priority of his application and record of his entry, he acquires a right to the possession of the public land he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by any other suitable remedy that our rules provide.

7. JUDGMENT; FORCIBLE ENTRY AND UNLAWFUL DETAINER; USURPATION OF REAL PROPERTY; EFFECT OF JUDGMENT IN CRIMINAL CASE UPON CIVIL ACTION.— The dismissal of criminal action for usurpation of real property is not a bar to the filing of an action of forcible entry, for not only are the parties in the criminal action and in the action for forcible entry not identical, but the causes of action involved are also different.

Vicente Fontanosa *for appellant.*

Martin A. Galit, *for appellee.*

DECISION

LABRADOR, J.:

On July 30, 1941, plaintiff-appellee filed a miscellaneous sales application for a parcel of land known as Cadastral Lot No. 2777 situated at Mlang, Kidapawan, Cotabato, and paid a deposit of ₱5.00 therefor (Exhibit F). The Bureau of Lands acknowledged receipt of his application on November 22, 1941 (Exhibit E), and informed that it had been referred to the district land office of Cotabato, Cotabato. Upon receipt of this acknowledgement he started the construction of a small house on the lot, but the same was not finished because of the outbreak of the war. In 1946 he had another house constructed on the lot, which he used both as a clinic (he is a dentist) and as a residence. He introduced other improvements on the land and these, together with the house, he declared for tax purposes (Exhibit B), paying taxes thereon in 1947 and 1948 (Exhibits C and D). He placed one Cacayorin in charge of the house, but Cacayorin left it on December 13, 1948. Thereupon defendant-appellant herein demolished the house and built thereon one of his own. On December 17, 1948, plantiff went to defendant and asked the latter why he had constructed a building on the land, and the latter gave the excuse that there was no sign of interest on the sign of interest on the part of the one who had applied for it.

On March 9, 1949, plaintiff-appellee instituted this action of forcible entry in the Justice of the peace court, praying that defendant be ordered to vacate the lot usurped and remove the construction he had made thereon, with monthly damages at ₱10. Thereupon defendant filed a motion to dismiss the action on two grounds, namely, (1) that the court has no jurisdiction over the subject matter, as the same falls under the exclusive jurisdiction of the Bureau of Lands, and (2) that the action is barred by a prior judgment, because a previous criminal action for usurpation of real property filed by plaintiff against him had been dismissed. The Justice of the peace court denied the motion on the ground that the issue involved is as to who was in the actual possession of the lot in question on December 14, 1948, which issue can be resolved only after presentation of evidence (Record on Appeal, pp. 26-27). Thereupon defendant filed an answer denying plaintiff's possession since 1946, and alleging as special defenses (1) that the lot is an unawarded public land, which is already under investigation by the Bureau of Lands, and (2) that defendant was already acquitted of a criminal charge filed by plaintiff against him for usurpation of real property. By way of counterclaim he

demanded ₱2,800 from plaintiff (Record on Appeal, pp. 27-33). On June 4, 1949, the Justice of the peace court declared itself without jurisdiction to try the case for the reason that the subject matter of the action is the subject of an administrative investigation (Ibid., p. 39). Against this judgment plaintiff appealed to the Court of First Instance. At first this court refused to take cognizance of the case, but upon the authority of the case of Mago vs. Bihag, 44 O.G. (12) 4934, decided by the Court of Appeals, it proceeded to try the case on the merits. After trial it found the facts already set forth above, and sentence the defendant to vacate the land and indemnify the plaintiff in the sum of ₱100, with costs. Against this judgment this appeal has been presented, the defendant-appellant making the following assignments of error in his brief:

1. The lower Court erred in trying the case when the land involved is a public land and jurisdicton of which belong to the Land Department of the Philippines.

2. The lower Court erred in trying the case when prior to the commencement of this action an administrative case was (is) pending between the parties over the same land in the Bureau of Lands and, as such, the latter has acquired first jurisdiction over the subject-matter of the action.

3. The lower Court erred in trying the case when the cause of this action is barred by a prior judgment.

4. The lower Court erred in trying the case and rendering a decision on the merits when its duty after it had determined that the Justice of the Peace Court has jurisdiction is to reverse the order of dismissal of the inferior court and remand to it for further proceedings.

Under the facts and circumstances of the case the question now before us is as follows: Do courts have jurisdiction to entertain an action of forcible entry instituted by a *bona fide* applicant of public land, who is in occupation and peaceful possession thereof and who has introduced improvements, against one who deprives him of the possession thereof before award and pending investigation of the application? Defendant-appellant contends that as the administrative disposition and control of public lands is vested exclusively in the Lands Department, cognizance of the forcible entry action or of any possessory action constitutes a "prejudicial interference" with the said administrative functions, because there is an administrative case pending in the Bureau of Lands between the same parties over the same land. The record contains a certificate of a lands inspector the effect that the investigation of the conflict between plaintiff-appellee herein and the defendant-appellant has been suspended because of the trial of the criminal case for usurpation filed by plaintiff against defendant-appellant. (See Record on Appeal, pp. 25-26.) We note from the certificate, however, that while plaintiff's application is registered as MSA 9917, defendant-appellant does not appear to have made any formal application at all.

It must be made clear at the outset that this case does not involve a situation where the Bureau of Lands has already made an award of, or authorized and entry into, the public land. It is purely a possessory action by a *bona fide* applicant who has occupied the land he has applied for before the outbreak of the war under the ostensible authority of his application, which was given due course for investigation, but as to which no approval has been given because investigation has not yet been finished.

An ideal situation in the dispository of public lands would be one wherein these alienable and disposable are yet unoccupied and are delivered to the applicants upon the approval of their application, free from other occupants or claimants. But the situation in the country has invariably been the opposite; lands are occupied without being applied for, or before the applications are approved. In fact, the approval of applications often takes place many years after the occupation began or the application was filed, so that many other applicants or claimants have entered the land in the meantime, provoking conflicts and overlapping of applications. For some reason or other the Lands Department has been unable to cope with the ever increasing avalanche of application, or of conflicts and contests between rival applicants and claimants.

The question that is before this Count is: Are courts without jurisdiction to take cognizance of possessory actions involving these public lands before final award is made by the Lands Department, and before title is given any of the conflicting claimants? It is one of utmost importance, as there are public lands everywhere and there are thousands of settlers, especially in newly opened regions. It also involves a matter of policy, as it requires the determination of the respective authorities and functions of two coordinate branches of the Government in connection with public land conflicts.

Our problem is made simple by the fact that under the Civil Code, either in the old, which was in force in this country before the American occupation, or in the new, we have a possessory action, the aim and purpose of which is the recovery of the physical possession of real property, irrespective of the question as to who has the title thereto. Under the Spanish Civil Code we had the *accion interdictal*, a summary proceeding which could be brought within one year from dispossession (Roman Catholic Bishop of Cebu vs. Mangaron, 6 Phil. 286, 291); and as early as October 1, 1901, upon the enactment of the Code of Civil Procedure (Act No. 190 of the Philippine Commission) we implanted the common law action of forcible entry (Section 80 of Act No. 190), the object of which has been stated by this Court to be "to prevent breaches of the peace and criminal disorder which ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to these persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims." (Supia and Batioco vs. Quintero and Ayala, 59 Phil. 312, 314. So before Act (Act No. 926) the action of forcible entry was already available in the courts of the country. So the question to be resolved is, Did the Legistature intend, when it vested the power and authority to alienate and dispose of the public lands in the Lands Department, to exclude the courts from entertaining the possessory action of forcible entry between rival claimants or occupants of any land before award thereof to any of the parties? Did Congress intend that the lands applied for, or all public lands for that matter, be removed from the jurisdiction of the Judicial Branch of the Government, so that any troubles arising therefrom, or any branches of the peace or disorders caused by rival claimants, could be inquired into only by the Lands Department to the exclusion of the courts? The answer to this question seems to us evident. The Lands Department does not have the means to police public lands; neither does it have the means to prevent disorders arising therefrom, or contain breaches of the peace among settlers; or to pass promptly upon conflicts of possession. Then its power is clearly limited to *disposition and alienation*, and while it may decide conflicts of possession in order to make proper award, the settlement of conflicts of possession which is recognized in the courts herein has another ultimate purpose, i.e., the protection of actual possessors and occupants with a view to the prevention of breaches of the peace. The power to dispose and alienate could not have been intended to include the power to prevent or settle disorders or breaches of the peace among rival settlers

or claimants prior to the final award. As to this, therefore, the corresponding branches of the Government must continue to exercise power and jurisdiction within the limits of their respective functions. The vesting of the Lands Department with authority to administer, dispose, and alienate public lands, therefore, must not be understood as depriving the other branches of the Government of the exercise of their respective functions or powers thereon, such as the authority to stop disorders and quell breaches of the peace by the police, and the authority on the part of the courts to take jurisdiction over possessory actions arising therefrom not involving, directly or indirectly, alienation and disposition.

Our attention has been called to a principle enunciated in American courts to the effect that courts have no jurisdiction to determine the rights of claimants to public lands, and that until the disposition of the land has passed from the control of the Federal Government, the courts will not interfere with the administration of matters concerning the same. (50 C. J. L-4931094.) We have no quarrel with this principle. The determination of the respective rights of rival claimants to public lands is different from the determination of who has the actual physical possession or occupation with a view to protecting the same and preventing disorder and breaches of the peace. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, can never be "prejudicial interference" with the disposition or alienation of public lands. On the other hand, if courts were deprived of jurisdiction of cases involving conflicts of possession, the threat of judicial action against breaches of the peace committed on public lands would be eliminated, and a state of lawlessness would probably be produced between applicants, occupants or squatters, where force or might, not right or justice, would rule.

It must be borne in mind that the action that would be used to solve conflicts of possession between rivals or conflicting applicants or claimants would be no other than that of forcible entry. This action, both in England and the United States and in our jurisdiction, is a summary and expeditious remedy whereby one in peaceful and quiet possession may recover the possession of which he has been deprived by a stronger hand, by violence or terror; its ultimate object being to prevent breach of the peace and criminal disorder. (Supia and Batiaco vs. Quintero and Ayala, 59 Phil. 312, 314.) The basis of the remedy is mere possession as *a fact* of physical possession, not a legal possession. (Mediran vs. Villanueva, 37 Phil. 752.) The title or right to possession is never in issue in an action of forcible entry; as a matter of fact, evidence thereof is expressly banned, except to prove the nature of the possession. (Section 4, Rule 72, Rules of Court.) With this nature of the action in mind, by no stretch of the imagination can the conclusion be arrived at that the use of the remedy in the courts of justice would constitute an interference with the alienation, disposition, and control of public lands. To limit ourselves to the case at bar, can it be pretended at all that its result would in any way interfere with the manner of the alienation or disposition of the land contested? On the contrary, it would facilitate adjudication, for the question of priority of possession having been decided in a final manner by the courts, said question need no longer waste the time of the land officers making the adjudication or award.

The original Public Land Law (Act 926) was drafted and passed by a Commission composed mostly of Americans, and as the United States has had its vast public lands and as the United States has had its vast public lands and has had the same problems as we now have, involving their settlement and occupation, it is reasonable to assume that it was their intention to introduce into the country these laws in relation to our problems of land settlement and disposition. The problem now brought before us was presented in an analogous case in the year 1894 before the Supreme Court of Oklahoma in the case of Spreat v. Durland, 2 Okl. 24, 35 Pac. 682, and said court made practically the same solution as we have, thus:

> x x x. This question is one of vital importance in Oklahoma. All our lands are entered, and title procured therefor, under the homestead laws of the United States. The question arising out of averse possession, as between homestead claimants, daily confronts our courts. To say that no relief can be granted, or that our courts are powerless to do justice between litigants in this class of cases, pending the settlement of title in the land department, would be the announcement of a doctrine abhorrent to a sense of common justice. It would encourage the strong to override the weak, would place a premium upon greed and the use of force, and, in many instances, lead to bloodshed and crime. Such a state of affairs is to be avoided, and the courts should not hesitate to invoke the powers inherent in them, and lend their aid, in every way possible, to prevent injustice, by preventing encroachments upon the possessory rights of settlers, or by equitably adjusting their differences. In the case under consideration, no adequate remedy at law is provided for relief. Ejectment will not lie. Adams v. Couch, 1 Okl. 17, 26 Pac. 1009. And, at the time this proceeding was instituted, the forcible entry and detainer act was insufficient in its provisions to afford a remedy. The appellee was entitled to speed relief, and ought not to be compelled to wait the final and tedious result of the litigation in the interior department, before obtaining that which he clearly shows himself entitled to have.

That action of forcible entry was then deemed insufficient in that state to prevent acts of trespass interfering with an applicant's possession, so that the court ordered the issuance of an injunction. The main issue involved, however, was whether pending final investigation and award the occupant should be protected in his possession, and the Supreme Court of Oklahoma said it should, issuing an injunction to protect said possession.

The same conclusion was arrived at by the Supreme Court of Washington in the case of Colwell v. Smith, 1 Wash. T. 92, 94, when it held:

> We will not decide between two conflicting claimants, both of whom are actually in possession of certain portions of the claim in dispute, who is in the right, so far as to dispossess one or the other from the entire claim, which would render it impossible for him to prove that residence the law requires, and thus contest his claim before the register and receiver; we can and must protect either party from trespass by the other, upon such portion of the claim as may be in the actual exclusive possession of such party.

Resuming the considerations we have set forth above, we hold that the great of power and duty to the Lands Department to alienate and dispose of public lands does not divest the courts of their duty or power to take cognizance of actions instituted by settlers or occupants or applicants against others to protect their respective possessions and occupations, more especially the actions of trespass, forcible entry and unlawful detainer, and that the exercise of such jurisdiction is no interference with the alienation, disposition, and control of public lands. The question we have proposed to consider must be answered in the affirmative.

Our resolution above set forth answers defendant-appellant's contention. We have, however, to go further and explore another fundamental question, i.e., whe-

ther a public land applicant, such as the plaintiff-appellee herein, may be considered as having any right to the land occupied, which may entitle him to sue in the courts of justice for a remedy for the return of the possession hereof, such as an action of forcible entry or unlawful detainer, or any other suitable remedy provided by law. In the United States a claim "is initiated by an entry of the land, which is effectual by making an application at the proper land office, filing the affidavit and paying the amounts required by x x x the Revised Statutes. (Sturr v. Beck, 133 U.S. 541, 10 S. Ct. 350, 33 L. Ed. 761.) "Entry" as applied to appropriation of land, "means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim." (Ibid., citing Chotard v. Pope, 25 U.S. 12 Wheat, 586, 588.) It has been held that entry based upon priority in the initiatory steps, even if not accompanied by occupation, may be recognized as against another applicant.

In Hasting & Dakota R. Co. v. Whitney, ubi supra, an affidavit for the purpose of entering land as a homestead was filed on behalf of one Turner, in a local land office in Minnesota, on May 8, 1865. Turner claiming to act under section 1 of the Act of March 21, 1864 (13 Stat.. 35), now section 2293 of the Revised Statutes of the United States. As a matter of fact, Turner was never on the land, and no member of his family was then residing, or ever did reside, on it, and no improvements whatever had ever been made thereon by anyone. Upon being paid their fees, the register and receiver of the land office allowed the entry, and the same stood upon the records of the local land office. and upon the records of the General Land Office, uncancelled, until September 30, 1872. Between May, 1865, and September, 1872, Congress made a grant to the State of Minnesota for the purpose of aiding in the construction of a railroad from Hastings, through certain countries, to a point on the western boundary of the State, which grant was accepted by the Legislature of the State of Minnesota and transferred to the Hastings and Dakota Railroad Company, which shortly thereafter definitely located its line of road by filing its map in the office of the commissioner of the General Land Office. All these proceedings occured prior to the 30th of September, 1872. This court declared that the almost uniform practice of the Department has been to regard land upon which an entry of record, valid upon its face, has been made, as appropriated and withdrawn from subsequent homestead entry, pre-emption, settlement, sale or grant, until the original entry be cancelled or be declared forfeited, in which case the land reverts to the government as part of the public domain, and because again subject to entry under the Land Laws; and it was held that whatever defects there might be in an entry, so long as it remained a subsisting entry of record, whose legality had been passed upon by the land authorities and their action remained unreversed, it was such an appropriation of the tract as segregated it from the public domain, and therefore precluded it from subsequent grant; and that this entry on behalf of Turner "attached to the land" in question, with the meaning of the Act of Congress making the grant (14 Stat. 87), and could not be included within it. And as to mere settlement with the intention of obtaining title under the pre-emption Law, while it has been held that no vested right in the land as against the United States is acquired until all the prerequisites for the acquisition of title have been complied with, yet rights in parties as against each other were fully recognized as existing, based upon priority in the initiatory steps, when followed up to a patent. "The patent which is afterwards issued relates back to the date of the initiatory act, and cuts off all intervening claimants." Shepley v. Cowan, 91 U.S. 330, 337 (23:424, 426).

There are compelling reasons of policy supporting the recognition of a right in a *bona fide* applicant who has *occupied* the land applied for. Recognition of the right encourages actual settlement; it discourages speculation and land-grabbing. It is in accord with well established practices in the United States. It prevents conflicts and the overlapping of claims. It is an act of simple justice to the enterprise and diligence of the pioneer, without which land settlement can not be encouraged or emigration from thickly populated areas hastened.

Our answer to the second problem is also in the affirmative, and we hold that even pending the investigation of, and resolution on, an application by a *bona fide* occupant, such as plaintiff-appellee herein, by the priority of his application and record of his entry, he acquires a right to the possession of the public land he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by any other suitable remedy that our rules provide.

Having disposed of the most important questions raised on this appeal, we will next consider the procedural question, i.e., that the Court of First Instance, after deciding the question of jurisdiction of the justice of the peace favorably, should have remanded the case to that court for trial. The record discloses that upon the docketing of the case in the Court of First Instance on appeal, defendant-appellant filed a motion to dismiss which the Court of First Instance granted. However, upon motion for reconsideration filed by plaintiff, the trial court vacated this order of dismissal, and thereupon the defendant presented his answer. There was no need of remanding the case to the justice of the peace court for trial, because this court had already heard and tried the case evidently on the merits. The case was, therefore, brought before the Court of First Instance on appeal and for a *new trial*, not only on the question of jurisdiction but on the merits also.

The claim of bar by a prior judgment, because the action for usurpation of real property instituted by plaintiff-appellant was dismissed, can not be sustained, for not only are the parties in the previous criminal action and in this action of forcible entry not identical, but the causes of action involved are also different.

The judgment-appealed from is hereby affirmed, with costs against the appellant.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, and *Bautista Angelo*, concurred.

II

Sta. Mesa Slipways & Engineering Company, Inc., petitioner vs. the Court of Industrial Relations and Macario Tadina, et al., respondent, G. R. No. L-4521, Aug. 18, 1952 Montemayor, J.

1. EMPLOYERS AND EMPLOYEES: DISMISSAL: NOTICE: PAYMENT OF WAGES AT THE END OF EACH WEEK AND ON AN HOURLY BASIS.—Although the laborers were paid at the end of each week and on an hourly basis, it does not mean that there was a fixed term of employment. The basis of salary and period of payment is only for the purpose of computing the amount of wages earned and the time spent. They do not refer to the term or period of employment. Consequently, the contract of employment of such laborers was without a fixed period, and so comes within the purview of the first paragraph of Art. 302, Code of Commerce.

2. ID.; DISMISSAL WITHOUT JUST CAUSE.—The laborers of a company were notified that because of an inventory that was to be made, lasting about two weeks, their work would be suspended and that later they would be recalled. They offered to work after the termination

of the inventory by reason of which their work was suspended, but they were not allowed to continue in their employment. *Held:* Through no fault of the laborers, they were laid off and separated from the company's service. They were for all practical purposes dismissed without just cause.

3. ID.; COMMERCIAL EMPLOYEES.— An employer mainly dedicated in the work of building and repair of vessels and barges is a commercial company, and its employees and laborers, commercial employees.

4. ID.; PAYMENT OF ONE MONTH WAGES UPON SEPARATION FROM SERVICE.— Regardless of whether the laborers are commercial or industrial or business employees, the employers should pay the laborers the equivalent of one month wages upon separation from service without just cause.

5. ID.; COURT OF INDUSTRIAL RELATIONS; JURISDICTIONAL REQUISITES.—In order that the Court of Industrial Relations could acquire jurisdiction over a case, the following requisites or elements must exist: (1) Dispute, industrial or agricultural; (2) that said dispute is causing or likely to cause a strike or lockout; (3) that said dispute arose from the differences as regards wages, dismissals, lay-offs, etc. between employees and employers; and (4) that the number of employees or laborers must exceed thirty.

6. ID.; LOCKOUT; EXISTENCE OF LOCKOUT.— Where the work of the laborers of a company was suspended in order to make proper inventory, and when the laborers returned to work after the inventory, they were prevented from resuming work, there was to them, for all practical purposes, a lockout.

7. ID.; ID.; STRIKE; LOCKOUT AND STRIKE, COMPARED.— The "lockout" alike with the "strike", constitutes a suspension of employees' services, but the distinction is said to arise from the fact that the employer rather than his employees is the doer of the deed of suspension. In both cases, a labor controversy exists, which is deemed intolerable by one of the parties, but the lockout indicates that the employer rather than his employees have brought the matter to issue. Strikes are said statistically to be the rule, which lockouts constitute exceptions, but it is probably impossible to determine with any fair degree of conclusiveness whether the given dispute has been precipitated by a strike or a lockout because one, especially the latter, is many times set in motion in hurried anticipation of the other.

8. ID.; ID.; NATURE OF THE TERM "LOCKOUT".— A "lockout" is a term commonly used to express all employer's act of excluding from his plant union members hitherto employed by him. The act may affect all or less than all of the employee-union members. Lockout, in the sense in which it is universally used, is an act directed at the union itself rather than at the individual employer-members of the union.

9. ID.; ID.; ID.; SHUT-DOWN AND LOCKOUT, DISTINGUISHED.— A "shut-down" differs from a lockout in that in a lockout the plant continues to operate. The employee-union members locked out are replaced by non-union substitutes and the plant continues to function. In a "shut-down" the plant ceases to operate. A shut-down is the willful act of the employer himself, following a complete lockout as contrasted to the compulsory stoppage of operations as a result of a strike and walkout. It can truly be said that all shut-downs are lock-outs, but not all lock-outs constitute or effect shut-downs.

10. ID.; COURT OF INDUSTRIAL RELATIONS; STOPPAGE; RIGHT OF LABORER TO BE HEARD BY COURT OF INDUSTRIAL RELATIONS.—A laborer who was deprived of his work without just cause or the occasion of stoppage of work or temporary cessation of operation has a right to be heard by the Court of Industrial Relations.

11. ID.; ID.; INDUSTRIAL DISPUTES. —The Court of Industrial Relations should take cognizance of industrial disputes arising from a strike or lockout or those that come hereafter because the claim or damage caused to the workers because of their dismissal or lay-off necessarily comes after and not before the strike or lockout.

12. ID.; ID.; SUBSEQUENT REDUCTION OF THE NUMBER OF LABORERS AFFECTED.— Pending proceeding in the Court of Industrial Relations, ten of the thirty-seven petitioning employees or laborers withdrew from the petition because they had amicably settled their differences with the company, thus reducing the number of petitioners from 37 to 27. *Held:* Although during the proceedings in the court below, because of the amicable settlement of the dispute between the petitioner and some of the dismissed laborers, the number of said laborers was reduced to 27, this reduction below 31 as required by law did not affect the jurisdiction of the industrial court. Once the Court of Industrial Relations has acquired jurisdiction, it retains said jurisdiction until the case is completely decided, and that the reduction of the number of employees or laborers affected to a point below the number required by law, to invest the jurisdiction of the court at the beginning, or the amicable settlement of some of the demands originally made did not deprive said court of jurisdiction to continue hearing the case and decide it.

Cirilo R. Tiongson *for petitioner.*

M. A. Ferrer *for respondent Court of Industrial Relation* and Carlos M. Tadina et al.

DECISION

MONTEMAYOR, *J.:*

Petitioner *Sta. Mesa Slipways & Engineering Co., Inc.*, latter to be referred to as the Company, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines mainly dedicated to the construction and repair of vessels and barges. The respondents Macario Tadina, et al., were former laborers of the petitioner who had been employed as carpenters, some of them having worked for several years, under a verbal contract of employment for no fixed or definite period, with wages paid to them every end of the week. On April 26, 1949, a notice was posted at the rate of the compound of petitioner Company to the effect that in order to make the proper inventory, all work would stop on Saturday, April 30, 1949; that the yard would be closed for a period of two weeks or more if necessary and that the laborers would be notified accordingly as to when normal work will be resumed. The notice was signed by the Manager. The [illegible] work did not, however, apply to monthly personnel together with about forty-one laborers and fifteen watchmen who continued working in the compound. At the end of the two-week period of inventory, respondents Tadina and his fellow laborers had all been paid their wages up to the time they were laid off.

Tadina and thirty-six fellow laborers filed an action with the Court of Industrial Relations alleging that they were not given by the Company the one-month notice provided for in Art. 302 of the Code of Commerce and asking that the said Company be ordered to pay them compensation for one month in lieu of said notice. The Company asked for the dismissal of the case on the ground that

the court lacked jurisdiction over it. It also contended that the claim of respondents for a one-month compensation in lieu of notice was not supported by law and had no legal basis because said petitioners (now respondents herein) were all paid on an hourly basis and only for the number of hours of actual work. Pending proceedings in the Court of Industrial Relations, ten of the thirty-seven petitioning employees or laborers withdrew from the petition because they had amicably settled their differences with the Company, thus reducing the number of petitioners from 37 to 27 which is less than the thirty-one (31) contemplated by Commonwealth Act 103. The motion for dismissal was denied and after due hearing and the submission of a partial stipulation of facts, the industrial court decided in favor of the petitioners and ordered the Company to pay them (petitioners) the equivalent of their wages for one month, with legal interest. The company has now filed this petition for certiorari to review that decision of the lower court, presenting the following questions of law:

"1. Is Art. 302 of the Code of Commerce of the Philippines applicable in this particular case?

2. Does the respondent Court of Industrial Relations have jurisdiction to decide and settle this case?

Article 302 of the Code of Commerce reads as follows:

"ART. 302.—In cases in which the contract does not have a fixed period, any of the parties may terminate it, advising the other thereof one month in advance. The factory or shop clerk shall have a right, in this case, to the salary corresponding to said month."

Under the first question of the applicability of Art. 302 of the present case, petitioner contends that the employment of the laborers involved herein was not without a fixed period because they were paid at the end of every week and therefore they may be considered as having been hired by the week, and besides, the amount of payment was based on the number of hours of work performed. A similar question has heretofore been submitted for determination by this Court. In the case of Sanchez, et al. v. Harry Lyons Construction Inc., et al., G. R. No. L-2779, October 18, 1950, where the laborers involved were paid some on a monthly basis such as ₱250 a month while others were paid ₱5.00 a day, it was there contended that Art. 302 of the Code of Commerce did not apply inasmuch as some of the laborers invoking the provisions of said article were paid by the month and others by the day, and that therefore their employment was with a term, the term being temporary or on the monthly or daily basis. The Court there said:

"x x x x. The stated computation or manner of payment, whether monthly or daily, does not represent nor determine a special time of employment. Thus, a commercial employee may be employed for one year and yet receive his salary on the daily or weekly or monthly or other basis.

"Appellants allege that the use of the word 'temporary' in the contracts of services of some of the plaintiffs shows that their employment was with a term, and the term was 'temporary, on a day to day basis.' The record discloses that this conclusion is unwarranted. The contracts simply say — 'you are hereby employed as temporary guard with a compensation at the rate of ₱5.00 a day ....' The word special time fixed in the contracts referred to in Article 302 of the Code of Commerce. The daily basis therein stipulated is for the computation of pay, and is not necessarily the period of employment. Hence, this Court holds that plaintiffs appellants come within the purview of Article 302 of the Code of Commerce."

In the present case, it may also be said that although the laborers were paid at the end of each week and on an hourly basis, it does not mean that there was a fixed term of employment. The basis of salary and period of payment is only for the purpose of computing the amount of wages earned and the time spent. They do not refer to the term or period of employment. Consequently, we hold that the contract of employment of Macario Tadina and his fellow laborers was without a fixed period, and so come within the purview of the first paragraph of Art. 302, Code of Commerce.

Petitioner says that the decision of the Industrial Court does not contain a finding that the respondent laborers were dismissed without just cause and so, their case does not come within the provisions of the second part of Article 302. It is a fact, however, that through no fault of the laborer, they were laid off and separated from the petitioner's service. They offered to work after the termination of the inventory by reason of which their work was suspended, but they were for all practical purposes dismissed without just cause.

Lastly, petitioner contends that Art. 302 is no applicable here because the laborers were not commercial employees so as to warrant the application of the provisions of the Code of Commerce. It cites the case of Juan Arribas vs. Hawaiian-Philippine Co., G. R. No. 37219, dated August 23, 1923, purporting to hold that before an employee can invoke the provisions of Art. 302 of the Code of Commerce he must show that he is a commercial employee. Unfortunately, we are unable to read said case because it does not appear to have been published in the Philippine Reports or in the Official Gazette and we are unable to find it among our records that survived the last war. But granting that there was such a ruling by this Court, we also find that in the case of Philippine Trust Company vs. Smith Navigation Company, 66 Phil. 277 promulgated much later on September 30, 1938, this Court held or rather stated in the course of the decision that the contract of repair of vessels entered into between the appellee Smith Navigation Company and the intervenor-appellant El Varadero de Manila which later company, by the way was also engaged in the building and repair of vessels, like the petitioner herein, was a commercial transaction and as such should be governed first by the provisions of the Code of Commerce. One possible implication from said holding might be that an employer like the petitioner, engaged in the work of building and repair of vessels, is a commercial company, and its employees and laborers, commercial employees. But regardless of whether the laborers in the present case are commercial or industrial or business employees, the employer should, we believe, pay them the equivalent of one month wages upon separation from service without just cause. In the first place, from the standpoint of the laborer or employee, one employed by an industrial or business concerned is as much entitled to the benefits of the law and deserves his one month pay as one employed by a merchant. In the second place, regardless of the strict applicability or non-applicability of Art. 302, the Court of Industrial Relations by reason of its general jurisdiction and authority to decide labor disputes, the amount of salary or wages to be paid laborers and employees, to determine their living conditions has been deciding not only the minimum that the employer should pay its employees but also granting them even sick and vacation leave with pay without any express legal provision. A month's pay upon separation from service without just cause and without notice may also in the discretion of the Industrial Court be granted provided that said discretion is not abused.

In the case of Sanchez et al. v. Harry Lyons Construction Co., et al., *supra*, while one of the companies therein included as defendant-appellants, namely, the Material Distributors Inc. was engaged in buying surplus property, repairing and then selling them to the public for which reason it might be readily

considered a commercial company and its laborers commercial employees, the other company Harry Lyons Construction Co., Inc. was engaged in the construction of roads and bridges, a business hardly to be regarded as commercial; still, the employees of both companies were all considered commercial employees, entitled to the equivalent of one month pay, because of separation from service without notice.

Again, in the case of Lopez v. Roces, as Manager of the People's Homesite Corporation, 73 Phil. 605, the Supreme Court held that when the one month notice is not given, not only the factor or shop clerk, but any employee discharged without just cause is entitled to an indemnity which may be a month's salary, and that the Homesite Corporation being a business company, its chauffeur dismissed without notice may be considered as a commercial employee entitled to one month pay.

Going to the second question, that of jurisdiction of the Court of Industrial Relations, petitioner contends that in accordance with Chapter I, Section 1 and Chapter II, Section 4 of the Commonwealth Act No. 103, in order that the CIR could acquire jurisdiction over a case, the following requisites or elements must exist:

1. Dispute industrial or agricultural;
2. Said dispute is causing or likely to lockout;
3. Said dispute arose from differences as regards wages, dismissals, lay-offs, etc. between employees and employers; and
4. The number of employees or laborers must exceed thirty.

We agree with the respondent Court that all the four elements enumerated above were present. There was an industrial dispute between the petitioner and its laborers; said dispute arose from diferences as regards dismissal and lay-off, and the number of employees affected—thirty-seven — was more than the minimum required by the law. The only element which may be subject to doubt is whether or not the dispute is causing or is likely to cause strike but there was a sort of lockout. When the 37 laborers returned to work after the inventory and when prevented from resuming work, there was to them, for all practical purposes, a lockout.

> The 'lockout' alike with the 'strike,' constitutes a suspension of employees' services, but the distinction is said to arise from the fact that the employer rather than his employees is the doer of the deed of suspension. In both cases, a labor controversy exists, which is deemed intolerable by one of the parties, but the lockout indicates that the employer rather than his employees have brought the matter to issue. Strikes are said statistically to be the rule, while lockouts constitute exceptions, but it is probably impossible to determine with any fair degree of conclusiveness whether the given dispute has been precipitated by a strike or a lockout because one, especially the latter, is many times set in motion in hurried anticipation of the other." (Teller, Labor Disputes and Collective Bargaining, Vol. I, p. 246).
>
> "A 'lockout' is a term commonly used to express an employer's act of excluding from his plant union members hitherto employed by him. The act may affect all or less than all of the employee-union members. Lockout, in the sense in which it is universally used, is an act directed at the union itself rather than at the individual employer-members of the union. x x x
>
> * * * * * * *
>
> "A 'shut-down' differs from a lockout in that in a lock-out the plant continues to operate. The employee-union members locked out are replaced by non-union substitutes and the paint continues to function. In a 'shut-down' the plant ceases to operate. A shut-down is the wilful act of the employer himself, following a complete lock-out as contracted to the compulsory stoppage of operations as a result of a strike and walkout. It can truly be aid that all shut-downs are lock-outs, but not all lock-outs constitute or effect shut-downs." (Rothenberg, Labor Relations, pp. 58-59.)

Of course, ordinarily, a lockout refers to union members, and is used to discipline laborers for their union activities, or is directed at the union itself; and in the present case there is no evidence about the union affiliation of Tadina and his fellow laborers, or the real reason behind their ouster and exclusion from work. But whatever the reason, to them there was stoppage of work, a lockout within the contemplation of the law warranting the extension of juridiction of the CIA and its intervention if sought.

In the case of Yellow Taxi and Pasay Transportation Worker's Union (CLO) v. Manila Yellow Taxi Cab Company, Inc., 45 O. G. 4856, this Court held that a laborer who was deprived of his work without just cause on the occasion of stoppage of work or temporary cessation of operations (pare) has a right to be heard by the Court of Industrial Relations. It further held that said court should take cognizance of industrial disputes arising from a strike or lockout or those that come thereafter because the claim or damage caused to the workers because of their dismissal or lay-off necessarily comes after and not before the strike or lockout.

As to the number of laborers involved in the present case, although during the proceedings in the court below, because of the amicable settlement of the dispute between the petitioner and some of the dismissed laborers, the number of said laborers was reduced to 27, this reduction below 31 as required by law did not affect the jurisdiction of the industrial court. In the case of Pepsicola, Inc. v. National Labor Union, G. R. No. L-1500, 46 O. G. (Sup.) No. 1, p. 130 and Manila Hotel Employees Association v. Manila Hotel, 73 Phil. 374, this Court laid down the doctrine to the effect that once the Court of Industrial Relations has acquired jurisdiction, it retains said jurisdiction until the case is completely decided, and that the reduction of the number of employees or laborers affected to a point below the number required by law, to invest the jurisdiction of the court at the beginning, or the amicable settlement of some of the demands originally made did not deprive said court of jurisdiction to continue hearing the case and decide it.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Baustista Angelo, and Labrador JJ., concurred.

Messrs. Justices Feria, Reyes and Jugo did not take part.

III

Laureto A. Talaroc, petitioner-appellee, vs. Alejandro D. Uy respondent-appellant, G. R. *L-5397, September 26, 1952, Tuason, J*

1. ELECTIONS; CITIZENSHIP OF ELECTED CANDIDATES.— U was elected municipal mayor of Manticao, Misamis Oriental on November 13, 1951. T, one of the defeated candidates for the same office, contested the election of U on the ground that the latter is a Chinese national and therefore ineligible to the office of the municipal mayor. U was born on January 26, 1912 in the municipality of Iligan, province of Lanao, of Chinese father and of Filipino mother. His father and mother were married on March 3, 1914 in Iligan. The father died in this municipality on February 17, 1917 and the mother died on August 29, 1949 in the municipality of Manticao, Misamis Oriental. U had voted in the previous elections and had held various positions in the government. *Held:* U is a Filipino citizen and eligible to the office of municipal mayor. He became a Philippine citizen at least upon his fa-

ther's death. Commonwealth Act No. 63, providing a method for regaining Philippines citizenship by Filipino woman in such case, was passed when U's mother had been a widow for 19 years and U had been of age three years, and this law carries no provision giving it retroactive effect. It would neither be fair nor good policy to hold U an alien after he had exercised the privileges of citizenship and the Government had confirmed his Philippine citizenship on the faith of legal principles that had the force of law.

Claro M. Recto for appellant.

Justiniano R. Borja for appellee.

DECISION

TUASON, *J.*:

The election of Alejandro D. Uy to the office of municipal mayor of Manticao, Misamis Oriental, on November 13, 1951, brought the instant action of quo warranto in the Court of First Instance of that province. The petitioner was Laureto A. Talaroc, one of the defeated candidates for the same office, and the grounds of the petition were that he respondent is a Chinese national and therefore ineligible. The court below found the petition well founded and declared the position in question vacant.

The personal circumstances of the respondent as found by the court are not in dispute. They are as follows:

> "Estan establecidas por las pruebas, y admitidas por las partes, que Alejandro D. Uy nacio en Enero 28, 1912, en el municipio de Iligan, provincia de Lanao (Exhibito 1), de padre chino, Uy Piangco, y de macre Filipina, Ursula Diabo, cuando convivian estos como marido y mujer, pero despues contrajeron matrimonio eclesiastico al Marzo 3, 1914, en dicho pueblo (Exhibito 9). Tuvieron siete hijos, siendo el recurrido Alejandro D. Uy el 5.o hijo. Uy Piangco, nativo de Chuitao, Amoy, China, nunca se ausento desde que llego hacia 1893 o 1895, en Filipinas hasta su fallecimiento el Febrero 17, 1917, en Iligan, Lanao, donde estuvo residiendo continuamente, murio con posterioridad, el Agosto 29, 1949, en el municipio de Manticao, Misamis Oriental (Exhibit 3). Aparece tambien que el recurrido Alejandro D. Uy nunca fue a China y he votado en las anteriores elecciones verificadas en el pais, y ha desempenado empleos como Inspector del "Bureau of Plant Industry" en 1948 (Exh. 4); en los anos 1935, 1946, 1947, maestro bajo el Bureau of Public Schools, en Manticao District (Exhs. 5 y 5-a); filing clerk en la Tesoreria Municipal de Initao, en 1935 al 1945 (Exh. 4); y Acting Municipal Treasurer de Lagait, en 1942 a 1943 (Exh. 6); ademas de haber servido al 120th Infantry Regiment de la guerrilla, y algun tiempo 'Tax collector' del gobierno de ocupacion japonesa, en esta provincia de Misamis Oriental."

These facts also appear uncontroverted in evidence: One of the respondent's brothers, Pedro D. Uy, before the war and up to this time has been occupying the position of income tax examiner of the Bureau of Internal Revenue. His other brother, Jose D. Uy, is a practising certified public accountant, and before the war was the accountant of the National Abaca and Fiber Corporation (NAFCO). His other brother, Dr. Victorio D. Uy, is a practising physician, and, before the war, was charity physician in Initao and later a physician in the provincial hospital. During the war, Dr. Uy was a captain in the Philippine army. His younger brother was a lieutenant in the 120th Infantry Regiment of the Guerrillas. All his brothers married Filipina girls and they were never identified with any Chinese political or social organization. Respondent's father acquired properties in Lugait. His mother, who never remarried, campaigned for woman suffrage in 1935 and voted in the subsequent elections.

The respondent's contentions, which the court below rejected, were that his father was a subject of Spain on April 11, 1899 by virtue of Article 17 of the Civil Code; that his mother *ipso facto* reacquired her Filipino citizenship upon the death of her husband on February 17, 1917, and the child followed her citizenship; and that the respondent is a citizen of the Philippines by the mere fact of his birth therein. His Honor the Judge noted that, while under the Roa doctrine (Roa v. Insular Collector of Customs, 23 Phil. 315), Alejandro D. Uy would be a Filipino citizen regardless of the nationality of his parents, yet, he said, this doctrine was abandoned in Tan Chon v. Secretary of Labor, G. R. No. 47616, September 16, 1947; Swee Sang vs. The Commonwealth of the Philippines, G. R. No. 47625, decided with Tan Chong vs. Secretary of Labor; and Villahermosa vs. The Commissioner of Immigration G. R. No. L-1663, March 31, 1948.

It may be recalled that in the case of Roa vs. Insular Collector of Customs, *supra*, the petitioner was born in lawful wedlock in the Philippines on July 6, 1889, his father being a native of China and his mother a Filipina. His father was domiciled in this country up to the year 1895 when he went to China and never returned, dying there about 1900. In May, 1901, Roa, who was then a minor, was sent to China by his widowed mother for the sole purpose of studying, and returned in October, 1910, being then about 21 years and 3 months of age. He was denied admission by the board of special inquiry, whose decision was affirmed by the Court of First Instance in habeas corpus proceedings.

This Court held that Article 17 of the Civil Code "is sufficient to show that the first paragraph affirms and recognizes the principle of nationality by place of birth, *jus soli*." Citing various decisions, authorities, and opinions of the United States Attorney General, if found that the decided weight of authority was to the effect that the marriage of an American woman with an alien conferred his nationality upon her during coverture; that upon the dissolution of the marriage by death of the husband, the wife reverted, *ipso facto*, to her former status, unless her conduct or acts showed that she elected to retain the nationality of her husband, and that where the widowed mother herself thus reacquire her former nationality, her children, she being their natural guardian, should follow her nationality with the *proviso* that they may elect for themselves upon reaching majority.

The Roa decision, promulgated on October 30, 1912, set a precedent that was uniformly followed in numerous cases. This long line of decisions applied the principle of *jus soli* up to September 16, 1947, when that principle was renounce in the cases of Tan Cheng v. Secretary of Labor and Swee Sang v. The Commonwealth of the Philippines cited in the appealed decision.

These two decision are not, in our opinion, controlling in this case.

Article IV, entitled "Citizenship," of the Constitution provides:

> "Section 1. The following are citizens of the Philippines:
>
> "(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

On the strength of the Roa doctrine, Alejandro D. Uy undoubtedly was considered a full-pledged Philippine citizen on the date of the adoption of the Constitution, when *jus soli* has been the prevailing doctrine. "With it," as Mr. Justice Laurel said in Ramon Torres et al. vs. Tan Chim, 69 Phil. 519, "the bench and the bar were familiar. The members of the Constitutional Convention were also aware of this rule, and in abrogating the doctrine laid down in the Roa case, by making the *jus sanguinis* the predominating principle in the determination of Philippine citizenship, they did not intend to exclude these who, in the situation of Tranquilino Roa, were citizens of the Philippines by judicial declaration at the time of the adoption of

the Constitution. This, "the Court went on to say," is apparent from the following excerpt of the proceedings of the Constitutional Convention when Article IV of the Constitution was discussed:

"Delegate Aruego.—Mr. President, may I just have one question? May I ask Mr. Roxas if, under this proposition that you have, all children born in the Philippines before the adoption of the Constitution was included?

"Delegate Roxas. — No, sir: that is to say, if they are citizens in accordance with the present law, they will be citizens.

"Delegate Aruego.—But as I said they are citizens by judicial decisions.

"Delegate Roxas.—If they are citizens now by judicial decisions, they will be citizens.

"Delegate Aruego.—I should like to make it clear that we are voting on the proposition so that it will include all those born in the Philippines, regardless of their parentage, because I have heard some objections here to the incorporation in toto of the doctrine of jus soli. There are many who do not want to include, as are included in the proposition we are voting upon x x x

"I should like to find out from the gentleman from Capiz if that proposition would make Filipino citizens of children of Chinese parents born last year or this year.

"Delegate Roxas.—No, because by the laws of the Philippine Islands, they are not Filipino citizens now." (Record of the Proceedings of the Constitutional Convention, Session of November 26, 1934.)

Unlike the Tan Chong case, the herein appellant Uy had attained the age of majority when the Constitution went into effect, and had been allowed to exercise the right of suffrage, to hold public offices, and to take the oath of allegiance to the Commonwealth Government or Republic of the Philippines.

The Tan Chong decision itself makes this express reservation: "Needless to say, this decision is not intended or designed to deprive, as it can not divest, of their Filipino citizenship, those who have been declared to be Filipino citizens, or upon whom such citizenship had been conferred by the courts because of the doctrine or principle of *res adjudicata*." Certainly, it would neither be fair nor good policy to hold the respondent an alien after he had exercised the privileges of citizenship and the Government had confirmed his Philippine citizenship on the faith of legal principles that had the force of law. On several occasions the Secretary of Justice had declared as Filipino citizens persons similarly circumstanced as the herein respondent. (Opinion 40, series of 1940, of the Secretary of Justice. See also Opinion No. 18, series of 1942, of the Commissioner of Justice, 1942 Off. Gaz., September.)

Cut out of the same pattern and deserving of the same consideration is the proposition that Alejandro D. Uy became a Philippine citizen at least upon his father's death.

It has been seen that, according to the rule of the Roa case, a Filipino woman married to a Chinese *ipso facto* reacquired her Filipino citizen upon her husband's demite and that thereafter her minor children's nationality automatically followed that of the mother's. This rule was not changed by the adoption of the *jus sanguini* doctrine, and was in force until Commonwealth Act No. 63 went into effect in 1936, by which the Legislature, for the first time, provided a method for regaining Philippines citizenship by Filipino women in such cases. It is to be noted that when Commonwealth Act No. 63 was passed Ursula Diabo had been a widow for 19 years and Alejandro D. Dy had been of age three years, and that the new law carries no provision giving it retroactive effect.

These conclusions make superfluous consideration of the rest of the several assignments of error by the appellant upon which we refrain to express an opinion.

The decision of the lower court is reversed and the respondent and appellant declared a Filipino citizen and eligible to the office of municipal mayor. The petitioner and apoellee will pay the costs of both instances.

Paras, C. J., Bengzon, Montemayor and *Bautista Angelo*, concurred.

PABLO, M., *concurrente:*

Opino que Alejandro D. Uy nacio como ciudadano filipino en 28 de enero de 1912 en Iligan, Lanao, porque su madre Ursula Diabo no estaba casada legalmente con Uy Piangco, pues el hijo natural sigue la ciudadania de su madre (Serra contra Republica de Filipinas, G. R. No. L-4223, mayo 12, 1952); pero al casarse ella con Uy Piangco en 3 de marzo de 1914, Alejandro D. Uy quedo legitimado por subsiguiente matrimonio (Art. 120, Cod. Civ. Esp.); *ipso facto* se habia hecho ciudadano chino porque como menor de edad, tenia que seguir la nacionalidad de su padre legitimo (Art. 18, Cod. Civ. Esp.), como Ursula siguio la de su marido (Art. 22, Cod. Civ. Esp.).

Al fallecimiento de Uy Piangco en 17 de febrero de 1917, Ursula Diabo no se hizo automaticamente ciudadana filipina, pues el articulo 32 de Codigo Civil Español entonces vigente dispone que la española (filipina) que casare con extranjero podra, disuelto el matrimonio, recobrar la nacionalidad española (filipina) llenando los requisitos expresados en el articulo anterior, y estos requisitos son: (a) volviendo la viuda al Reino (repatriacion); (b) declarando su voluntad de recobrar la ciudadania filipina; y (c) renunciando la proteccion del pabellon del pais de su marido. La primera condicion esta practicamente cumplida porque Diabo no salio nunca de Filipinas; pero no esta probado que hubiese declarado ante el registrador civil de su residencia que era su intencion recobrar la ciudadania filipina, ni que hubiese renunciado la proteccion de la bandera china. Desde el 26 de noviembre de 1930 en que se establecio el registro civil en Filipinas, siendo registrador civil local el tesorero municipal, hasta el 28 de agosto de 1949 en que fallecio—mas de dieciocho años — Ursula Diabo tenia amplia oportunidad de hacer la declaracion que exige el articulo 21 de Codigo Civil, pero no lo ha hecho; su silencio da lugar a la presuncion de que deseo continuar gozando de la ciudadania de su marido. Para recobrar la ciudadania filipina, la viuda de un extranjero debe ejecutar ciertos actos que demuestren su deseo indubitable de readquirir su antigua ciudadania y perder la de su finado marido; por tanto, Alejandro D. Uy tampoco readquirio la ciudadania filipina por el mero hecho de haber quedado viuda su madre.

Es principio universalmente aceptado que la expatriacion es derecho inherente a todos. Los hijos de un extranjero nacidos en Filipinas deben manifestar el encargado del Registro civil dentro del año siguiente a su mayor edad o emancipacion, si desean optar por la ciudadania de su pais natal (Art. 19, Cod. Civ. Esp.). Aunque no aparece que ha hecho tal manifestacion al registrador civil, Alejandro D. Uy ejercito, sin embargo, el derecho de sufragio "en las anteriores eleccion verificadas en el pais" al tener edad competente para votar. Con ello demostro que queria adoptar la ciudadania del pais de su nacimiento, prefiriendola a la de su padre. Cuando el 1935 Alejandro D. Uy sirvio al gobierno como maestro de escuela bajo el Departamento de Instruccion Publica, despues escribiente en la tesoreria municipal de Initao en 1937, y mas tarde tesorero de Lugait en 1942 a 1943, y cuando, con exposicion de su vida, ingreso en las filas del 120.o Regimiento de Infanteria de las guerrillas, demostro de una manera clara e inequivoca que preferia ser ciudadano filipino a ser ciudadano chino.

Alejandro D. Uy, de acuerdo con el Codigo Civil antiguo es ciudadano filipino porque opto serlo al llegar a mayor edad. Tambien es ciudadano filipino por disposicion constitucional. Al votar en las elecciones verificadas en el pais al llegar a la mayor edad, demostro que quiso abrazar la ciudadania filipina. La Constitucion dice asi: "Son ciudadanos filipinos: x x x (4) los que, siendo hijos de madres de ciudadania filipina, optaren por esta al llegar a la mayor edad." (Art. 4,Titulo IV, Constitucion). Bueno es hacer constar que existe error en esta disposicion: debe decirse filipina." La filipina que se casa con un extranjero sigue la ciudadania de su marido; por el simple hecho del matrimonio pierde la ciudadania filipina y se hace extranjera: no puede continuar en la condicion de ciudadana filipina por expresa disposicion de la ley, pero no pierde la nacionalidad filipina.

Por las razones expuestas, y no por otras, Alejandro D. Uy adquirio la ciudadania filipina.

PADILLA, *J., concurring.*

I would rest the judgment in this case on the undisputed fact that the respondent was born out of wedlock in Iligan, Lanao, on 28, January 1912 of a Filipino mother and a Chinese father who were married on 3 March 1914 and that his father died on 17 February 1917. He was a Filipino citizen, became Chinese citizen when his father and mother were married, and reacquired his original citizenship on the death of his father, because being under age he followed the citizenship of his mother who reacquired her Filipino citizenship of his mother who reacquired her Filipino citizenship upon the death of her husband and never remarried.

I do not agree to the proposition that persons born in this country of alien parentage whose father is an alien must be deemed Filipino citizens under and by virtue of the doctrine laid down in the case of Roa v. Collector of Customs, 23 Phil. 315. Precisely, the judgment in the cases of Tan Chong v. The Secretary of Labor and Lam Swee Sang v. The Commonwealth of the Philippines, 45 O.G. 1269, holds that as the doctrine laid down in the case of Roa v. Collector of Customs, *supra*, is in conflict with the law in force at the time it must be abandoned. Jose Tan Chong invoked also the benefit of the doctrine in the Roa v. Collector of Cusos case. There is only an exception to the rule laid down in the case of Tan Chong v. The Secretary of Labor and Lam Swee Sang v. The Commonwealth of the Philippines, *supra*.

I concur in this opinion.

(Sgd.) ALEJO LABRADOR

IV

Hon. Agustin P. Montesa, et al appellants, vs. Manila Cordage Co., appellee, G. R. L-4559, September 19, 1952, Pablo, J.

1. COURT; JURISDICTION; INTERFERENCE WITH COORDINATE COURT; EXCEPTION.—A judge of a branch of the court should not annul the order issued by another judge of difference branch of the same court, because both of them are judges of the same category and act independently but coordinately, unless the second judge acts in place of the first judge in the same proceedings.
2. ID.; ID.; ATTACHMENT; DELIVERY OF PERSONAL PROPERTY.—Under section 2(c), Rule 62 of the Rules of Court, a court has no jurisdiction to order the delivery of personal property to the plaintiff if the property is under attachment.

Estanislao A. Fernandez for petitioners.

Ross, Selph, Carrascoso & Janda and *Defin L. Gonzalez* for respondent.

DECISION

PABLO, *J.*:

Se trata de una apelacion interpuesta por el Hon. Juez Montesa, Hao Yu Guan alias A. Lao Roldan y Rufino Ibañez contra una resolucion del Tribunal de Apelacion.

En 7 de marzo de 1950 el Sheriff de Manila, cumpliendo la order expedida en la causa civil No. 9126 del Juzgado de Primera Instancia de esta ciudad, titulada Manila Cordage Company contra Yu Bon Chiong, embargo el automovil Buick Sedan con placa No. 1074 (año 1950) de Yu Bon Chiong que era demandado en dicha causa.

En 8 de marzo Hao Yu Guan alias A. Lao Roldan y Rufino Ibañez presentaron una reclamacion de terceria cada uno, alegando el primero que el automovil estaba hipotecado a su favor hipoteca de bienes muebles, art. 4, Ley (3952), y el segundo, que es condueño de dicho vehiculo. El Sheriff advirtio a la Manila Cordage Company que levantaria el embargo del automovil si ella no prestaba fianza correspondiente. Por tal motivo, la Fidelity & Surety Co., a peticion de Manila Cordage Company, presto fianza de acuerdo con el articulo 14, Regla 59.

En 17 de marzo los terceristas presentaron una demanda en el Juzgado de Primera Instancia de Manila contra la Manila Cordage Company, la Fidelity & Surety Co., y el Sheriff de Manila (causa civil No. 10624), pidiendo la expedicion de una orden de interdicto preliminar para que los demandados, especialmente el Sheriff, desistiesen de continuar reteniendo el Buick y que se lo entregasen a ellos; el Hon. Juez Montesa expidio *ex parte* la orden pedida y, en cumplimiento con dicha order, el Sheriff de Manila entrego el automovil a los demandantes. Al enterarse de esta, la Manila Cordage Company presento una mocion urgente pidiendo la disolucion de la orden de interdicto expedida por dicho Juez, alegando que este se habia excedido en su jurisdiccion al expedir dicha orden; que dicho automovil estaba ya preventivamente embargado en la causa civil No. 9126 por orden valida expedida por el Hon. Juez Macadaeg. Dicha mocion urgente habia sido de negada por el Hon. Juez Pecson en 18 de abril y la mocion de reconsideracion desestimada por el Hon. Juez Montesa en 23 de mayo.

La Manila Cordage Co., acudio al Tribunal de Apelacion por medio del recurso de certiorari contra el Hon. Juez Montesa y otros, pidiendo la revocacion de la orden expedida por dicho juez en la causa No. 10624.

Despues de considerar las razones de una y otra parte, el Tribunal de Apelacion revoco en 29 de diciembre de 1950 la orden del Hon. Juez Montesa que disolvia la orden de embargo preventivo dictada por el Juez Macadaeg. Contra esta resolucion, el Hon. Juez Montesa y otros acuden en apelacion a este Tribunal por medio de certiorari.

Los recurrentes arguyen que la doctrina sentada en el asunto de Cabigao y otro contra Del Rosario y otro, y en Hubahib contra Insular Drug Co., ha sido ya revocada por la decision dictada en Mercado y otros contra Ocampo, y sostienen que el juez de una sala puede expedir una orden anulando la orden de otro juez de otra sala del mismo juzgado de primera instancia.

Analicemos las tres causas citadas:

El Juez de la Segunda Sala del Juzgado de Primera Instancia de Manila condeno al demandado en la causa civil No. 18451, Cabigao contra Lim y Pineda, a pagar al demandante la suma de ₱379.00 con intereses y costas. La decision fue confirmada por este Tribunal en 12 de agosto de 1922; el Juez de la Segunda Sala expidio el mandamiento de ejecucion en 11 de octubre de 1922; el Sheriff de la ciudad trabo embargo sobre los bienes del demandado Lim y Pineda; en 18 del mismo mes Lim y Pineda pidio en la Sala Primera un interdicto prohibitorio preliminar contra el Sheriff y dicho Juez expidio la orden pedida.

Cabigao y otro acudieron a esta Superioridad pidiendo en un recurso de inhibicion que se ordenase al Juez de la Primera Sala que desistiese de intervenir en la ejecucion de la sentencia dictada en la causa civil No. 18451, y este Tribunal, despues de sir a las partes, declaro nulo y sin ningun valor el interdicto prohibitorio preliminar expedido por el Juez recurrido (el de la Primera Sala) declarando que "Las varias salas del Juzgado de Primera Instancia de Manila son, en cierto sentido, juzgados de jurisdiccion coordinada, y el, permitirlos que intervengan en sentencias o decretos de otros por medio de un interdicto prohibitorio, claramente conduciria a confusion, y seriamente podria embarazar la administracion de justicia." (44 Jur. Fil., 195).

En el asunto de Hubahib contra Insular Drug. Co., 5 Lawyers Journal 281 (Feb. 27, 1937), en que el Juez de la Primera Sala de Cebu expidio un interdicto prohibitorio preliminar contra el sheriff provincial para impedirle que cumplimentase el mandamiento de ejecucion expedido por el Juez de la Tercera Sala del mismo juzgado, reiterando la doctrina sentada en Cabigas y otro contra Del Rosario, este Tribunal dijo: "Las varias Salas de un Juzgado de Primera Instancia de una provincia o ciudad, teniendo como tienen la misma o igual autoridad y siendo como son de jurisdiccion concurrente, y coordinada, no deben, ni puede, ni les esta permitido, inmiscuirse en sus respectivos asuntos, y menos en sus ordenes o sentencias, por medio de interdictos prohibitorios. (Cabigao y otro contra Del Rosario y otro, 1922, 44 Jur. Fil., 192, y las causas alli citadas; Nuñez y Enrile contra Low, 1911, 19 Jur. Fil., 256; Orais contra Escaño, 1909, 14 Jur. Fil. 215.)"

En el asunto de Mercado y otro contra el Juez Ocampo, 72 Phil. Rep. 318, se trataba de una orden dictada por el Hon. Juez B. A., de 28 de enero de 1940, que desestimo las objeciones de las comparecientes y mantuvo su orden del 16 de abril del mismo año, que ordenaba la comparecencia de E. L. de B. y J. F. de R. para declarar sobre ciertos bienes del finado Mercado. Las comparecientes presentaron mociones de reconsideracion y nueva vista; el Juez O., que habia vuelto o ocupar su sala del juzgado despues de su vacacion, en resolucion del 2 de julio de 1950, reconsidero las ordenes promulgadas por el anterior Juez B. A. El segundo juez no se entrometio en las ordenes del primero porque el segundo actuaba en lugar del primero en un mismo asunto. Este Tribunal sento la doctrina de que "x x x un juez que preside una sala de un juzgado de primera instancia puede modificar o anular la orden que ha dictado otro juez del mismo juzgado, sin que por ello se infrinja el principio de coordinacion, y que la norma que debe servir de guia debe ser la de si el juez que dicto la primera orden tenia facultad para modificarla o dejarla sin efecto, en cuyo caso el otro juez que la modifico o anulo debe tener igualmente la misma facultad. Y la razon de la doctrina asi sentada consiste sencillamente en que ambos jueces actuan en el mismo juzgado y es el mismo juzgado el que ha modificado o anulado la orden.

"Refiriendonos ahora al caso en consideracion, resulta que el Juez O., al anular las ordenes del Juez B. A., actuaba como Juez del mismo Juzgado de Primera Instancia de Pampanga y apareciendo claro que si las mociones de reconsideracion se hubiesen presentado ante el Juez B. A. este podia anularlas, si a su juicio asi procediese, es obvio que el Juez O. podia hacer lo mismo y podia anularlas, como asi lo hizo.

"x x x Declaramos que el Juez O. tenia jurisdiccion para anular las ordenes que dicto el Juez B. A. y que al hacerlo no hizo mal uso de la discrecion que le ha conferido la ley x x x."

La doctrina en esta ultima causa no revoca la establecida en las dos anteriores causas citadas. En aquellas dos el juez de una sala expidio en un asunto una orden de interdicto anulando la orden de ejecucion dictada en otro por el juez de la otra, lo que es una verdadera intromision indebida de un juez en el asunto de otro juez. Pero en el asunto de Mercado contra Ocampo no se trata de dos causas de dos diferentes salas; se trata de una orden de un juez proveida en un asunto y que despues fue revocada por otro juez que habia vuelto a ocupar su cargo al terminar su vacacion. Aunque eran dos jueces, actuo, sin embargo, el uno en lugar del otro como si hubiera actuado un solo juez. No se ha declarado expresamente la base sobre que descansa la doctrina en las causas de Cabigao y otro contra Del Rosario, y Hubahib contra Insular Drug Co., pero es evidente que es el articulo 263, parrafo 4, del Codigo de Procedimiento Civil.

El articulo 1.o de la Regla 62 dispone que, en un litigio para recobrar la posesion de bienes muebles, el demandante podra solicitar una order interlocutoria para que se le entreguen dichos bienes; pero, para que pueda obtener esa orden, es necesario que pruebe bajo juramento: (a) que es dueño de los bienes embargados a que tiene derecho a la posesion de los mismos; (b) que los bienes son injustamente detentados, alegando la causa de la detentacion; (c) que no han sido secuestrados para satisfacer contribucion alguna, ni multa por mandato de la ley, ni embargados en virtud de ejecucion o embargo preventivo contra los bienes del demandante, o en caso de serlo asi, que son bienes exentos de embargo; y (d) que preste una fianza a favor del demandado por el doble valor de los bienes que reclama para garantizar la devolucion de los mismos al demandado, si asi se dispusiere en la sentencia, y para el pago a dicho demandado de cualquier cantidad que pueda recobrar de la parte demandante en el asunto.

El Buick Sedan con placa No. 1074 habia sido embargado por el Sheriff en virtud de una orden de embargo preventivo dictada en la causa civil No. 9126, y el automovil no esta exento de embargo (Regla 39, art. 12). No podia, por tanto, el Hon. Juez Montesa, por medio de una orden interlocutoria, disponer la entrega a los demandantes de dicho automovil en la causa civil No. 10624, anulando *ipso facto* la orden de embargo preventivo dictada en la causa civil No. 9126. Fue una indebida intremision de un juez en la orden de otro juez de igual categoria. En realidad, la orden dictada en la causa civil No. 10624 deshizo la que otro juez decreto en la causa No. 9126. El juez de una sala de un Juzgado no debe anular la orden de otro juez de otra sala del mismo juzgado porque ambos son jueces de la misma categoria y actuan independiente pero coordinamente, a menos que el segundo actue en lugar del primero sobre un mismo expediente.

La orden dictada disolviendo la orden de embargo preventivo era factible bajo el Codigo de Procedimiento Civil porque su articulo 263, parrafo 4, dice asi:

> "Que los bienes no han sido secuestrados para satisfacer contribucion alguna, ni multa por mandato de una ley, ni embargados en cumplimiento de una sentencia dictada contra los bienes del demandante; y en el caso de haber sido embargados, que son bienes exentos de embargo."

Pero, bajo el reglamento vigente, no se puede ordenar la entrega de los bienes embargados preventivamente porque la Regla 62, articulo 2, parrafo (c), dispone lo siguiente:

> "Que no han sido secuestrados para satisfacer contribucion alguna, ni multa por mandato de la ley, ni embargados en virtud de ejecucion o embargo preventivo contra los bienes del demandante, o en caso de serlo asi, que son bienes exentos de embargo."

En la nueva disposicion se añadieron las palabras *"o embargo preventivo"*. Esta es la innovacion adoptada por el nuevo reglamento, con el evidente pro-

posito de impedir el triste espectaculo de que un juez revoque la orden dictada por otro juez, en jerjuicio de la ordenada administracion de justicia.

Ademas, los demandantes solamente prestaron fianza de ₱6,500.00, que es el valor del automovil embargado, en vez del doble de su valor.

La orden impugnada esta en abierta contravencion con las disposiciones del articulo 2, Regla 62.

Se confirma la resolucion apelada con costas contra Hao Yu Guan y Rufino Ibañez.

Paras, C.J., Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo and *Labrador, JJ.*, conformes.

V

Jose L. Laxamana, petitoner, vs. Jose T. Baltazar, respondent. G. R. L-5955, September 19, 1952, Bengzon, J.

1. PUBLIC OFFICERS; MAYORS; VICE-MAYOR DISCHARGES DUTIES OF SUSPENDED MAYOR.—When in July 1952 the mayor of Sexmoan, Pampanga, was suspended, the vice-mayor B, assumed office as mayor by virtue of section 2195 of the Revised Administrative Code. However, the provincial governor, acting under section 21(a) of the Revised Election Code (R. A. 180), with the consent of the provincial board appointed L, as mayor of Sexmoan, who immediately took the corresponding official oath. *Held:* When the mayor of a municipality is suspended, absent or temporarily unable, his duties should be discharged by the vice-mayor in accordance with sec. 2195 of the Revised Administrative Code.

2. STATUTORY CONSTRUCTION; INTERPRETATION OF REENACTED STATUTE.—Where a statute has received a contemporaneous and practical interpretation and the statute as interpreted is reenacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law.

3. ID.; CONFLICT BETWEEN GENERAL AND SPECIAL STATUTES.—Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute.

4 ID.; CONSTRUCTION PLACED UPON STATUTE BY EXECUTIVE OFFICERS.— The contemporaneous construction placed upon the statute by the executive officers charged with its execution deserves great weight in the courts.

Gerardo S. Limlingan and Jose L. Baltazar for petitioner.

Macapagal, Punsalan & Yabut and *Pedro S. David* for respondent.

Pedro Lopez, Ramon Duterte and *Regino Hermosisima* as *amici curiae.*

DECISION

BENGZON, *J.*:

When in July 1952 the mayor of Sexmoan, Pampanga, was suspended, the vice-mayor Jose T. Baltazar, assumed office as mayor by virtue of section 2195 of the Revised Administrative Code. However, the provincial governor, acting under section 21(a) of the Revised Election Code (R. A. 180), with the consent of the provincial board appointed Jose L. Laxamana, as mayor of Sexmoan, who immediately took the corresponding official oath.

Result: this *quo warranto* proceeding, based solely on the petitioner's proposition that the section first mentioned has been repealed by the subsequent provision of the Revised Election Code.

If there was such repeal, this petition should be granted; and Laxamana declared the lawful mayor of Sexmoan. Otherwise it must be denied (1).

The two statutory provisions read as follows:

"Sec. 2195. TEMPORARY DISABILITY OF MAYOR.—Upon the occasion of the absence, suspension, or other temporary disability of the Mayor, his duties shall be discharged by the Vice-Mayor, or if there be no Vice-Mayor, by the councilor who at the last general election received the highest number of votes."

"Sec. 21(a) VACANCY IN ELECTIVE PROVINCIAL, CITY OR MUNICIPAL OFFICE.—Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office. (R. A. 180, the Revised Election Code.)

Section 21(a)—the portion relating to municipal offices — was taken from section 2180 of the Revised Administrative Code, which partly provided:

"Sec. 2180. VACANCIES IN MUNICIPAL OFFICE.—(a) In case of a temporary vacancy in any municipal office, the same shall be filled by appointment by the provincial governor, with the consent of the provincial board.

(b) In case of a permanent vacancy in any municipal office, the same shall be filed by appointment by the provincial board, except in case of a municipal president, in which the permanent vacancy shall be filled by the municipal vice-president." x x x

It will be seen that under this section, when the office of municipal president (now mayor) became *permanently vacant* the vice-president stepped into the office. The section omitted reference to *temporary vacancy* of such office because section 2195 governed that contingency. In this regard sections 2180 and 2195 supplemented each other. Paragraph (a), of section 2180 applied to municipal offices in general, other than that of the municipal president.

Under the Revised Administrative Code, —especially the two sections indicated— there was no doubt in Government circles that when the municipal president was suspended from office, the vice-president took his place.

"Temporary vacancy in office of municipal president.—Paragraph (a) of this section (2180) should be construed to cover only municipal offices other than the office of president. Section 2195 of the Administrative Code should be applied in case of the absence, suspension, or other temporary disability of the municipal president. (Op. Atty. Gen., Sept. 21, 1917; Ins. Aud., Oct. 23, 1927.)" (Araneta, Administrative Code Vol. IV p. 2838).

"Municipal president cannot designate acting president. — There is no provision of law expressly or impliedly authorizing the municipal president to designate any person to act in his stead during his temporary absence or disability. From the provision of section 2195 of this Code, it is clear that the vice-president or, if there be no vice-president, the councilor who at the last general election received the highest number of votes, should automatically (without any formal designation) discharge the duties of the president." (Op. Ins. Aud., March 2, 1926.) (Araneta, Administrative Code Vol. IV p. 2839).

Now, it is reasonable to assure that the incorporation of the above section 2180 into the Revised Election law as sec. 21(a) did not have the effect of enlarging its scope (2), to supersede or repeal section 2195, what with the presumption against implied repeals (3).

(1) The alleged offer of appointment by the governor which Baltazar rejected is immaterial, because under sec. 2195 no appointment is needed.

(2) It was even restricted to elective municipal office.

(3) Sutherland, Statutory Construction 3rd Ed. sec. 2014 note 1.

"Where a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law. The rule here is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and therefore impliedly adopts the interpretation upon re-enactment." (Sutherland Statutory Construction, sec. 5109.)

Indeed, even disregarding their origin, the allegedly conflicting sections, could be interpreted in the light of the principle of statutory construction that when a general and a particular provision are inconsistent the latter is paramount to the former (Sec. 288 Act 190). In other words, section 2195 referring particularly to vacancy in the office of mayor, must prevail over the general terms of sec. 21(a) as to vacancies of municipal (local) offices. Otherwise stated, section 2195 may be deemed an exception to or qualification of the latter [4]. "Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute." (Sutherland Statutory Construction," (Sutherland Statutory Construction, sec. 5204.)

In a recent decision [5], we had occasion to pass on a similar situation, -repeal by subsequent general provision of a prior special provision- and we said,:

"It is well settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, **general** in its **terms, provisions and application,** unless the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law. x x x It is a canon of statutory construction that a later **statute, general in its terms** and not expressly repealing a **prior special** statute, will ordinarily not affect the special provisions of such earlier statute. (Steamboat Company vs. Collector. 18 Wall. [U.S.], 478; Cass County vs. Gillett, 100 U.S. 585; Minnesota vs. Hitchcock, 185 U.S. 373, 396.)

"Where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special — the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. (State vs. Stoll, 17 Wall. [U.S.], 425.)"

In fact even after the Revised Election Code was enacted, the Department of the Interior and the office of Executive Secretary who are charged with the supervision of provincial and municipal governments have "consistently held that in case of the suspension or other temporary disability of the mayor, the vice-mayor shall, by operation of law, assume the office of the mayor, and if the vice-mayor is not available, the said office shall be discharged by the first councilor." (Annex 5 of the answer).

Needless to say, the contemporaneous construction placed upon the statute by the executive officers charged with its execution deserves great weight in the courts [6].

Consequently it is our ruling that when the mayor of a municipality is suspended, absent or temporarily unable, his duties should be discharged by the vice-mayor in accordance with sec. 2195 of the Revised Administrative Code.

This *quo warranto* petition is dismissed with costs. So ordered.

Paras, C.J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo and *Labrador, JJ*, concurred.

Mr. Justice Tuason took no part.

VI

Paulino Dumaguin, plaintiff-appellant, vs. A. J. Reynolds, E. J. Harrison and Big Wedge Mining Co., G. R. L-3572, September 30, 1952, Montemayor, J.

1. MINING EMPLOYERS AND EMPLOYEES; LOCATION OF MINING CLAIMS.—It would really be unfair, even against public policy to allow a person employed to stake and locate mining claims for his employer to make locations on his own account and for his own benefit tho done outside hours of work or employment, because there is an obvious incompatibility and conflict of interests between those of the employer on one hand and those of the employer on the other, unless there is a clear and express agreement to the contrary.

2. ID.; ID.; EMPLOYERS NOT ALLOWED TO STAKE MINING CLAIMS FOR THEM.—It has been the practice of miners to employ others to stake mining claims for them. This is usually done after the prospectors have assured themselves that a mine exists in a certain locality. The man who places the stake could easily leave fractional mineral claims in between the claims without reporting the existence of these factions to his principal. Later he could stake and claim them. If this is permitted to happen, bona fide miners can easily be held up by the very men whom they have employed to stake their mining claims. If the mining industry shall be protected and the exploitation of the natural resources of his country encouraged, such practice should not be tolerated. The wrong or the damage that can be done is unlimited. If agents or employees or laborers are permitted to conceal or without certain mining claims ordered staked by their employer who gave them specific instructions to stake the entire ground in a certain locality, the effect will practically be the condonation and legalization of a holdup.

3. CONTRACT; GUARDIANSHIP. CONTRACT ENTERED INTO BY PERSON UNDER GUARDIANSHIP. —Even in the execution of contracts, in the absence of a statute to the contrary, the presumption of insanity and mental incapacity is only *prima facie* and may be rebutted by evidence; and a person under guardianship for insanity may still enter into a valid contract and even convey property, provided it is proven that at the time of entering into said contract, he was not to interfere with or affect his capacity to appreciate the meaning and significance of the transaction entered into by him.

4. INSANITY; PERSONS MENTALLY DERANGED REGARDING CERTAIN SUBJECTS MENTALLY SOUND IN OTHER RESPECTS.—There are many cases of persons mentally deranged who although they have been having obsessions and delusions for many years regarding certain subjects and situations, still are mentally sound in other respects. There are others who though insane, have their lucid intervals when in all respects they are perfectly same and mentally sound.

5. ID.; MINING; EMPLOYERS AND EMPLOYEES. EMPLOYEE COULD BE COMPELLED TO TRANSFER MINING CLAIMS TO EMPLOYER.—Although at the time of executing the deed of sale of mining claims, the vendor was still mentally inca-

(4) Sutherland, Statutory Construction 3rd Ed. Vol. 1 p. 486.

(5) Philippine Railway Co. v. Collector of Int. Rev. G.R. No. L-3859, March, 1952.

(6) Madrigal v. Rafferty, 38 Phil. 414, Government v. Binalonan, 32 Phil. 634.

pacitated, because of his moral and legal obligation to transfer the mining claims to his employers, he could through his guardian have been compelled by the court to execute said transfer, or after the termination of his guardianship obliged personally to execute said transfer to his employers. He acted as a trustee for his employers and the law will not allow him to invoke insanity or mental incapacity to violate his trust.

6 CONTRACTS: VALIDITY OF ONE-PESO CONSIDERATION.- Where in the two deeds of sale of mining claims each mentions ₱1.00 and other valuable consideration, the receipt whereof was acknowledged, to be the consideration, the consideration is sufficient, according to the provision of law, (Art. 1277 of the Civil Code). Besides, consideration in the contract will be presumed and it is licit, unless the debtor proves the contrary.

7. MINING: EMPLOYERS AND EMPLOYERS: CONSIDERATION FOR CONVEYANCE OF MINING CLAIMS NOT NECESSARY.— The mining claims having been located for the benefit of the employer by an employee in his capacity as such, paid for that purpose, no consideration for the conveyances of the mining claims by the employee to the employee was necessary. The employee was merely fulfilling an obligation and complying with a trust.

Tañada, Pelaez & Teehankee for appellant.

Claro M. Recto for appellee.

DECISION

MONTEMAYOR, *J.:*

For purposes of this decision, the following facts may be said to be agreed upon by the parties or to be without dispute. Because the plaintiff-Paulino M. Dumaguin would appear to be the central figure in this case, we shall begin by making reference to this background and his status at the time he entered into the transactions and executed the deeds of conveyance whose legality is now the subject of the present petition.

Paulino M. Dumaguin was a teacher in the public elementary schools for a year and a half, and from 1916 to 1918 was the Manager of the Head Waters Mining Company in Baguio. As Manager of said mining company Paulino acquired some knowledge of mining. On or before May 21, 1929, he was a supervising line-man of the Bureau of Posts. On that date (May 21, 1929) he was admitted to the Insular Psychopathic Hospital at San Felipe Neri (now the National Psychopathic Hospital), Mandaluyong, Rizal, said to be suffering from "paranecia". On October 15, 1929, Dr. Toribio Joson, assistant alienist of said Hospital, submitted the following memorandum:

MEMORANDUM

TO: The Alienist in Charge Insular Psychopathic Hospital, San Felipe Neri, Rizal.

SUBJECT: Paulino M. Dumaguin—Male, married, 33 years old, Ex-Supervising Lineman of the Bureau of Posts, admitted to the hospital at 11:25 a.m. on May 21, 1929.

1. The patient is well behaved, oriented in all sphere, coherent in his speech and has no more illusion or hallucinations; but is having a delusion that one of the patients in the hospital is trying to chloroform him. He consequently keeps away from the said patient.

2. He is also not sure that his former officemates whom he erroneously believed chloroformed him before, would not chloroform him anymore when he goes home.

3. This type of insanity which Paulino M. Dumaguin is suffering from is therefore that of **Paranecia, which runs a very chronic course of usually a life time, but which may show improvement as the patient grows older".** (See Exhibits 42, folio 195; Italic ours)

After Paulino's discharge from the hospital on or about November 11, 1929, in order to enable his wife to withdraw his retirement gratuity from the government, on September 16, 1930, she filed guardianship proceedings in the Court of First Instance of Camarines Sur. Said court relying presumably on the report of Dr. Joson above quoted granted the petition and appointed her as Paulino's guardian.

On February 2, 1931, Paulino and his guardian in a joint motion before the Court of Camarines Sur among others alleged that —

"4. Que en la actualidad, el citado Paulino M. Dumaguin, ya esta re-establecido, por lo que se le ha permitido dejar el Hospital y ahora vive con su familia en esta localidad, que es su residencia.

"5. Que el mencionado Paulino M. Dumaguin ha recibido un cheque del Gobierno por la cantidad de ₱412.38, como parte de su pension.

"6. Que los comparecientes necesitan el importe el importe de dicho cheque para atender a sus subsistencia, pues se hallan en la actualidad faltos de todo necesario."

and asked that they be authorized to cash said check and use its proceeds for their support:

"POR TANTO, suplican al Juzgado que se les poner de su producto para su manutencion."

In 1934, the guardianship proceedings were closed.

In and before the year 1930, defendants A. I. Reynolds and E. J. Harrison sold and transferred to the same demineral claims in the Itogon District, subprovince of Benguet, Mountain Province, known as the "ANACONDA GROUP". They employed Fructuoso Dumaguin, brother of plaintiff Paulino, in their work as prospectors.

At the beginning of 1931, Fructuoso Dumaguin was thus working for said defendants Reynolds and Harrison relocating some of their mining claims previously located and locating new ones, for which work he was paid ₱5.00 a day. About the same time his brother Paulino M. Dumaguin, plaintiff herein, leaving his home in Camarines Sur went up to Baguio in search of work. To help him, Fructuoso got him employed by the defendants and the two brothers worked together in the mining business for the defendants.

The theory of the plaintiff is that he was employed only to re-locate defendants' mining claims in the ANACONDA GROUP while the defense claims that like his brother Fructuoso, Paulino was employed not only to re-locate mining claims within the Anaconda Group but also to stake and locate new mining claims for them. For said work Paulino was also paid by the day by defendants.

During the months of May, June and July of that year 1931 the two brothers Fructuoso and Paulino staked and located ten mining claims or fractions thereof named Victoria, Greta, Triangle, Lolita, Frank, Paul, Leo, Loreto, Arthur and G. Ubalde, all said claims or fractions being later registered in the name of Paulino M. Dumaguin as locator in the office of the Mining Recorder. By virtue of an instrument (Exh. "A") entitled "Deed of Transfer" dated September 10, 1931, Paulino M. Dumaguin conveyed and transferred to defendants A. I. Reynolds and E. J. Harrison nine of the ten mineral claims just mentioned, and in another instrument (Exh. "B") on the same date September 10, 1931, Paulino transferred and conveyed to defendant Reynolds the remaining claim Victoria.

Later, Reynolds as vendee of the mining claim Victoria by virtue of a deed of sale (Exh. "C") dated November 2, 1931 sold and transferred said claim to the defendant Big Wedge Mining Co. In another deed of sale (Exh. "D") dated June 2, 1933, Reynolds and Harrison sold and transferred to the same de-

fendant Big Wedge Mining Co. the claims Frank, Paul, Leo, Loreto and Arthur. In still another deed of sale (Exh. "J"), Reynolds and Harrison sold and transferred to the same Big Wedge Mining Co. the Greta, Lolita and Triangle fractions or mineral claims. As a result, all the ten mineral claims or fractions transferred by Paulino to Reynolds and Harrison, with the exception of the claim G. Ubalde were in turn sold and transferred to the Big Wedge Mining Co. What was done with this last claim or fraction G. Ubalde, does not appear on the record, but it must still remain in the name of Reynolds and Harrison.

Plaintiff Dumaguin initiated this case in the Court of First Instance of Baguio by filing his original complaint on November 5, 1934, later amending it on July 26, 1939 and finally re-amending it on June 4, 1940. Under his re-amended complaint which contains three causes of action, he alleges that when he executed the deeds of transfer (Exhs. A and B) he was under guardianship and did not possess the mental capacity to contract and so asked the court that the said two deeds be declared null and void. He also alleged that those two deeds being void, Reynolds and Harrison had no title to transmit to the Big Wedge Mining Co. by virtue of the deeds of sale, Exhs. "C" and "D" (plaintiff evidently overlooked the deed, Exh. "J"), and therefore those two deeds of sale (Exhs. C and D) should also be declared null and void, and that he (Paulino) should be declared the owner of the ten mining claims or fractions in question. Finally, he claimed that the Big Wedge Mining Co. had illegally taken possession of the ten mining claims and profitably worked or operated them and so he asked that said company be ordered to render an accounting of its operations and the profits made therefrom, and that the defendants should be ordered jointly and severally to pay to the plaintiff such profits as may have been derived by the Big Wedge Mining Co. as shown by its accounts.

Defendants Reynolds and Harrison filed their original answers on January 30, 1935 and April 12, 1935, respectively, both superseded by their amended answers on January 22, 1936. Defendant Big Wedge Mining Co. filed its answer on January 30, 1935, which was amended on January 18, 1936 and later re-amended on February 5, 1940. Reynolds and Harrison claimed in their answers that plaintiff Paulino and his brother Fructuoso had been expressly employed by them to locate and stake mineral claims, and that said two brothers staked and located the ten mineral claims in question for them (defendants), and that there was an understanding between the two brothers and the two defendants that said mineral claims so located would eventually be transferred to them. In its turn defendant Big Wedge Mining Co. followed the theory of Reynolds and Harrison about Paulino having been employed by them and having made the location of the mineral claims in question for their employers, said that the company was not aware of the alleged mental capacity of plaintiff at the time that he executed the deeds of transfer in favor of Reynolds and Harrison, and that even if plaintiff was under guardianship at the time, yet he confirmed and ratified the deeds of transfer by his acts and letters after his release from guardianship, and that said company bought the said mineral claims in good faith and for valuable consideration from the registered owners.

Hearing was held on July 31, 1940. The evidence submitted was mainly documentary. Only three witnesses took the witness stand. Atty. Alberto Jamir was presented by the Big Wedge Mining Co. to identify a copy of a decision rendered by the Securities and Exchange Commission. Defendant Reynolds testified for the defense. For the plaintiff, only Fructuoso Dumaguin testified for his brother. Why Paulino, the plaintiff, did not take the witness stand, if not to support the allegations of his complaint, at least to refute the evidence for the defense particularly that which tended to show that he was employed by defendants Reynolds and Harrison to stake and locate mineral claims for them with the understanding that he would later transfer said claims to his employers, is not known to this Court. After trial, Judge Jose R. Carlos before whom the hearing was held, rendered judgment on January 16, 1941, dismissing the complaint.

Paulino Dumaguin appealed from that decision. His Record on Appeal was approved on April 16, 1941 Appellant's brief was filed on November 3, 1941 and the brief for the Big Wedge Mining Co. was filed or rather is dated December 31, 1941. It is not known whether defendants Reynolds and Harrison ever filed a brief. The fact is that the record of the case was lost or destroyed during the war and only copies of the record on appeal and the brief were salvaged. As to the oral and documentary evidence which was lost, only those portions of the transcript and documents reproduced and appearing in the briefs are now available. But the parties have agreed to the correctness of these portions so quoted in the briefs.

After the reconstitution of the case, the Court of Appeals which had taken charge of the appeal found that the amount involved was beyond its jurisdiction and so certified the case to us. Neither Reynolds nor Harrison has appeared before the Court of Appeals or before this Court. Appellant's attorney represented that Harrison's counsel could not appear in the appeal due to lack of authority not having heard from his client since Liberation and being of the belief that his client is dead. There was also information to the effect that defendant Reynolds had been killed during the early part of the occupation by the Japanese. So, only the Big Wedge Mining Co. is opposing the present appeal.

The decisive and pivotal question here is whether plaintiff Paulino M. Dumaguin and his brother Fructuoso acting on their account staked and located these mining claims or fractions in dispute for Paulino, or whether they acting as employees and agents of defendants Reynolds and Harrison, staked and located said claims for and in behalf of their employers. We agree with the trial court that the great preponderance of evidence is to the effect that these claims were located for Reynolds and Harrison by Paulino and Fructuoso as employees, and that the latter were purposely employed and paid for his work. All the expenses incident to the staking and location of said claims and the registration of the corresponding declarations of location were paid by Reynolds and Harrison. It is true that in one part of his testimony, Fructuoso claimed that he and his brother were employed merely to re-locate the mining claims of defendants within the Anaconda Group but later on, he admitted in his testimony and also in his affidavit (Exh. "1") which was prepared before these proceedings were initiated in court that he and his brother Paulino working together were paid by the defendants Reynolds and Harrison to locate new mining claims outside the Anaconda Group; that as a matter of fact, Paulino engaged in this work at the beginning, but because he (Fructuoso) found that Paulino physically was not equal to the arduous work of climbing up and down mountains to stake and locate claims, he was placed in charge of the payroll of the defendants and detailed to do paper work which, it is presumed, included the registration of the declarations of location of the mining claims in the office of the Mining Recorder, in his name. Fructuoso also admitted that there was an understanding before and pending the staking and location of said mining claims that they would eventually be transferred to their real owner, Reynolds and Harrison.

In consonance with this correct theory that these mining claims were located for defendants Reynolds and Harrison, as counsel for appellee well observes, Exhibits A and B are both entitled "Deed of Transfer". This conveys the idea that

Paulino was merely transferring to the real owners property which technically and in name were registered as his own. Otherwise, if he really owned these mining claims, the two deeds (Exhibits A and B) would have been more appropriately entitled "Deed of Sale" and the body of said instruments should have stated that he was selling the mining claims. On the other hand, we have the instruments (Exhibits C and D) wherein Reynolds and Harrison sold said mining claims or fractions to the Big Wedge Mining Co. and the documents were each entitled "Deed of Sale".

It would really be unfair, even against public policy to allow a person employed to stake and locate mining claims for his employer to make locations on his own account and for his own benefit though done outside hours of work or employment, because there is an obvious incompatibility and conflict of interests between those of the employer on the one hand and those of the employee on the other, unless there is a clear and express agreement to the contrary. Judge Carlos in his well-considered decision correctly states the fiduciary relation between Paulino and his employers Reynolds and Harrison and the sound and correct rule and public policy on this matter.

"The fiduciary relation between the plaintiff and the defendants A. I. Reynolds and E. J. Harrison is very clear from the evidence. Fructuoso M. Dumaguin has clearly stated that his brother, Paulino M. Dumaguin, was working under him while he was locating the claims in question for A. I. Reynolds and E. J. Harrison. There can be no doubt that these claims in question were among those which these defendants wanted staked because, according to Fructuoso M. Dumanguin himself, they all adjoin the Anaconda Group, which ground he was specifically instructed to stake for the said defendants. The plaintiff herein, therefore, learned of the existence, especially of the fractional mineral claims, because he was with the party who staked the rest of the claims in that locality. To permit the plaintiff herein to assert his claim of ownership over these claims in question would be tantamount to allowing him to violate and infringe all the sound and age-old rules which govern principal and agent. There can be no doubt that this relation existed because Fructuoso M. Dumaguin, the sole witness for the plaintiff, stated categorically in his affidavit Exhibit "T" that all the claims subject of this litigation, except the C. Ubalde mineral claim, had been located and staked by him for A. I. Reynolds and E. J. Harrison, though the same were recorded in the name of his brother Paulino. It is quite evident, therefore, that even if no transfers were made on Exhibits "A" and "B" did not exist, these two defendants would still be entitled to an assignment of the said claims. The evidence of the fiduciary relation between the plaintiff and the defendants A. I. Reynolds and E. J. Harrison was given by none other than Fructuoso M. Dumaguin, the brother the only witness of the plaintiff in this case.

"Any act of an agent, the object or tendency of which is to commit a fraud or breach of the agency, should be discouraged. In the first place, such acts are condemned by public policy. They are against the morals; therefore, they should never be tolerated. An agent or trustee, or anybody who acts in a fiduciary capacity, should never be permitted to capitalize on his fiduciary position to mulct or take advantage of his principal or employer.

"It has been the practice of miners to employ others to stake mining claims for them. This is usually done after the prospectors have assured themselves that a mine exists in a certain locality. The man who places the stake could easily leave fractional mineral claims in between the claims without reporting the existence of these fractions to his principal. Later he could stake and claim them. If this is permitted to happen, bona fide miners can easily be held up by the very men whom they have employed to stake their mining claims. If the mining industry shall be protected and the exploitation of the natural resources of this country encouraged, such practice should not be tolerated. The wrong or the damage that can be done is unlimited. If agents or employees or laborers are permitted to conceal or withhold certain mining claims ordered staked by their employer who gave them specific instructions to stake the entire ground in a certain locality, the effect will practically be the condonation and legalization of a holdup. For the reason, Mechem on Agency, Sec. 1224, said the following:

"'The well-settled and salutary principle that person who undertakes to act for another shall not, be in the same matter, act for himself, result also in the other rule, that all profits made and advantage gained by the agent in the execution of the agency belong to the principal. And it matters not whether such profit or advantage be the result of the performance or of the violation of the duty of the agent if it be the fruit of the agency. If his duty be strictly performed, the resulting profit accrues to the principal as the legitimate consequence of the relation; if profit accrues from his violation of duty while executing the agency, that likewise belongs to the principal, not only because the principal has to assume the responsibility of the transaction, but also because the agent cannot be permitted to derive advantage from his own default.

'It is only by rigid adherence to this rule that all temptation can be removed from one acting in a fiduciary capacity, to abuse his trust or seek his own advantage in the position which it affords him.'"

In view of our conclusion and holding that these mining claims were staked and located for the benefit of defendants Reynolds and Harrison, the other points and questions involved in the appeal exhaustively, in detail and with a wealth of authorities, discussed by counsel for both appellant and appellee with ability and skill, become incidental and not of much if any relevancy whatsoever, although we may discuss one or two of them not so much to strengthen our decision but rather to render more clear our views. Appellant contends that the deeds of transfer (Exhs. A and B) should be annulled for lack of mental capacity because at the time of their execution he was under guardianship for insanity. It is contended that altho in a case of execution of a will by a testator who was under guardianship for mental derangement, the presumption of insanity is only *juris tantum*, subject to rebuttal, nevertheless, mental incapacity as regards contracts particularly those transferring property, under similar circumstances, involves a conclusive presumption which cannot be rebutted by evidence. We have studied the arguments and authorities adduced by both counsel on this point and we are inclined to agree with counsel for appellee that the better rule is that even in the execution of contracts, in the absence of a statute to the contrary, the presumption of insanity and mental incapacity is only *prima facie* and may be rebutted by evidence; and that a person under guardianship for insanity may still enter into a valid contract and even convey property, provided it is proven that at the time of entering into said contract, he was not insane or that his mental defect if mentally deranged did not interfere with or affect his capacity to appreciate the meaning and significance of the transaction entered into by him.

"Sec. 66. Generally. — Of course, not every substandard mentality or even every mental infirmity has the effect of rendering the afflicted person disabled for the purpose of entering into contract and making conveyances. x x x A reasonable test, suggested by several courts for the purpose of determining whether an infirmity operates to render

a person incapable of binding himself absolutely by contract, is whether his mind has been so affected as to render him incapable of understanding the nature and consequences of his acts, or, more exactly, whether his mental powers have become so far affected as to make him unable to understand the character of the transaction in question. x x x Some authorities take the view that a guarantor may be competent to execute a deed notwithstanding his disability to transact business generally, provided he understands the nature of what he is doing and recollects the property of which he is doing and recollects the property of which he is making a disposition and to whom he is conveying it. Other authorities, however, take the position that to sustain a deed, the grantor must have the ability to transact ordinary business. In any event, if it appears that the grantor in a deed was incapable of comprehending that the effect of the instrument, when made, executed, and delivered, would be to divest him of title to the land covered by the instrument, it is not binding upon him. x x x." (28 Am. Jur. Insane, etc., Sec. 66, pp. 701-702.)

"x x x Even partial insanity will not render a contract voidable unless it exists in connection with or is referable to the subject matter of the contract. Similarly, a delusion if unconnected with the transaction in question, is not sufficient to affect the validity of a contract consummated by the person thus affected. Monomania or a mental fixation or abnormality respecting a matter disconnected with the act of conveying property will not affect the validity of the conveyance. x x x" (Ibid., p. 703).

There are many cases of persons mentally deranged who although they have been having obsessions and delusions for many years regarding certain subjects and situations, still are mentally sound in other respects. There are others who though insane, have their lucid intervals when in all respects they are perfectly same and mentally sound.

In the case of Paulino M. Dumaguin, according to the doctor who observed and examined him, and who made his report on October 15, 1929, and that was more than two years before Exhibits A and B were executed, he (Paulino) while in the hospital was "well behaved, oriented in all spheres, coherent in his speech and has no more illusion or hallucinations; but is having a delusion that one of the patients in the hospital is trying to chloroform him. He consequently keeps away from said patient;" and that he was "not sure that his former officemates whom he erroneously believed chloroformed him before would not chloroform him anymore when he goes home." This was in 1929. The same year Paulino was discharged from the hospital presumably because his condition had improved, and on February 2, 1931, Paulino and his wife in a motion assured the Court of Camarines Sur that Paulino was already re-established (ya esta re-establicido). Several months later he went to Baguio looking for work. It is to be presumed that he was then no longer insane. It is equally to be presumed that his brother Fructuoso would not have recommended him for employment by defendants Reynolds and Harrison and actually let him work for them, at the beginning climbing up and down mountains to stake and locate claims for his employers: and if Paulino was then insane, it was not likely that Reynolds and Harrison would employ him to do the work of staking and locating claims to say nothing of taking charge of the payroll of their emolover, and registering with the Mining Recorder the declarations of location of mining claims. There is every reason to believe as we do and hold that at least from about the beginning of the year 1931 when Paulino began working for his employers Reynolds and Harrison, and when he executed Exhs. A and B, he had the mental capacity to transact ordinary business and was mentally capable of validly entering into contract even conveying property to another. But even assuming that at the time of executing Exhibits A and B. Paulino were still mentally incapacitated, still, because of his moral and legal obligation to transfer said claims to his employers, he could through his guardian have been compelled by the court to execute said transfer, or after the termination of his guardianship obliged personally to execute said transfer to his employers. He acted as a trustee for his employers and the law will not allow him to invoke insanity or mental incapacity to violate his trust.

In relation with this alleged incapacity of Paulino, it is interesting to note that when he and his lawyers filed his first complaint in 1934, that is, about three years after executing Exhs. A and B, they said nothing about being mentally incapacitated in 1931. They did not ask for the annulment of the deeds of transfer (Exhibits A and B) on the ground of lack of mental capacity. They assumed and took it for granted and led others to believe that said deeds of transfer were valid. They only asked for the payment of damages. It was not until five years later in the year 1939 when they filed the first amended complaint that they raised his question of mental incapacity. It took him and his lawyers almost five years to discover and claim that he (Paulino) was not mentally capable to enter into a contract when he executed exhibits A and B. In view of all this, we may well and logically presume that all the time that Paulino was employed by Reynolds and Harrison to locate and register mining claims for them, and at the time that he executed Exhibits A and B and for several years thereafter when he continued in their employ, neither Fructuoso, Paulino's brother nor defendants Reynolds and Harrison had any reason to suspect, much less, to believe that Paulino was other than a sane, responsible, and mentally capable individual, able to take care not only of himself and his interest but also of the interests of his employers. Neither did the other employees of Reynolds and Harrison to whom Paulino paid wages on paydays, he being in charge of the payroll, and the Mining Recorder before whom he executed proper and valid affidavits of locations for purposes of registration, note any mental incapacity on the part of Paulino. All this goes to reinforce the finding that Paulino was mentally sane and capable in 1931.

Counsel for appellant next contends that Exhibits "A" and "B" should be declared void for lack of consideration Said two deeds each mentions ₱1.00 and other valuable consideration, the receipt whereof was acknowledged, to be the consideration. We believe that that consideration is sufficient, this aside from the provision of law (Article 1277) of the Civil Code), that consideration in a contract will be presumed and that it is licit, unless the debtor prove the contrary which Paulino in this case failed to establish. Furthermore, according to Reynolds, in consideration of the transfer of these mining claims, he had later paid Paulino between ₱3,000.00 and ₱5,000.00. This was not refuted by Paulino. Moreover. under the view we take of the mining claims having been located for the benefit of defendants Reynolds and Harrison, by Paulino in his capacity as their employee, paid for that purpose, no consideration for the conveyances was even necessary. He was merely fulfilling an obligation and complying with a trust.

In conclusion we find and hold that Exhibits "A" and "B" were valid conveyances executed by one who was mentally capable. Consequently, Reynolds and Harrison had a valid title to convey as they did convey to defendant Big Wedge Mining Co. in Exhibits "C", "D", and "J".

In view of the foregoing, finding no reversible error in the decision appealed from the same is hereby affirmed, with costs.

Paras, C.J., Bengzon, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concurred.

Messrs. Justices Feria, Tuason, Reyes and Pablo did not take part.

VII

People of the Philippines, plaintiff-appellee, vs. Nestorio Remalante, defendant-appellant, G.R. L-3512, September 26, 1952, Padilla, J.

1. MURDER; KIDNAPPING; INTENTION TO KIDNAP THE VICTIM; PRESENCE OF QUALIFYING CIRCUMSTANCE—While T accompanied by two others was on the way to her home in the barrio of Guinarona, municipality of Dagami, province of Leyte coming from her farm, she met a group of more than ten men all armed with rifles, some of them with beard reaching the breast. R, one of the bearded men, approached, took hold of and dragged T toward the *sitio* of Sawahon. Hardly had the companions of T walked one kilometer when they heard gun reports. The following day T was found dead in Sawahon with two gunshot wounds, the points of entry being at the back and of exit at the left breast and shoulder. R was charged with the complex crime of kidnapping with murder. *Held:* There is no sufficient evidence of intention to kidnap because from the moment T was held and dragged to the time when the gun reports were heard nothing was done or said by R or his confederates to show or indicate that the captors intended to deprive her of her liberty for sometime and for some purpose and thereafter set her free or kill her. The interval was short as to negative the idea implied in kidnapping. Her short detention and illtreatment are included or form part of the perpetration of the crime of murder. It is murder because of the concurrence of at least one qualifying circumstance, either of treachery, or of abuse of superior strength, or with the aid of armed men, the first shown by the entry of the shots at the back and the second and the third by the number of the armed captors, the appellant and his companions, some or one of whom killed T.

2. EVIDENCE; MARAUDERS; DISSIDENTS; BANDITS; GROWING OF BEARD.—The fact that the appellant grew beard reaching his breast as some of his companions did is a positive and clear proof that he was a member of the of marauders, dissidents, bandits who were harassing the peaceful inhabitants of the town of Dagami and is environs.

3. ID.; CONSPIRACY; ACTS SHOW CONSPIRACY.—Where one in a group of more than ten men all armed with rifles upon meeting the victim who was on the way to her home, approached, took hold and dragged her away and the next day the victim was found dead with two gunshot wounds, the acts of the malefactors show and constitute conspiracy which renders the appellant liable for the crime committed by his companions, although no one witnessed the killing of the victim.

Modesto R. Ramolete for appellant.

Solicitor General Pompeyo Diaz and *Assistant Solicitor General Francisco Carreon* for appellee.

DECISION

PADILLA, *J.*:

At about 4:00 o'clock in the afternoon of 18 March 1948, while Mercedes Tobias accompanied by Eusebio Gerilla and Lucia Pelo was on the way to her home in the barrio of Guinarona, municipality of Dagami, province of Leyte, coming from her farm in Maanghon, she met a group of more than ten men all armed with rifles, some of them with beard reaching the breast. Nestorio Remalante, one of the bearded men, approached, took hold of and dragged Mercedes Tobias. She remonstrated and entreated him not to take her because she had done him no wrong. Remalante continued to drag and struck her with the butt of his rifle on different parts of her body. The companions of Mercedes were told to continue their way. They saw Mercedes being dragged toward the *sitio* of Sawahon. Hardly had they walked one kilometer when they heard gun reports. The following day Mercedes Tobias was found dead in Sawahon with two gunshot wounds, the points of entry being at the back and of exit at the left breast and shoulder (Exhibit A).

Nestorio Remalante was charged with the complex crime of kidnapping with murder. His companions have not been apprehended. After trial the Court of First Instance of Leyte found him guilty of the crime charged and sentenced him to *reclusion perpetua*, the accessories of the law, to indemnify the heirs of the deceased in the sum of ₱2,000 and to pay the costs. He has appealed.

The appellant claims that at about 1:00 o'clock in the afternoon of that day while he together with Emeterio Arellano was working on his farm at Binog the dissidents apprehended and detained him because they were not satisfied with his answers as to whether he had been furnishing the constabulary soldiers information about them; that as he begged to be excused from going with them they beat him up with their rifles hitting him on the head and causing him to lose consciousness; that when he came to the dissidents took him together with another male prisoner along with them and on their way they met Mercedes Tobias and her companions; that upon orders of the leader of the band he (the appellant) took hold of Mercedes Tobias and when he informed the leader that she refused to go with them the leader again beat him up (the appellant); that the dissidents together with the three captives continued their way; that after walking 100 meters they stopped; that the leader commanded five soldiers and the two male prisoners to prepare the meal and the other soldiers to take Mercedes Tobias away; that not long hereafter the appellant heard gun reports from a place about a kilometer away; and that after taking their meal he (the appellant) was further questioned and the dissidents satisfied that he was not an informer released him.

The appellant admits he took hold and dragged Mercedes Tobias on that occasion, although he pretends it was upon orders of the leader of the band. If it is true that he was illtreated by the captors and fell unconscious as a result thereof, it is strange that he did not exhibit or show any bruise or wound which would have left a scar. The corroborative evidence of his claim is given by Emeterio Arellano who is the husband of his mother's sister. The fact that the appellant grew beard reaching his breast as some of his companions did is a positive and clear proof that he was a member of the group of marauders, dissidents, bandits who were harassing the peaceful inhabitants of the town of Dagami and its environs. It is true that no one witnessed the killing of Mercedes Tobias, but the acts of the malefactors show and constitute conspiracy which renders the appellant liable for the crime committed by his companions.

There is no sufficient evidence of intention to kidnap because from the moment Mercedes Tobias was held and dragged to the time when the gun reports were heard nothing was done or said by the appellant or his confederates to show or indicate that the captors intended to deprive her of her liberty for sometime and for some purpose and thereafter set her free or kill her. The interval was so short as to negative the idea implied in kidnapping. Her short detention and illtreatment are included or form part of the perpetration of the crime of murder. It is murder because of the concurrence of at least one qualifying circumstance, either of treachery,

or of abuse of superior strength, or with the aid of armed men, the first shown by the entry of the shots at the back and the second and the third by the number of the armed captors. the appellant and his companions, some or one of whom killed Mercedes Tobias. For lack of sufficient number of votes as required by law, the death penalty recommended by the Solicitor General cannot be imposed.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Jugo, Pablo, Montemayor, Bautista Angelo, and Labrador, JJ., concurred.

Messrs. Justices Feria and Reyes took no part.

I certify that Mr. Justice Tuason concurred in this opinion.

(SGD.) RICARDO PARAS
Chief Justice

VIII

Administrative Case, No. 126, vs. In re: Atty. Tranquilino Rovero, respondent, October 24, 1952, Paras, C. J.

1. ATTORNEY-AT-LAW; ACTS OF ATTORNEY NOT IN THE EXERCISE OF LEGAL PROFESSION.— Under Sec. 25, Rule 127 of the Rules of Court, a member of the bar may be removed or suspended from his office as attorney for a conviction of a crime involving moral turpitude, and this ground is a part from any deceit, malpractice or other gross misconduct in office as lawyer.
2. ID.; MORAL TURPITUDE, DEFINED; CONVICTION OF SMUGGLING.— Moral turpitude includes any act done contrary to justice, honesty, modesty or good morals. The conviction of an attorney of smuggling by final decision of the Court of Appeals certainly involves an act done contrary at least to honesty or good morals.

First Assistant Solicitor General *Ruperto Kapunan, Jr.* and Solicitor *Jesus A. Avanceña* as complainants.

Respondent in his own behalf.

RESOLUTION

PARAS, *C. J.*:

The Solicitor-General has filed the present complaint for disbarment against Atty. Tranquilino Rovero, on the grounds that on March 31, 1947, "respondent Tranquilino Rovero, having been found in a final decision rendered by the then Insular Collector of Customs to have violated the customs law by fraudulently concealing a dutiable importation, was fined in an amount equal to three times the customs duty due on a piece of jewelry which he omitted to declare and which was subsequently found to be concealed in his wallet", and that on October 28, 1948, "respondent Transquilino Rovero was convicted of smuggling by final decision of the Court of Appeals in Criminal Case No. CA-G. R. No. 2214-R, affirming a judgment of the Court of First Instance of Manila sentencing him to pay a fine of ₱2,500.00, with subsidiary imprisonment in case of insolvency, said case involving a fraudulent practice against customs revenue, as defined and penalized by Section 2703 of the Revised Administrative Code." The respondent admits the existence of the decision of the Collector of Customs, and his conviction by the Court of Appeals, but sets up the defense that they are not sufficient to disqualify him from the practice of law, especially because the acts of which he was found guilty, while at most merely discreditable, had been committed by him as an individual and not in pursuance or in the exercise of his legal profession.

Under section 25, Rule 127, of the Rules of Court, a member of the bar may be removed or suspended from his office as attorney for a conviction of a crime involving moral turpitude, and this ground is apart from any deceit, malpractice or other gross misconduct in office as lawyer. Moral turpitude includes any act done contrary to justice, honesty, modesty or good morals. (*In re* Basa, 41 Phil. 275.)

Respondent's conviction of smuggling by final decision of the Court of Appeals certainly involves an act done contrary at least to honesty or good morals. The ground invoked by he Solicitor General is aggravated by the fact that the respondent sought to defraud, not merely a private person, but the Government.

Wherefore, the respondent Tranquilino Rovero is hereby disbarred from the practice of law, and he is hereby directed to surrender to this Court his lawyer's certificate within 10 days after this resolution shall have become final.

So ordered.

Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo and Labrador, J.J., concurred.

IX

In re: Petition for the Probate of the Will of the Deceased Da. Leona Singson. Dr. Manuel Singson, petitioner-appellee, vs. Emilia Florentino, Trinidad Florentino de Paz, et al, L-4603, October 25, 1952, Bautista Angelo, J.

1. WILL; TRIAL; DEPOSITION OF INSTRUMENTAL WITNESS.— Where the instrumental witness of the will is within the seat of the court but is unable to appear at the trial because of sickness his deposition may be taken under Sec. 11, Rule 77 in connection with Sec. 4, Rule 18 of the Rules of Court.
2. ID.; ATTESTATION CLAUSE; NUMBER OF PAGES UPON WHICH WILL IS WRITTEN.— The provision of Sec. 618 of the Code of Civil Procedure, as amended by Act No. 2645, which requires that the attestation clause shall state the number of pages or sheets upon which the will is written is mandatory as an effective safeguard against the possibility of interpolation or ommission of some of the pages of the will to the prejudice of the heirs to whom the property is intended to be bequeathed.
3. ID.; ID.; FAILURE TO STATE NUMBER OF PAGES UPON WHICH WILL IS WRITTEN.— Where the attestation clause of the will does not state the number of sheets or pages upon which the will is written, but the last part of the body of the will contains a statement that it is composed of eight pages, the will is drafted in substantial compliance with the law.
4. ID.; ID.; PLACE WHERE SIGNATURE OF TESTATRIX HAD BEEN AFFIXED.— The attestation clause of the will reads: "Nosotros los testigos, conforme al ruego de Da Leona Singson, en este testamento, despues de anunciarnos que este es su testamento donde hizo sus ordenes sobre su verdadera y ultima voluntad, firmo o imprimio su carca digital en presencia de todos nosotros; y nosotros firmamos tambien en presencia de ella y delante de cada uno de nosotros al pie del citado testamento y en el margen izquierdo de sus otras paginas. Y hemos observado que Da. Leona Singson estaba en su sano juicio, pensamiento y uso de sus sentidos," *Held:* The attestation clause at first glance would appear that the testatrix merely signed or stamped her thumbmark on the will in the presence of the witnesses, without stating the place where signature or thumbmark had been affixed, which impression is caused by the fact that right after the sentence "firmo e imprimio su marca digital en presencia de todos nosotros," there appears a semicolon; but if this semicolon is disregarded, it would appear that the testatrix signed or affixed her thumbmark not only at the bottom of the will but also on the left margin of each and every page thereon, considering the concluding part of the sentence

concerning the signing of the will. That semicolon undoubtedly has been placed there by mistake or through inadvertence, as may be deduced from the use of the word "tambien" made by the witnesses in the sentence immediately following, which conveys the idea of oneness in action both on the part of the testatrix and the witnesses. Thus considered and interpreted, the attestation clause complies substantially with the law.

Vicente Paz for oppositors-appellants.

Felix V. Vergara and *Pedro Singson* for petitioner-appellee Dr. Manuel Singson and legatees Consolacion Florentino and Rosario F. de Donato.

DECISION

BAUTISTA ANGELO, *J.*:

This is an appeal from a decision of the Court of First Instance of Ilocos Sur admitting to probate the last will and testament of the late Leona Singson.

On January 13, 1948, Leona Singson died in Vigan, Ilocos Sur, leaving a will. In said will the deceased instituted as heirs her brothers Evaristo, Dionisio and Manuel, her nieces Rosario F. de Donato, Emilia Florentino and Trinidad Florentino de Paz, her grand niece Consolacion Florentino, and some servants. She named her brothers Evaristo and Manuel as executors of the will. On February 2, 1948, Manuel Singson filed a petition for the probate of said will.

On March 6, 1948, Emilia Florentino, Trinidad Florentino de Paz and Josefina Florentino Vda. de Lim, daughters of a sister of the deceased, opposed the petition alleging among other grounds that the signature appearing in the will are not the genuine signatures of the deceased, and that the will has not been executed in accordance with the formalities of the law.

After due trial, the court found that the will has been executed in accordance with law and admitted the same to probate. The oppositors appealed to the Court of Appeals, but the case was later certified to this Court for the reason that it involves purely questions of law.

The first error assigned refers to the admission by the lower court of the deposition of Fidel Reyes, an instrumental witness, which was taken because he was then suffering from paralysis and was thus physically incapacitated to appear and testify in court. It is the claim of the oppositors that, under section 11, rule 77 of the Rules, if the will is contested, all the subscribing witnesses present in the Philippines must be produced and examined, and if they are dead, absent or insane, this fact must be satisfactorily shown to the court. If a subscribing witness is present in the Philippines but outside the province where the will has been filed, his deposition must be taken. In this case Fidel Reyes was not outside of the province, in fact he was then living in the place where the case was pending trial. He, therefore, must appear in court and his deposition cannot be taken. And so they contend that the lower court erred in admitting his deposition instead of taking his testimony.

It should be noted that one of the three instrumental witnesses of the will, namely, Bonifacio Brillantes, was already dead when the case came up for trial and the only witnesses then available were Victoriano Lazo and Fidel Reyes who was then unable to appear because of his physical ailment. And when this matter was brought to the knowledge of the court, the latter manifested its desire to go to the house of the ailing witness for the taking of his testimony, but the move was prevented because of the conformity of counsel for the oppositors to the taking of his deposition. And because of this conformity, the deposition was taken and on that occasion opposing counsel was present and actually took part in the taking of the deposition. In the face of these facts, we opine that, while the taking of the deposition was not made in strict compliance with the rule (section 11, rule 77), the deficiency, if any, has been cured by the waiver evinced by counsel for the oppositors which prevented the court from constituting itself in the residence of the witness.

We believe, however, that the deposition may also be justified by interpreting section 11, rule 77, in connection with rule 18, section 4(c), of the Rules, relative to the taking of the deposition of a witness in ordinary cases when he is unable to testify because of sickness. Interpreting and harmonizing together these two provisions we may draw the conclusion that even if an instrumental witness is within the seat of the court but is unable to appear because of sickness, as in this case, his deposition may still be taken, for a different interpretation would be senseless and impractical and would defeat the very purpose which said rule 77 intends to serve.

Another point raised by oppositors refers to the alleged failure of the attestation clause to state the number of the sheets or pages in which the will is written which, it is claimed, is fatal because it is contrary to the express requirement of the law.

The law referred to is article 618 of the Code of Civil Procedure, as amended by Act No. 2645, which requires that the attestation clause shall state the number of pages or sheets upon which the will is written, which requirement has been held to be mandatory as an effective safeguard against the possibility of interpolation or omission of some of the pages of the will to the prejudice of heirs to whom the property is intended to be bequeathed (In re will of Andrada, 42 Phil. 180; Uy Coque v. Navas L. Sioca, 43 Phil. 405; Gumban v. Gorecho, 50 Phil. 30; Quinto v. Morata, 54 Phil. 481; in re will of Maximo Sarmiento v. Roman Sarmiento, et al., 38 Off. Gaz., 2632). The *ratio decidendi* of these cases seems to be that the attestation clause must contain a statement of the number of sheets or pages composing the will and that if this is missing or is omitted, it will have the effect of invalidating the will if the deficiency cannot be supplied, not by evidence *aliunde*, but by a consideration or examination of the will itself. But here the situation is different. While the attestation clause does not state the number of sheets or pages upon which the will is written, however, the last part of the body of the will contains a statement that it is composed of eight pages, which circumstance in our opinion takes this case out of the rigid rule of construction and places it within the realm of similar cases where a broad and more liberal view has been adopted to prevent the will of the testator from being defeated by purely technical considerations.

One of such cases is De Gala v. Gonzales and Ona, 53 Phil. 104. Here one of the objections raised was that the attestation clause does not state that the will had been signed in the presence of the witnesses although this fact appears in the last paragraph of the body of the will, and the Court, in overruling the objection, said that "it may be conceded that the attestation clause is not artistically drawn and that, standing alone, it does not quite meet the requirements of the statute, but taken in connection with the last clause of the body of the will, it is fairly clear and sufficiently carries out the legislative intent; it leaves no possible doubt as to the authenticity of the document".

Another case that may be cited is Mendoza v. Pilapil, 40 Off. Gaz., No. 9, p. 1855. (June 27, 1941). In this case, the objection was that the attestation clause does not state the number of pages upon which the will was written, and yet the court held that the law has been substantially complied with inasmuch as in the body of the will and on the same page wherein the attestation clause appears written it is expressly stated that will contains three pages each of which was numbered in letters and in figures. Said the court:

"El proposito de la ley al establecer las formalidades que se requieren en un

testamento, es indudablemente asegurar y garantizar su autenticidad contra la mala fe y el fraude, para evitar que aquellos que no tienen derecho a suceder al testador, le suceden y salgan beneficiados con la legalizacion del mismo. Se ha cumplido dicho proposito en el caso de que se viene hablando porque, en el mismo cuerpo del testamento y en la misma pagina donde aparece la clausula de atestiguamiento, o sea la tercera, se expresa que el testamento consta de tres paginas y porque cada una de las dos primeras lleva en parte la nota en letras, y en parte la nota en guarismos, de que son respectivamente la primera y segunda paginas del mismo. Estos hechos excluyen evidentemente todo temor, toda sospecha, o todo asomo de duda de que se haya sustituido alguna de sus paginas con otra." (Mendoza v. Pilapil, et al., 40 Off. Gaz., No. 9, pp. 1855, 1862).

Considering the form in which the will question is written in the light of the liberal ruling above adverted to the conclusion is inescapable that the will has been drafted in substantial compliance with the law. This opinion is bolstered up when we examine the will itself which shows on its face that it is really and actually composed of eight pages duly signed by the testatrix and her instrumental witnesses.

The remaining question to be determined is: does the attestation clause state that the testafrix signed each and every page of the will in the presence of the three instrumental witnesses as required by law?

The disputed attestation clause reads as follows:

"NOSOTROS los testigos, conforme al ruego de Da Leona Singson, en este testamento, despues de aunciarnos que este es su testamento donde hizo sus ordenes sobre su verdadera y ultima voluntad, firmo o imprimio su marca digital en presencia de todos nosotros; y nosotros firmamos tambien en presencia de ella y delante de cada uno de nosotros al pie del citado testamento y en el margen izquierdo de sus otras paginas. Y hemos observado que Da. Leona Singson estaba en su sano juicio, pensamiento y uso de sus sentidos. (Exh. A-1)".

A perusal of the above attestation clause would at first glance give the impression that the testatrix merely signed or stamped her thumbmark on the will in the presence of the witnesses, without stating the place where her signature or thumbmark had been affixed, which impression is caused by the fact that right after the sentence *firmo e imprimio su marca digital en presencia de todos nosotros*, there appears a semicolon; but if this semicolon is disregarded, we would at once see that the testatrix signed or affixed her thumbmark not only at the bottom of the will but also on the left margin of each and every page thereon, considering the concluding part of the sentence concerning the signing of the will. That semicolon undoubtedly has been placed there by mistake or through inadvertence, as may be deduced from the use of the word *tambien* made by the witnesses in the sentence immediately following, which conveys the idea of oneness in action both on the part of the testatrix and the witnesses. Thus considered and interpreted, the attestation clause complies substantially with the law.

"The appellants earnestly contend that the attestation clause fails to show that the witnesses signed the will and each and every page thereof because it simply says 'que nosotros los testigos hemos tambien firmado en presencia de la testadora y en la presencia del uno al otro' (that we the witnesses also signed in the presence of the testatrix and of each other).

In answer to this contention it may be said that this portion of the attestation clause must be read in connection with the portion preceding it which states that the testatrix signed the will and on all the margins thereof in the presence of the witnesses; especially, because the word also used therein establishes a very close connection between said two portions of the attestation clause. This word also should: therefore be given its full meaning which, in the instant case, is that the witnesses signed the will in the same manner as the testatrix did. The language of the whole attestation clause, taken together, clearly shows that the witnesses signed the will and on all the margins thereof in the presence of the testatrix and of each other." (Rey v. Cartagena, 56 Phil. pp. 282, 284.)

In view of the foregoing, we find that the lower court did not commit any of the errors assigned by appellants and, therefore, we affirm the decision appealed frob, with costs.

Paras, C.J., Pablo, Bengzon, Padilla, and *Montemayor, JJ.*, concurred.

Messrs. Justices Jugo and Labrador concurred in the result.

X

Eugenio Evangelista and Simeon Evangelista, plaintiffs-appellees, vs. Brigida Soriano, defendant-appellant, L-4625, October 29, 1952, Padilla, J.

1. DEFAULT; ANSWER; EFFECT OF FILING ANSWER.—Where the defendant in an action for detainer and collection of rentals due and unpaid filed her answer within the time provided for in Sec. 1, Rule 9 of the Rules of Court, she could not be deemed and declared in default (Sec. 3, Rule 7).

2. APPEAL; WHO COULD WITHDRAW THE APPEAL.—Under the provisions of Sec. 9, Rule 40 of the Rules of Court, the party who could withdraw the appeal to the Court of First Instance from the judgment of the municipal court was the appellant, because such withdrawal would revive the judgment against her rendered by the municipal court. Obviously, the appellees for whom judgment was rendered could not ask for the withdrawal of the appeal. They would not ask for the dismissal of the case because the judgment secured by them would not be revived thereby and they would be left without judgment which was vacated upon perfection of the appeal.

3. ID.; FAILURE TO APPEAR AT THE TRIAL; WITHDRAWAL OF APPEAL.—When the defendant or her attorney in an action for detainer and collection of rentals due and unpaid failed to appear at the resumption of the trial, the court could not dismiss the appeal to the Court of First Instance from the judgment of the municipal court because it was not authorized to do so, but was in duty bound to hear the evidence of the plaintiffs and render judgment thereon unless for good reasons it deemed it justified to postpone the hearing of the case. Nor could it dismiss the case and grant the remedy prayed for, such as the payment of rentals, even if the defendant had vacated already the premises, without a finding that such rentals were really due and unpaid, for a dismissal of the case, if granted, would leave the prevailing parties in the municipal court bereft of or without a judgment. The failure of the defendant or her attorney to appear at the resumption of the trial of the case could not be deemed a withdrawal of her appeal. And as there are no findings of fact upon which a judgment may be based and rendered, the order of the court holding that defendant's failure to appear and prosecute her appeal is tantamount to a withdrawal of the case on the merits (section 12, Article VIII, of the Constitution).

4. PARTY; DEATH OF PARTY WHEN CASE IS PENDING.—Where a party died when the case is pending, her attorney should prove the fact of her death and the court shall order, upon proper notice, the legal representative of the deceased to appear

for her within 30 days or such time as may be granted, as provided for in section 17, Rule 3 of the Rules of Court.

DECISION

PADILLA, *J.*:

This is an action for detainer and collection of rentals due and unpaid. After trial judgment was rendered for the plaintiffs. The defendant appealed filing a supersedeas bond. In the Court of First Instance the defendant filed an answer setting up illegality of the rentals sought to be collected and of he assessed value of the leased premises upon which the increased rental was based, failure of the plaintiffs to make plumbing repairs in the leased premises, a counterclaim for ₱128 claimed to be an excess of the amount of rental authorized by law from February 1945 to December 1946, both inclusive, and damages in the sum of ₱250. On 21 January 1949 the attorneys for the plaintifs filed a motion praying for the dismissal of the case, payment to the plaintiffs of the supersedeas bond in the sum of ₱347.50 and withdrawal by them of the amount of ₱176 for rentals deposited by the defendant, for the reason that the latter had vacated the premises on 19 January 1949 and because she and her attorney failed to appear at the resumption of the trial of the case on 21 January, the plaintiffs waiving payment of rentals for July, October, November and December 1948 and half of January 1949, to put an end to the litigation, without costs. On that date, after stating that the case was partly tried on 1 July, the trial having been postponed due to the failure of the clerk of the municipal court to forward the exhibits presented by the parties, and that the resumption of the trial set for 24 August and 23 September was postponed again upon motion of the attorney for the defendant and set for 21 January 1949 on which date the defendant and her attorney failed to appear and the attorneys for the plaintiffs moved for the dismissal of the case and prayed that the plaintiffs be allowed to withdraw the rentals deposited in court by the defendant, the court entered an order holding that "her failure to appear and prosecute her appeal is tantamount to a withdrawal of said appeal" and that "the appeal is considered withdrawn, the judgment of the Municipal Court is deemed revived and let the record of the case be remanded to the Municipal Court in accordance with Sec. 9, Rule 40, of the Rules of Court, for the enforcement of the judgment rendered by it in the case." On 24 January 1949 the attorney for the defendant filed a motion praying that the proceedings be suspended until after the provisions of section 17, Rule 3, shall have been complied with, in view of the fact that the defendant had died on 9 January 1949, and explaining that his (attorney's) failure to appear at the resumpton of the trial on 21 January was due to the fact that there was a proposal for an amicable settlement and that not having heard from the defendant despite his letter to her sent on the 15th, he thought that the case had been settled amicably. On 29 January 1949 both motions for dismissal of the case filed on behalf of the plaintiffs and for suspension of the proceedings filed in behalf of the defendant were acted upon, the Court inviting attention to its order of 21 January 1949, which, according to it, disposed of the two motions, and further holding that the case was "within the jurisdiction of the Municipal Court for the execution of the judgment rendered by it in his case." On 18 May 1949, acting upon a motion filed by the plaintiffs, the court authorized the atorneys for the plaintiffs to withdraw the sum of ₱176 in cash for rentals deposited and of ₱347.50 as supersedeas bond, and further stated that "this withdrawal is authorized in accordance with the judgment rendered in this case on 21 January 1949." On 21 June 1949 attorney for the defendant moved for reconsideration of the order of 18 May 1949, on the ground that it was contrary to law and entered without jurisdiction. This motion was denied. A notice of appeal, an appeal bond and a record on appeal were filed. The appeal was certified to this Court because only questions of law are raised and involved.

Section 9, Rule 40, provides: "A perfected appeal shall operate to vacate the judgment of x x x the municipal court, and the action when duly entered in the Court of First Instance shall stand for trial *de novo* upon its merits in accordance with the regular procedure in that Court, as though the same had never been tried before and had been originally there commenced. If the appeal is withdrawn, the judgment shall be deemed revived and shall forthwith be remanded to the x x x municipal court for execution." The defendant filed her answer within the time provided foir n section 1, Rule 9, so she could not be deemed and declared in default (section 3, Rule 7). Even if she had failed to file her answer within the time required and were declared in default, the plaintiffs were bound to present their evidence upon which judgment could be rendered. In accordance with the above quoted provisions of section 9, Rule 40, the party who could withdraw the appeal was the appellant, because such withdrawal would revive the judgment against her rendered by the municipal court. Obviously, the appellees for whom judgment was rendered could not ask for the withdrawal of the appeal. They would not ask for the dismissal of the case because the judgment secured by them would not be revived thereby and they would be left without judgment which was vacated upon perfection of the appeal.

It is contended that section 9, Rule 40, is not applicable to appeals in detainer cases because the appeal does not vacate the judgment but suspends only, as may be inferred from the authority of the court to which the case has been appealed to order execution of the judgment during the pendency of the appeal upon failure of the appellant to pay to the prevailing party or to deposit in court the stipulated rentals or the reasonable compensation, for the preceding month on or before the tenth day of each month, for the use or occupation of the premises, as fund by the judgment of the municipal or justice of the peace court. This authority to direct execution expressly provided for in section 8, Rule 72, in no way alters the provisions of section 9, Rule 40, on the effect of an appeal upon a judgment rendered by a municipal or justice of the peace court. And proof of this is the provision in the same section that such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits." When the defendant or her attorney failed to appear at the resumption of the trial on 21 January 1949, the court could not dismiss the appeal because it was not authorized to do so, but was in duty bound to hear the evidence of the plaintiffs and render judgment thereon unless for good reasons it deemed it justified to postpone the hearing of the case. Nor could it dismiss the case and grant the remedy prayed for, such as the payment of rentals, even if the defendant had vacated already the premises, without a finding that such rentals were really due and unpaid, for a dismissal of the case, if granted, would leave the prevailing parties in the municipal court bereft of or without a judgment. The failure of the defendant or her attorney to appear at the resumption of the trial of the case on 21 January 1949 could not be deemed a withdrawal of her appeal. And as there are no findings of facts upon which a judgment may be based and rendered, the order of 21 January 1949 is not and cannot be deemed a judgment of the case on the merits (section 12. Article VIII, of he Constitution).

As to the substitution of the defendant, her attorney should prove the fact of her death and the court shall order, upon proper notice, the legal representative of the deceased to appear for her within 30 days or such time as may be

granted, as provided for in section 17, Rule 3. The Court could not order the legal representaive of the decease to appear for her because it considered the order of 21 January 1949 as judgment entered in the case and notice of the defendant's death was given it three days later or on 24 January 1949.

The trial court seems to be of the behef and opinion that the order of 21 January 1949 is a judgment, where it held that failure of the defendant or her attorney to appear at the resumption of the hearing of the case on that date was tantamount to a withdrawal of the appeal, that the judgment of the municipal court was revived, and that for that reason it directed the record of the case to be remanded to the municipal court for execution. For the reasons above set forth this is an error, because as the appellant did not withdraw the appeal there was no withdrawal thereof. On the other hand, as already stated, the appellees could not ask for the withdrawal of the appeal because it was not their appeal and would not ask for the dismissal of the case because, if granted, they would have been left without a judgment.

The orders of 29 January and 18 May 1949, being predicated upon an erroneous opinion that the order of 21 January 1949 is a judgment, which is not and is a nullity, are set aside and the case remanded to the court below for further proceedings in accordance with law, without costs.

Paras, C.J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concurred.

XI

Alicia S. Gonzales, plaintiff-appellee, vs. Asia Life Insurance Co., defendant-appellant, L-5188, October 29, 1952, Bengzon, J.

1. INSURANCE: TENDER OF PREMIUM REFUSED.—On April 15, 1940, the defendant Asia Life Insurance Company insured the life of G. The premium was payable annually on or before April 15. The premiums for the first two years were duly paid. On or before April 15, 1942 the insured tendered the premium for the third policy year to the branch office of the company in Iloilo City, but the insurer refused to accept it, because the office was closing for the day on account of the threat of bombing by Japanese planes. On September 22, 1942 G died. *Held:* The refusal to accept payment was not justified. The insurer, therefore, may not asset nonpayment of the premium as a defense to an action on the policy. The act of the insurer or his agent in refusing the tender of a premium properly made, will necessarily estop the insurer from claiming a forfeiture from non-payment.

J. A. Wolfson for appellant.
Fulgencio Vega for appellee.

DECISION

BENGZON, *J.*:

On April 15, 1940, the defendant American corporation issued its twenty-year endowment policy insuring the life of Celso R. Gonzales and designating the plaintiff Alicia S. Gonzales, as beneficiary. The premium was payable annually on or before April 15. The premiums for the first two years were duly paid. The premium accruing April 15, 1942 was not actually paid. But according to the court of first instance of Iloilo, where this case was tried, "On or before April 15, 1942 the premium for the third policy year was tendered to the branch office of the company in Iloilo City, but was not accepted because at the time it was tendered the office was closing for the day on account of the threat of bombing by Japanese planes. There is some controversy between the parties as to this fact, the defendant denying that tender of payment was ever made, while on the other hand the plaintiff's witness Carlos Soriano, who was the one who had been delegated by the insured to make the payment, could not remember the precise date when he offered it. But that there was tender of payment of the third-year premium on or before its due date, which however was not accepted for the reason already referred to, may reasonably be inferred from the fact that the plaintiff's statement to that effect in her claim-letter written to the defendant on November 2, 1945 (Exh. 1), was not challenged or denied by the latter's agent in Iloilo, who simply transmitted said letter to the Manila office for adjudication of the claim on the basis of what was therein stated."

On September 22, 1942 Celso R. Gonzales died.

After the deliberation in January 1947 this suit was instituted. The defense was based on non-payment of the premium, and the consequent lapse of the policy before the insured's death. The Hon. Queruben Macalintal allowed the plaintiff beneficiary to recover on the grounds: (1) that the premium for April 15, 1942 had been tendered on or before that date but was refused, and (2) because non-payment of that premium was excused by the occurence of the war, the American insurance company having closed its Iloilo office on and after April 16, 1942.

There is no question that under the terms of the policy, non-payment of premiums on time would cause the lapse thereof. There is also no question that the annual premium for same policy was due and payable on April 15, 1942 there being no allegation or claim that such surrender value and accumulated from which the premium could be advanced by the insurer.

Appellant's sole assignment of error is that the trial court erred in not holding that the policy lapsed by reason of non-payment of premiums. The only argument in support of this assignment is our decision in Constantino v. Asia Life Insurance Company, 47 Off. Gaz. Suppl. 12 p. 428 and others, holding that the occurence of war was no excuse for nonpayment of premiums. In the face of our rulings the lower court's decision (1) following a contrary doctrine must be held erroneous.

However, it does not follow that defendant is entitled to reversal. His Honor declared that the premium had been tendered on or before April 15, 1942, the insurer refusing to accept it, "because the office was closing for the day on account of the threat of bombing by Japanese planes." That is a finding of fact which we find no reason to disturb. The refusal to accept payment was not justified. The insurer, therefore, may not assert non-payment of the premium as a defense to an action on the policy.

"The act of the insurer or his agent in refusing the tender of a premium properly made, will necessarily estop the insurer from claiming a forfeiture from nonpayment." (Vance on Insurance 2d Ed. p. 294 citing Meyer v. Ins. Co. 29 Am. Rep. 200; Continental Ins. Co. v. Miller 30 N.E. 718).

According to Corpus Juris, Vol. 32, tender to an agent authorized to receive payment of premiums is obviously sufficient to prevent a forfeiture for nonpayment. (p. 1311)

> "When the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured." (Manhattan I. Ins. Co. v. Warwick, supra.) (Note, Corpus Juris Vol. 32 p. 1306)

Again the situation here described bears some similarity to the case where the insured made efforts to pay at the office of the insular but could not pay due to the absence of the latter's agent,

(1) Rendered before publication of our views.

"Absence from office.—While inability of insured to make payment at the office of insurer because of the absence of its representatives does not excuse nonpayment where it does not appear that the effort to make payment was made during reasonable office hours, where insured has made reasonable efforts to pay during office hours but is prevented by such absence, nonpayment is excused." (Corpus Juris Sec. Vol. 45 p. 474)

Wherefore, it is proper to affirm the decision requiring the insurer to pay with legal interest, the value of the policy minus the amount of the premium unpaid on September 22, 1942.

The question whether the insurer was justified in contesting the claim and should pay the beneficiary legal interest for the duration of the delay [1], may properly be overlooked, because plaintiff has not appealed.

Judgment affirmed, with costs.

Paras, C.J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo and *Labrador, JJ.*, concerred.

XII

People of the Philippines, plaintiff-appellee, vs. Bienvenido Capistrano, defendant-appellant, L-4549, October 22, 1952, Jugo, J.

1. CRIMINAL LAW; PENALTY; MINORITY CONSIDERED AS A SPECIAL MITIGATING CIRCUMSTANCE.—The accused was more than nine but less than fifteen of age at the time he committed the crime of treason. However, the accused acted with discernment, yet it may be leader or commander of the raiding party. *Held:* Although his minority does not exempt him from criminal responsibility for the reason that he acted with discernment, yet it may be considered as a special mitigating circumstances lowering the penalty by two degrees.

2. ID.; MINORS; SUSPENSION OF SENTENCE.—Where the accused was more than nine but less than fifteen years but was over eighteen years old at the time of the trial, Art. 80 of the Revised Penal Code providing for suspension of sentence of minor delinquents cannot be applied.

(1) Section 91-A Insurance Act as amended. Alicia S. Gonzales v. Asia Life Insurance Company.

Miguel F. Trias for appelant.
Solicitor General *Pompeyo Diaz* and Solicitor *Esmeraldo Umali* for appellee.

DECISION

JUGO, *J.*:

Bienvenido Capistrano was charged before the Court of First Instance of Quezon province with the crime of treason on four (4) counts. He was found guilty by said court and setenced to suffer life imprisonment and to pay a fine of ₱10,000.000 and the costs.

The attorney *de oficio* of the appellant states in a petition filed with this Court that after having read, reread, and studied the evidence, he finds no substantial error committed by the trial court and prays for the affirmance of the judgment.

The evidence of record establishes the following:

The accused Bienvenido Capistrano admitted being a Filipino citizen.

Count No. I

Alejo Enriquez Wong and Carmen Verdera testified that the defendant was a so-called Yoin, which means an armed soldier of the Japanese. Wearing a Japanese army as a guard of a Japanese garrison. To the same effect, the witness Placer Canada testified.

The defendant argued at the trial court that there was no evidence showing that he had been appointed a Yoin or that he was a *Makapili*. While no written formal appointment was introduced in evidence, yet it is clear that he was engaged in the work of guarding the Japanese garrison, armed with a gun and wearing a Japanese uniform and taking part in the military drills of the Japanese army.

Count No. II

At about 3:00 o'clock in the morning of January 8, 1945, the defendant with other Filipino members of the Yoin and several Japanese soldiers, all armed, arrived near the house of Carmen Verdera in barrio Malay Municipality of Lopez, Province of Tayabas (now Quezon), and ordered the inmates therein to open the door. The appellant and his companions entered the house raised the mosquito nets and ordered the inmates to rise. The appellant and his companions tied Graciano Fortuna, Carmen Verdera, Alejo Enriquez Wong, Rufino Rivera, Maria Canada, Brisilio Canada, Remedios Anastasio, Dolores Enriquez, Teodora Zamora, Presentacion Anastacio, and Placer Canada with a rope which was used as a clothesline. The intruders then search the premises and seized from Alejo Enriquez Wong $1,000.00, U. S. currency, and ₱4,000.00, Philippine currency. They took Graciano Fortuna and the other inmates to the Japanese garrison at Lopez, Tayabas (Quezon) and then to the Yoin garrison in the same town. The motive for the raid was that Pedro Canada, a brother of Placer, was a guerilla lieutenant in Lopez and Salvador Fortuna, son of Graciano, was a soldier in the said organization. One night, during the detention of Placer and her companions in the Yoin garrison, the appellant attempted to sexually abuse Placer and her girl companions, but when the women cried and the Japanese came, the defendant escaped. Placer and her companions were released after one month when they paid to the Chief of the Yoin and the appellant the sum of ₱2,500.00 in Japanese war notes. This charge was testified to by the several victims.

The accused was more than nine (9) but less than fifteen (15) years of age at the time that he committed the crime charged. However, the court which had the opportunity to see and hear the accused at the trial found that he acted with discernment. It should be noted, furthermore, that he appeared as the leader or commander of the raiding party. Although his minority does not exempt him from criminal responsibility for the reason that he acted with discernment, yet it may be considered as a special mitigating circumstance lowering the penalty by two (2) degrees.

Article 80 of the Revised Penal Code cannot be applied to the accused because he was over eighteen (18) years old at the time of the trial (People vs. Estefa, 47 Off. Gaz., No. 11, 5652).

In view of the above special mitigating circumstance of minority, the penalty imposed upon the accused is hereby modified by imposing upon him four (4) years of *prision correccional*, to pay a fine of ₱10.000.00 and to indemnify Alejo Enriquez Wong in the sum of ₱6,000.00 with subsidiary imprisonment in case of insolvency in the payment of the fine and the indemnity, with costs.

It is so ordered.

Pablo, Bengzon, Padilla, Montemayor, Bautista Angelo and *Labrador, JJ.*, concurred.

Mr. Chief Justice Paras took no part.

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