I

H. E. Heacock Co., Petitioner-Appellant, vs. National Labor Union et al., Respondents-Appellees, No. L-5577, July 31, 1954, Paras, C.J.

1. EMPLOYER AND EMPLOYEES; FINDINGS OF FACT OF COURT OF INDUSTRIAL RELATIONS, CONCLUSIVE IN APPEAL BY CERTIORARI. — The findings of fact of the Court of Industrial Relations in an appeal by certiorari are conclusive on the Supreme Court.

2. ID.; BONUS; PAYMENT ON EQUITABLE CONSIDERATION. — For the year 1947 the petitioner paid a bonus of one month salary to all its employees, and for the years 1948 and 1949, realizing necessary profits, it also paid a bonus to its executives and heads of departments, omitting only the low salaried employees. *Held*: Even if a bonus is not demandable for not forming part of the wage, salary or compensation of the employee, the same may nevertheless be granted on equitable considerations.

3. ID.; ID.; ITS CONSIDERATION. — Any extra concession granted by the employer to his employee or laborer is necessarily premised on the need of improving the latter's working conditions to the highest possible level, in return only for the efficient service and loyalty expected from the employee or laborer.

Perkins, Ponce Enrile and *Contreras* for the petitioner.

H. A. Ferrer for the respondent court.

Eulogio R. Lerum for the respondent Union.

DECISION

PARAS, *C.J.*:

The National Labor Union, hereinafter to be referred to as the Union, filed a petition under date of June 26, 1950 in the Court of Industrial Relations against H. E. Heacock Co., hereinafter to be referred to as the Company, praying that the latter be ordered to pay to all its low salaried employees their bonus for the years 1948 and 1949, in an amount equivalent to one month salary for each year, it being alleged in substance that on the occasion of the distribution on April 17, 1948 of the same bonus for the year 1947, the Company promised that said benefit would be granted yearly to the employees, provided sufficient profits were made; that in 1948 and 1949 the Company, notwithstanding available profits, distributed bonus only to its high salaried employees; that upon the Company's failure to accede to the Union's demand for the payment of the stipulated bonus for the years 1948 and 1949, and upon its refusal to submit the matter to the labor-management committee in accordance with the collective bargaining agreement of April, 1949, the employees declared a strike on June 19, 1950.

In its answer, the Company in substance alleged that it had never bound itself to pay an annual bonus and that granted for the year 1947 was purely an act of grace and liberality on the part of the Company; that while the Company made some profits and paid to its executives and chiefs of departments bonuses for the years 1948 and 1949, the same was a voluntary concession to said officials who had received no increases in pay and were not entitled to and did not actually collect compensation for overtime work; that the compensation of the employees was never made to depend wholly or in part upon profits, and all wages to which were set out in the agreement of July 11, 1949, and any other payment or gratuity was entirely within the Company's discretion; that the illegal strike staged by the Union led the Company to suffer damages in the sum of ₱12,000.00.

After hearing, the Court of Industrial Relations, through Judge Jose S. Bautista, rendered a decision in favor of the employees, ordering the Company to pay them one month salary as bonus for the year 1948 and another one month salary for the year 1949. A subsequent motion for reconsideration filed by the Company was denied by the resolution of the Court of Industrial Relations *in banc*, dated July 16, 1951, by a vote of three to two. The instant petition for certiorari was filed by the Company, assailing the decision of the Court of Industrial Relations.

The lower court found that on April 17, 1948, the Company distributed to all its employees a bonus equivalent to their salaries for one month for the year 1947; that the Company realized profits in 1948 and 1949, and although it paid bonus to its high officials and executives for said years, it did not extend the same privilege to any low salaried employee; that the Union duly filed with the Company a protest against such omission, and demanded the payment of the same bonus to all the low salaried employees; that in the protest of May 15, 1950, the Union gave notice that, upon failure of the Company to grant the demand, steps would be taken for the protection of the members of the Union; that upon denial of the Company and its failure to submit the matter to the labor-management committee, as requested by the Union, the employees staged a peaceful strike on June 19, 1950, although they returned to work in obedience to a directive of the court; that the Company in fact made a promise to all its low salaried employees on April 17, 1948, that a bonus of one month salary would be distributed among them yearly, as for the year 1947, as long as the Company would realize sufficient profits.

The Company, however, contends that it had never assumed the obligation of paying the bonus claimed by the Union, and that there is no evidence whatsoever tending to prove such obligation.

It appears that the issues of *The Manila Times* and *The Manila Chronicle* of August 22, 1948 featured a "Heacock Supplement" containing the following statements:

> "The steady growth and enviable reputation of the H. E. Heacock Co., as an institution well known in the Philippines and in the entire Far East for its quality merchandise and courteous service exemplify a modern tenet of progressive employer-employee relationship founded on mutual confidence and good-will.
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> "The Heacock employees are given all the benefits that can reasonably be expected from the management, Jose Y. Orosa, the firm's first vice-president and assistant general manager, declared. 'For this reason,' he added, 'we have never had the unfortunate experience of seeing our employees go on strike since the company was organized in 1905. And we don't expect to have any strikes.'
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> "That the sound relationship between the management and the employees redounds to the good of everybody concerned was also pointed out by Mr. Orosa. The employer's goodwill is returned with a spontaneous manifestation of loyalty, cooperation, efficiency and unstinted honesty on the part of the employees, it was further explained.
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> "The present mutual confidence and good-will of Heacock's personnel is maintained for the ultimate benefit of the buying public, Mr. Orosa said. Employees who are treated right have sufficient reasons to give their employers full cooperation so that in the final analysis, the customers are the recipients of the rewards of such cooperation.
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> "Since the H. E. Heacock Co. resumed business after the war, 87 of its 200 employees have been given salary increases, Mr. Orosa revealed. There are other meritorious cases which deserve similar consideration in due time, it was pointed out.
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> "One of the most helpful and progressive steps ever taken by a firm like Heacock's is the setting up of a special fund for which the employees may draw a cash loan equivalent to a half-month salary and payable within 60 days. This privilege, it was explained, is a boon to those employees who may be forced

by circumstances beyond their control to meet emergency needs.

"Another benefit extended to Heacock employees is a 25 per cent overtime pay in addition to their regular pay. In other words, the employees are paid 25 per cent for all hours of work beyond the eight-hour limit fixed by law, it was also stressed. This makes it fair and profitable for the employee of this firm to render overtime service whenever the need arises, and that generally is during special sales and the Christmas season.

"At the end of every year, Mr. Orosa declared, the Heacock employees enjoy a profit-sharing privilege when they are given bonuses by the management, the amount depending on the profits realized during that year. This progressive policy, he pointed out, makes for a genuine interest on the part of the employees to work honestly and sincerely for the good of the company — a company which is theirs in a sense.

"Every year the employees of Heacock's are given 15 days vacation leave and 15 days sick leave with pay. They are also entitled to free medical and dental service rendered by the company physician and dentist.

"The management of the H. E. Heacock Co. firmly believes that athletics fosters fraternity, cooperation and 'a sound mind in a sound body.' With this end in view, the firm formed an athletic association whose membership is open to all employees of the company. Followers of the basketball game in this country are familiar with the reputation of the Heacock quintet which has time and again garnered laurels in the local sporting world.

"Mr. Orosa revealed that the H. E. Heacock Co. is a bona fide member of the Manila Industrial and Commercial Association (MICA). Such membership, he said, assures both the management and the employees with a solid foundation for profitable and sound business relationship. Problems affecting both parties which may arise are met and solved with open minds on common grounds. Fortunately for Heacock's, 40 years of public service have proved that the management and the employees have joined hands in mutual confidence and good-will.

"'Heacock's has a splendid reputation,' Mr. Orosa declared, 'and this has been built up by the employees and the government. We have lived up to the expectation of the public. We continue to do so, and to better serve our customers, we are opening our new air-conditioned store this week.'"

The same publication was carried in the issue of *The Manila Daily Bulletin* of August 23, 1948. The Union presented oral evidence tending to show that the President and General Manager of the Company, Donald O. Gunn, was the one who made the promise of April 17, 1948, to pay to all its employees yearly one-month salary as bonus, provided there were profits. This testimony is controverted by Mr. Gunn; but the lower court considered, in addition to such oral evidence, the publication of the "Heacock Supplement" on the occasion of the opening of the new store of the Company in Dasmariñas Street, Manila, as conclusive proof of its commitment to pay the bonus in question.

The "Heacock Supplement", in the portion pertinent to the case at bar, contained the following paragraph: "At the end of every year, Mr. Orosa declared, the Heacock employees enjoy a profit-sharing privilege when they are given bonuses by the management, the amount depending on the profits realized during the year. This progressive policy, he pointed out, makes for a genuine interest on the part of the employees to work honestly and sincerely for the good of the company — a company which is theirs in a sense." These statements are denied by Mr. Orosa, Vice-President and Assistant General Manager of the Company; and attorneys for the latter argue that Guztavo M. Torres, Assistant Manager of the Personnel Service Advertising Bureau which was then handling the advertising account of the Company, prepared the "Heacock Supplement", and, testifying on his interview with Mr. Orosa, declared that he was not certain as to the nature of the bonus talked about, and that he thought that it referred to the Christmas bonus which the Company gives to its employees at the end of every year, and that this was what he had in mind when he wrote the article in question. The Court of Industrial Relations gave no weight to the denial of Mr. Orosa, and observed that the latter was aware, or should have read and known the Supplement in question, and his failure to make any correction or denial of its contents shortly after its publication, negatives the stand now taken by him.

The Company also points out that both Mr. Gunn and Mr. Orosa could not legally bind the Company which can only act through its board of directors, and there is nothing in the record to show that the board promised to pay any yearly bonus or ratified the alleged promise made by Mr. Gunn or Mr. Orosa. Counsel for the Union, however, observes that notwithstanding the publication of the "Heacock Supplement" which undoubtedly must have been noticed by all the officials of the Company, no correction or denial ever came from its board of directors which, by such silence, must be deemed as having ratified the commitment of Mr. Gunn and the statement of policy featured in the "Heacock Supplement".

The Court of Industrial Relations also invoked, as another circumstance confirming the promise made by Mr. Gunn to pay an annual bonus to all the low salaried employees of the Company, the following passage contained in his letter of February 19, 1949, addressed to the Union: "The company desires to call your attention to the fact that the salaries, bonuses (on plural por referirse al bono de Navidad y al bono por razon de utilidades) paid vacation leaves, paid sick leave, medical and dental services, and other privileges and facilities, accorded to its employees are the highest in the city of Manila for comparable positions and, as a consequence, we cannot consider any general increase in wages at the present time without doing violence to the stability of the labor situation here, of which you are fully aware."

Attorneys for the Company have exerted great efforts in disputing the findings of the lower court, but we are not in a position to pass upon, much less alter, said findings which are conclusive in this instance. Even so, the decision favorable to the Union may further be predicated upon the case of Philippine Education Company, Inc. vs. Court of Industrial Relations et al., G. R. No. L-5103, December 24, 1952, in which we held that, even if a bonus is not demandable for not forming part of the wage, salary or compensation of the employee, the same may nevertheless be granted on equitable considerations. It appears herein that for the year 1947 the Company paid a bonus of one-month salary to all its employees, and for the years 1948 and 1949, realizing necessary profits, it also paid a bonus to its executives and heads of departments, omitting only the low salaried employees. The payment of the bonus in 1947 already generated in the minds of all the employees the fixed hope of receiving the same concession in subsequent years, and on the ground of equity they deserved to be paid the bonus for the years 1948 and 1949, when the Company admittedly realized enough profits. The Company insists that its high officials were given bonus for 1948 and 1949 because they had never been granted any salary raise or paid for any overtime work. This is, however, answered by the Union which alleges that no salary increase or overtime pay was necessary for the high officials of the Company, since they have already been receiving adequate compensation.

The Company also maintains that no valid obligation to pay the bonus in question could arise, because there was no consideration therefor. It is sufficient to state that any extra concession granted by the employer of his employee or laborer is necessarily premised on the need of improving the latter's working conditions to the highest possible level, in return only for the efficient service and loyalty expected from the employee or laborer.

Wherefore, the decision of the Court of Industrial Relations is hereby affirmed, and it is so ordered with costs against the petitioner, H. E. Heacock Co.

Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, JJ., concur.

II

Juan Galanza, Plaintiff-Appellee, vs. Sotero N. Nuesa, Defendant-Appellant, No. L-6628, August 31, 1954, Paras, C. J.

PURCHASE AND SALE; RIGHT OF REPURCHASE; STIPULATION ON THE PERIOD FOR LEGAL REDEMPTION. — The parties to a sale with *pacto de retro* may stipulate on the period for redemption, unaffected by registration or by section 119 of Commonwealth Act No. 141.

Alejo Mabanag and *Mauro Verzosa* for defendant and appellant.

Fidel Sor. Mangonon for plaintiff and appellee.

DECISION

PARAS, *C.J.*:

The plaintiff Juan Galanza owned a parcel of land covered by original certificate of title No. I-2247 issued on July 23, 1934, and acquired as a homestead. On September 7, 1940, he sold said land to the defendant Sotero N. Nuesa with a right of repurchase within 5 years from the date of execution of the deed of sale. The original certificate of title No. I-2247 was not cancelled until July 17, 1947, when a transfer certificate of title No. T-172 was issued in the name of the defendant. On May 19, 1951, the plaintiff instituted in the Court of First Instance of Isabela a complaint against the defendant, praying that the latter be ordered to reconvey the land to the plaintiff in accordance with Section 119 of Commonwealth Act 141. In his answer, the defendant set up the special defense that the plaintiff had failed to exercise his right of redemption within the period stipulated in the deed of sale executed on September 7, 1940, and that therefore the title to the property had already consolidated in the defendant. The parties entered into an agreement of facts, and the Court of First Instance of Isabela, on June 23, 1952, rendered a decision ordering the defendant to convey to the plaintiff the land in question, upon payment by the plaintiff to the defendant of the sum of ₱1,328.00 as the repurchase price, and ordering the Register of Deeds of Isabela to cancel transfer certificate of title No. T-172 and issue another in the name of the plaintiff. after the proper deed of reconveyance shall have been presented for registration, without pronouncement as to damages and costs. From this decision the defendant has appealed.

The question that arises, as expressly framed in the stipulation of facts is "whether the period to repurchase the land in question shall be counted from the execution of the deed of sale with right to repurhcase or from the issuance of transfer certificate of title of the herein defendant." The trial court held that the 5-year period of repurchase should be computed from the day the deed of sale with *pacto de retro* was registered on January 17, 1947, applying section 50 of the Land Registration Law which provides that "the act of registration shall be the operative act to convey and affect the land." In his brief, counsel for the plaintiff-appellee admits that the latter's right of repurchase under the deed of sale executed on September 7, 1940, had already expired, but it is contended that the present action is based on the right of repurchase granted by section 119 of Commonwealth Act 141 which provides that "every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of 5 years"; and that the term "conveyance" imports the transfer of legal title, which in the present case took place only after the issuance of the transfer certificate of title in the name of the defendant-appellant.

In our opinion, appellant's title had already become absolute, because of appellee's failure to redeem the land within five years from September 7, 1940. Both under section 50 of the Land Registration Law and under section 119 of Commonwealth Act 141, the owner of a piece of land is neither prohibited nor precluded from binding himself to an agreement whereby his right of repurchase is for a certain period starting from the date of the deed of sale. Indeed section 50 of the Land Registration Law provides that, even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third parties arising from subsequent alienations by the vendor, and is certainly not necessary to give effect, as between the parties, to their deed of sale. In the case of Carillo vs. Salak, G. R. No. L-4133, May 13, 1932, we made the following applicable pronouncement: "While we admit that the sale has not been registered in the office of the register of deeds, nor annotated on the torrens title covering it, such technical deficiency does not render the transaction ineffective nor does it convert it into a mere monetary obligation. but simply renders it ineffective against third persons. Said transaction is, however, valid and binding against the parties.

In the stipulation of facts, it is provided that in case judgment be in favor of the defendant, "the plaintiff will pay the amount of FIVE HUNDRED PESOS (₱500.00) to the defendant in concept of damages suffered." Even so, we are inclined to disallow appellant's claim for damages, in the same manner that, in the appealed decision, no damages were awarded in favor of the plaintiff in the absence of evidence to show how said damages accrued.

Wherefore, the appealed decision is hereby reversed and the complaint dismissed, without pronouncement as to costs.

Pablo, Padilla, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and J. B. L. Reyes, J.J., concur.

Montemayor reserved his vote.

BENGZON, *J. concurring*:

The idea occurs to me that the five-year period under section 119, C.A. 141 did not begin to run until *after expiration* of the conventional 5-year period of redemption. I should like to mull it over. Nevertheless I concur in this opinion, now because anyway the plaintiff allowed more than ten years to elapse before exercising his rights (Sept., 1940 to May 1951).

III

Esperanza V. Buhat, et al., Plaintiffs-Appellants, vs. Rosario Besana, Etc., et al., Defendants-Appellees, No. L-6746, August 31, 1954, Paras, C. J.

ACTIONS; PRESCRIPTION; MORTGAGE; REGISTRATION OF MORTGAGE DOES NOT MAKE IT IMPRESCRIPTIBLE. —The fact that a mortgage is registered does not make action to foreclose it imprescriptible.

Vicente Abalajon for plaintiffs and appellants.

Santiago Abella Vito for defendants and appellees.

DECISION

PARAS, *C. J.*:

On May 31, 1924, Jose M. Besana mortgaged his undivided one-half share in lot No. 1406 of the cadestral survey of Panay in favor of Luis Bernales, to secure an indebtedness of ₱900.00, payable within six years from said date. On October 27, 1926, original certificate of title No. RC-1354 (10255) was issued in the name of Jose M. Besana and Rosario Besana, brother and sister, covering lot No. 1406 in undivided equal shares; and on said certificate the mortgage in favor of Luis Bernales was noted. Jose M. Besana died and his portion passed to his surviving sister, Rosario Besana. Luis Bernales also died and his mortgage credit againt Jose M. Besana was inherited by Antonio Bernales who in turn transferred the same to the herein plaintiffs, Esperanza V. Buhat and Mauro A. Buhat. Rosario Besana sold her portion to Manuel B. Bernales who, on June 30, 1950, conveyed it to the plaintiffs. As the indebtedness above referred to remained unpaid, the present action was instituted in the Court of First Instance of Capiz by the plaintiffs against Rosario Besana and her husband

Lorenzo Contreras on December 6, 1952, for the foreclosure of the mortgage of May 31, 1924. The defendants Rosario Besana and Lorenzo Contreras filed a motion to dismiss the complaint, on the ground that plaintiffs' cause of action had prescribed, the complaint having been filed more than ten years from May 31, 1930 (in fact some 22 years after the obligation had become due and demandable). On May 6, 1953, the Court of First Instance of Capiz issued an order dismissing the case without costs. The plaintiffs have appealed.

Appellants' contention is that, as the mortgage was registered, the action to foreclose did not prescribe, because section 48 of the Land Registration Act, No. 496, provides that "No title to registered owner shall be acquired by prescription or adverse possession." This is clearly without merit. The citation speaks of the title of the "registered owner" and refers to prescription or adverse possession as a mode of acquiring ownership, the whole philosophy of the law being merely to make a Torrens title indefeasible and, without more, surely not to cause a registered lien or encumbrance such as a mortgage — and the right of action to enforce it — imprescriptible as against the registered owner. The important effect of the registration of a mortgage is obviously to bind third parties.

Wherefore, the appealed order is affirmed, and it is so ordered with costs against the appellants.

Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion and *J.B.L. Reyes*, J.J. concur.

IV

Ben L. Chuy, Demandante y Apelado, contra Philippine American Life Insurance Company, Demandada y Apelante, G. R. No. L-6672, Junio 29, 1954, Pablo, M.

1. LEY DE SEGURO; SEGUROS DE VIDA; LA CERTIFICACION DE MEDICOS DE LA COMPAÑIA ASEGURADORA PREVALECE CONTRA LA DECLARACION NO CORROBORADA DE OTRO MEDICO QUE NO ES DE LA COMPAÑIA. — Después de examen fisico por médicos de la compañía aseguradora, se expidieron a Dee Se pólizas de seguro de vida. Las primas correspondientes fueron pagadas debidamente. Después de un año, Dee Se falleció de cancer. Su beneficiario reclamó el pago del importe de las pólizas. Después de siete meses de trámite, la cosa aseguradora le envío una carta dándole cuenta de que rescindía los contratos de seguro, y se negaba a pagar el importe de las polizas y le envió dos cheques que venian a constitutir la restitución de las primas pagadas con sus intereses. La negativa de la casa aseguradora a pagar el importe de las polizas se fundaba en la declaración de otro medico que no era de la compañía aseguradora, de que Dee Se, bajo el nombre de José Dy, había sido tratado por aquel por estar enformo de cancer por más de tres años de su muerte. *Se declara*: Que las opiniones de los doctores de la casa aseguradora son de más peso que la declaración no corroborada de otro medico que no es de dicha compañía. Los medicos de las casas aseguradoras son los que debian tener interes en saber el verdadero estado de salud del solicitante, y si expidieron certificados de buena salud será porque estaban convencidos de la verdad de lo que certificaban. No hay el menor indicio de que ellos hayan obrado de mala fe. No existe en autos ninguna prueba de que el asegurado haya engañado a la casa aseguradora haciendo creer que él gozaba de buena salud cuando en realidad estaba enfermo de cancer.

2 ABOGADOS; HONORARIOS; SENTENCIA POR HONORARIOS CONTRA LA PARTE QUE PERDIO EL ASUNTO; LA MANIFESTA Y EVIDENTE MALA FE, DEBE PROBARSE. — Se reclama también contra la casa aseguradora honorarios de abogado que asciende a ₱10,000. *Se declara*: "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: . . . (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim" (Art. 2208, Cód. Civ. de Filipinas). La casa aseguradora no obro con manifesta y evidente mala fe al no pagar el importe de la poliza. El tramite de siete meses demuestra la precaución que ha tenido en cerciorarse de si Dee Se era el mismo José Dy que había sido información de dicho médico, cualquiera que estuviese en lugar de la casa aseguradora hubiera hecho lo mismo. Si después de una vista larga en que declararon varios doctores, el Juzgado ha llegado a la conclusión de que Dee Se no era el mismo José Dy, no se debe deducir necesariamente que la demandada ha obrado con abierta y evidente mala fe.

J. A. Wolfson and *Manuel Y. Macias* por el demandado y apelante.

Primicias, Abad, Mencias and *Castillo* por el demandante y apelado.

DECISION

PABLO, *M.*:

Ben L. Chuy presentó una demanda contra la Philippine American Life Insurance Company (que se denominará PHILAMLIFE en el curso de esta decisión) en el Juzgado de Primera Instancia de Pangasinán, causa No. 12033, pidiendo que se condenase a la demandada a pagarle la suma de ₱46,008.75 con su interés legal desde el 22 de junio de 1951 hasta su completo pago, más la cantidad de ₱10,000 en concepto de daños. También se presentó otra demanda por Ben L. Chuy y Lee Sin contra la Lincoln National Life Insurance Company, causa No. 12034, en el mismo juzgado, reclamando el pago de igual cantidad con igual causa de acción.

A petición de ambas partes, las dos causas se vieron conjuntamente, sometiendo un convenio de hechos además de presentar otras pruebas. Después de considerar las pruebas presentadas, el Juzgado dictó sentencia concediendo la reclamación de los demandantes. Las dos compañías aseguradoras apelaron; pero antes de la aprobación del expediente de apelación, la Lincoln National Life Insurance Company, considerando tal vez inútil todo esfuerzo, pagó a los demandantes la cantidad de ₱50,000, abandonando la apelación. Por eso solamente se decidirá por este Tribunal la apelación de la Philamlife.

Eutiquiano P. Nava, un agente asegurador de la Lincoln National Life Insurance Company, consiguió convencer a Dee Se para asegurarse en ₱25,000; los doctores G Oreta-Dizon y Godofredo A. Antonio le examinaron y expidieron el certificado médico correspondiente, que fué aprobado por el director médico de la Lincoln National Life Insurance Company. La solicitud de Dee Se fué aprobada y la póliza No. 812 254 por la suma de ₱25,000 se expidió en 8 de mayo de 1950; otra póliza No. 812 411 por igual cantidad se expidió a Dee Se en 10 de junio de 1950 después de cumplidas todas las formalidades indispensables.

Paula Dolores Sendaydiego, agente de la Philamlife, consiguió también convencer a Dee Se de que se asegurarse en su compañía en la suma de ₱25,000. El Dr. Braulio M. Venecia examinó a Dee Se y su certificado médico fué aprobado por recomendación del doctor de la oficina central. En 2 de mayo de 1950 se expidió a Dee Se la póliza No. 97310 por la suma de ₱25,000. Por medio de la agente Paula Dolores Sendaydiego, Dee Se otra vez solicitó otra póliza por la suma de ₱25,000. El Dr. Ricardo B. Villamil le examinó y expidió el certificado correspondiente que fué aprobado por el Dr. Valenzuela, director médico de la Philamlife. Se aprobó la solicitud y se expidió a Dee Se otra póliza No. 101840 por la suma de ₱25,000 en 18 de julio de 1950. Las primas de las cuatro pólizas fueron pagadas debidamente.

En 22 de junio de 1951 Dee Se falleció de cáncer en la región naso-faríngea en el Hospital Provincial de Pangasinán, situado en la ciudad de Dagupan; su beneficiario, que es el demandante en esta causa, reclamó el pago del importe de las dos pólizas. Después de siete meses de trámite, la demandada, con fecha 24 de enero de 1952, le envió una carta dándole cuenta de que rescindía los dos

contratos de seguro; se negaba a pagar el importe de las dos pólizas y le envió dos cheques, uno por ₱1,723.58 y otro de ₱2,570.90 contra el Bank of America, cantidades que venían a constituir la restitución de las primas pagadas, con sus intereses.

La demandada, en apelación, alega que el juzgado erro: (1) al declarar que José Dy, el paciente del Dr. Chikiamco, no era el asegurado Dee Se; (2) al declarar que Dee Se gozaba de buena salud al tiempo de solicitar su seguro y que no había hecho ninguna manifestación falsa en su solicitud de seguro; (3) al no declarar que dichas dos pólizas de seguro eran nulas y de ningún valor; y (4) al conceder al demandante honorarios de abogado.

La demandada contiende que Dee Se, bajo el nombre de José Dy, había sido tratado por el Dr. Paterno S. Chikiamco por estar enfermo de cáncer desde el 19 de abril de 1948 hasta el 20 de enero de 1951, fundándose en la declaración del mismo doctor, el cual declaró así:

> "I think I have a clear memory of his features because—except when I was away for six months in the State in 1949—most of the treatment was done by me although some of the records are jotted down by my assistant." (Exhibit "17", page 23.)
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> "I remember very well that he looks the same as the patient by the name of Jose Dy." (Exhibit "17", page 24.)

¿Es suficiente la declaración no corroborada del Dr. Chikiamco para concluir que el asegurado Dee Se fué su paciente José Dy?

Este testimonio del Dr. Chikiamco es incompatible con el de varios doctores. El Dr. Braulio M. de Venecia, médico de la Philamlife, asegura que al tiempo en que le examinó, Dee Se gozaba de buena salud; que le había conocido por unos dos años porque era su vecino y que trabajaba en una tablería; que al tiempo en que lo llamó para examinarle, Dee Se acababa de venir de su trabajo con la tablería, un trabajo árduo, y estaba aún sudando cuando él le examinó; si Dee Se — asegura el Dr. de Venecia — hubiera estado sufriendo de cáncer y había estado bajo un tratamiento médico por más de tres años, no habría podido afrontar los rigores del trabajo en una tablería.

Dee Se había sido examinado, además del Dr. de Venecia, por el Dr. Villamil de la Philamlife y los doctores Oreta-Dizon y Godofredo A. Antonio de la Lincoln National Life Insurance Company y los certificados médicos que ellos expidieron fueron aprobados por los directores médicos de las dos compañías demandadas.

El Dr. Amado Tan Lee declaró que había tratado a Dee Se en 28 de diciembre de 1950 y enviadole al Dr. Sevilla en 13 de febrero de 1951. (Exh. E.)

El Dr. Manuel D. Peñas declaró que en 18 de febrero de 1951 había hecho un exámen hispatológico de dos especímenes sacados de la nasofaringe de Dee Se por recomendación del Dr. Sevilla.

El Dr. Carlos L. Sevilla declaró que había tratado por primera vez a Dee Se en 13 de febrero de 1951 por recomendación del Dr. Amado Tan Lee. Creyendo que padecía de cáncer, le envió al Dr. Valencia en la misma fecha (13 de febrero de 1951) para que se lo sometiera a rayos X; dos días después él sacó especimenes de la nasofaringe para ser examinados por el Dr. Peñas, quien hizo constar en su informe que halló "Granulation tissue with Subacute and Chronic Inflammation (non-specific)."

Si el Dr. Sevilla fué el que envio a Dee Se al Dr. Chikiamco en 1951, entonces debía ser otro y diferente el paciente a quien el Dr. Chikiamco había estado tratando con el nombre de José Dy desde el 19 de abril de 1948 hasta el 20 de enero de 1951. Si Dee Se y el Dr. Chikiamco eran ya antiguos conocidos, ¿qué necesidad tenía Dee Se de una recomendación del Dr. Sevilla? Esta recomendación llevada por Dee Se al Dr. Chikiamco nos convence que Dee Se era el nuevo paciente y no el antiguo: que Dee Se y José Dy eran dos distintas personas.

Cuando acudió a los Drs. Lee y Sevilla y enviado al Dr. Chikiamco, Dee Se ya estaba asegurado. Si él solicitó el seguro para medrar o favorecer a sus beneficiarios haciendo creer que gozaba de buena salud cuando en realidad ya padecía de cáncer por tres años, ¿por qué entregó al Dr. Chikiamco la recomendación (Exh. 2) del Dr. Sevilla? ¿Para que se descubriese más tarde su impostura? Eso es contrario al sentido común. Debía de haber destruido la recomendación y proponerse no ver ya al Dr. Chikiamco.

El tratamiento de José Dy de cerca de tres años no se había hecho exclusivamente por el Dr. Chikiamco, porque habia estado fuera de Filipinas por seis meses y la Dra. Carmen Chikiamco, de la misma clínica, trató al paciente en lugar de aquél. Es extraño que el testimonio de ella — que hubiera sido una excelente corroboración — no se haya presentado ante el juzgado sin explicar la razón.

El Dr. Chikiamco, según él, fué honrado con un *lauriat* por José Dy, su paciente, en 26 de diciembre de 1950; pero existe prueba en autos de que Dee Se estaba en Dagupan en dicho día y salió para Manila el 27 después de las fiestas de Dagupan.

La declaración del Dr. Benigno Parayno, médico residente del Hospital Provincial de Pangasinán, de que la enfermedad de Dee Se, (cáncer en la región nasofaríngea) debía haber existido entre cuatro y seis meses antes de su muerte en 22 de junio de 1951 apoya las opiniones de los cuatro doctores de las casas aseguradoras.

Las opiniones de estos cuatro doctores, las de dos directores médicos de las mismas casas de seguros, las de los Drs. Lee, Sevilla, Peñas y Parayno, son de más peso, a nuestro juicio, que la declaración no corroborada del Dr. Chikiamco.

Los cuatro médicos de las casas aseguradoras son los que debían tener interés en saber el verdadero estado de salud del solicitante, y si expidieron certificados de buena salud será porque estaban convencidos de la verdad de lo que certificaban. No hay el menor indicio de que ellos hayan obrado de mala fe. No existe en autos ninguna prueba de que Dee Se haya engañado a las casas aseguradoras haciendo creer que él gozaba de buena salud cuando en realidad estaba enfermo de cáncer. La mala fe debe probarse.

Creemos que el juzgado inferior no erró al concluir que Dee Se y José Dy no eran una misma persona y que Dee Se gozaba de buena salud al solicitar su seguro. Como no existe prueba de que Dee Se había empleado fraude y engaño para obtener las dos pólizas de seguro, fuerza es concluir que el juez *a quo* no cometió el tercer error atribuido a él.

En cuanto al cuarto error, el nuevo Código Civil dispone que "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: x x x (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;" (Art. 2208, Código Civil de Filipinas.)

En el caso presente, creemos que la demandada no obró con manifiesta y evidente mala fe al no pagar el importe de las dos pólizas. El trámite de siete meses demuestra la precaución que ha tenido en cerciorarse de si Dee Se era el mismo José Dy que había sido tratado por el Dr. Chikiamco por cerca de tres años. Teniendo a la vista la información del Dr. Chikiamco, cualquiera que estuviese en lugar de la Philamlife hubiera hecho lo mismo. Si, después de una vista larga en que declararon varios doctores, el Juzgado ha llegado a la conclusión de que Dee Se no era el mismo José Dy, paciente por tres años del Dr. Chikiamco, no se debe deducir necesariamente que la demandada ha obrado con abierta y evidente mala fe. Creemos que la decisión del tribunal inferior, condenando a la demandada a pagar ₱10,000 para honorarios de abogado, no está justificada: el demandante es quien debe pagarlos a su abogado.

Se revoca la sentencia apelada en cuanto condena a la demandada a pagar ₱10,000 como honorarios de abogado, y se confirma en todo lo demás.

Paras, C.J., Bengzon, Montemayor, Reyes; Jugo; Bautista Angelo; Labrador y *Concepción, J.J.*, conformes.

Padilla, J., took no part.

V

Eugene Arthur Perkins, Plaintiff-Appellee, vs. Benguet Consolidated Mining Company, et al., Defendants; Benguet Consolidated Mining Company, Defendant-Appellant, Nos. L-1981, L-1982, May 28, 1954, Pablo, J.

1. DECISIONS; EFFECT OF DECISION OF A FOREIGN COURT AGAINST A DECISION OF A COURT IN THE PHILIPPINES. — The doctrine of Coke (Coke on Littleton, 3255) "that where there are two conflicting judgments on a claim or demand . . . The two judgments neutralize each other and both parties may assert their claims anew," is not applicable in the present case. The litigants, whether they are citizens or foreigners, should respect the decisions of Philippine Courts; but if they choose to resort to a foreign court, asking for a remedy that is incompatible with the execution of a decision obtained in the Philippines and obtain a decision that is adverse, they should not be permitted to repudiate the decision of the foreign court and to ask the enforcement of the decision of the Philippine court which they have abandoned. To permit them to litigate in that manner is contrary to the order and public interest in the Philippines because it disturbs the orderly administration of law.

2. ID.; COMMENCEMENT OF A NEW CASE ABROAD, ABANDONING THE DECISION OF A PHILIPPINE COURT. — "One who subjects himself to the jurisdiction of a Court, even where he would not otherwise be subject to suit, becomes subject to any valid claim asserted against him directly relating to the subject matter of his voluntarily initiated proceeding."

3. ID.; ID.; THE CASE OF QUERUBIN VS. QUERUBIN NOT APPLICABLE. — The case of Querubin versus Querubin (L-3692, July 19, 1950), is not applicable in the present case. In the present case the decision of the New York court was not obtained by Mrs. Perkins behind the back of the plaintiff; on the contrary, that decision was rendered by virtue of the complaint filed by Mr. Perkins, he was the plaintiff, the initiator of the case in which was discussed for the second time the owner of the 24,000 shares and, abandoning the decision of the court of Manila, he asked that said shares be declared his exclusive property. After the trial in which the parties had ample opportunity to be heard, decision was rendered declaring Mrs. Perkins owner of the shares. This decision is final between the two of them. The plaintiff has no right to impugn said decision rendered in a case commenced by him before a Court in New York where plaintiff and defendant are citizens.

4. ID.; ID.; DISTINCTION BETWEEN EXECUTION OF FOREIGN DECISION AND TRANSPOSING OF THE SAME AS RES JUDICATA. — There exists a difference between asking for the enforcement of foreign judgment in the Philippines and that of preventing the defense of *res judicata*. To order the enforcement of a foreign decision implies a direct act of sovereignty; to recognize the defense of a judicial cause only the spirit of justice enters; hence Sections 14 and 48-a of Rule 39, do not require that there be a special reason in order that the defense of *res judicata* may be accepted as required in Sec. 47 which we abolished by the resolution of August 9, 1946. The reason is simple; the execution of *res judicata* is not asked for as the enforcement of a foreign decision is asked; it is solely presented as a defense against an action.

Claro M. Recto & Perkins, Ponce Enrile, Contreras & Gomez for the plaintiff-appellee.

Ross, Selph, Carrascoso & Janda for the appellant.

RESOLUCION

PABLO, *M.*:

El demandante pide la reconsideración de la decisión sosteniendo que no abandonó la sentencia que él había obtenido en la causa tramitada en los Tribunales de Manila, porque él había acudido a los de Nueva York para pedir precisamente que se ejecutase dicha sentencia. La moción de reconsideración dice:

"The only purpose of his New York action was to enforce his final Philippine judgment. x x x (pág. 12.)

x x x x x x

"All that plaintiff sought by his complaint in the New York suit was to enforce the final judgment of the Philippine courts, by securing the return of the certificates, the ownership of which had already been determined by the said judgment, x x x.

"Plaintiff, in pursuing the New York suit, far from having the intention of abandoning the rights granted him under the Philippine judgments, sought to enforce them, x x x." (págs. 13-14.)

La demanda enmendada que se presentó en Nueva York habla por sí misma. Contiende dos causas de acción: en la primera, el demandante alega hechos que dieron lugar a que se dictase una decisión en su favor por los tribunales de Filipinas en que se declaraba que las 24,000 acciones de la Benguet Consolidated Mining Company eran bienes gananciales del demandante y su esposa, y no propiedad exclusiva de Mrs. Perkins; en que se la ordenaba que rindiera cuenta de los bienes gananciales que estaban en su poder y que los entregase al demandante; y que, en vez de cumplir dicha sentencia, ella huyó de Filipinas y depositó las acciones en poder de la Guaranty Trust Company of New York. Como segunda cause de acción, el demandante alega hechos que tienden a establecer que las 24,000 acciones de la Benguet Consolidated Mining Company son de su exclusiva propiedad y pedía lo siguiente:

"Wherefore, this plaintiff demands judgment against the defendants:

"1. Adjudging and declaring the plaintiff herein to be the true and lawful owner of said certificates numbered 1484, 1595, 2176, 2238, 2773, 2780 and 2781 of stock of said Benguet Consolidated Mining Company.

"2. Permanently enjoining and restraining the said defendants, and each of them, from delivering, assigning or transferring said twenty-four thousand (24,000) shares of Benguet Consolidated Mining Company stock to any other person except to the plaintiff herein.

"3. Directing the said defendants, and each of them, to deliver to the plaintiff herein the said twenty-four thousand (24,000) shares of Benguet Consolidated Mining Company stock.

"4. Requiring the said defendants, and each of them, to account to the plaintiff herein and to pay over to said plaintiff any and all dividends which have been or may be received by either of them upon said twenty-four thousand (24,000) shares of Benguet Consolidated Mining Company stock, and for the costs and disbursements of this action, together with any other and further relief as to the Court may seem just and proper." (Exhibit A-64, págs. 20-21.)

Como se ve, el demandante no pidió la entrega a él, como marido o administrador de los bienes gananciales, de las 24,000 acciones; no pidió que se condenase a Mrs. Perkins y la Guaranty Trust Co. a entregarle las acciones en cumplimiento de la sentencia del Tribunal de Manila: lo que pidió fué (1) que fuese declarado dueño legal de las 24,000 acciones de la Benguet Consolidated Mining Company; (2) que se prohibiese a los demandados a entregarlas o trasferirlas a cualquiera persona; (3) que las mismas acciones fuesen entregadas a él (como dueño indudablemente y no como administrador); y (4) que los demandados rindiesen cuenta de los dividendos de dichas acciones.

De acuerdo con la primera causa de acción y la decisión obtenida por el demandante en Manila, él era solamente condueño de las 24,000 acciones, o propietario de la mitad de las mismas, con derecho a poseer todas ellas como administrador de los bienes gananciales. Cuando pidió en su demanda enmendada que fuese declarado dueño de las 24,000 acciones, abandonó necesariamente la sentencia que declaraba que dichas acciones eran bienes gananciales; al pedir que fuese declarado dueño legal de las acciones, abrió de nuevo el pleito sobre la propiedad de dichas acciones, considerando inútil y de

ningún valor la decisión de los tribunales de Manila. Que él abandonó dicha decisión es evidente; él pidió que fuese declarado dueño de las 24,000 acciones; en vez de pedir que se ordenase por el Tribunal de Nueva York el cumplimiento y ejecución de la sentencia que él había obtenido en Filipinas. El mismo, con su demanda enmendada suscitando de nuevo la propiedad de las acciones; deshizo dicha decisión, implicitamente pidió su revocación para que pudiese obtener del Tribunal de Nueva York una decisión declarandole dueño legal de las acciones. O estas acciones son gananciales, o son de la exclusiva propiedad del demandante: no pueden ser gananciales y, al mismo tiempo, de la propiedad exclusiva del demandante. Si son gananciales, no pueden ser del demandante, y si son de su exclusiva propiedad, entonces rechazaba, o por lo menos negaba la validez de la decisión de los tribunales de Filipinas: sostenía entonces que él era el único dueño de las 24,000 acciones. Si el objeto del demandante al acudir a los tribunales de Nueva York era solamente conseguir la posesión de las acciones, "the ownership of which had already been determined by said judgment" (de Filipinas), ¿por qué no lo pidió así en su demanda enmendada en vez de pedir que sea declarado dueño de las mismas? Si en su demanda enmendada en Nueva York no hubiera el demandante pedido más que el cumplimiento de la decisión del Tribunal de Manila, sin suscitar de nuevo la cuestión de la propiedad de las acciones y el Tribunal de Nueva York hubiese dictado una decisión contraria a la del Tribunal de Filipinas, esté Tribunal probablemente no titubearía en no honrar esa nueva decisión y haría cumplir la primera. Y así la Sra. de Perkins, a espaldas de sumarido, reclamando la propiedad de las acciones en Nueva York, hubiera obtenido sentencia a su favor, este Tribunal indudablemente no tendría ningún reparo en ignorar tal decisión y, a petición de parte, haría cumplir la decisión dictada por el Tribunal Filipinas.

Bueno es hacer constar que la demanda enmendada no fué firmada por el demandante ni por sus abogados en Filipinas, sino por sus abogados en América, Sres. Platt, Taylor & Walker, pero la actuación de éstos le obliga.

Se invoca una decisión de esto Tribunal que, en parte, dice así:

> "x x x Creemos que este Tribunal no debe hacer cumplir un decreto dictado por un tribunal extranjero, que contravi'ene nuestras leyes y los sanos principios de moralidad que informan nuestra estructura social sobre relaciones familiares.
>
> x x x x x x
>
> "Las sentencias de tribunales extranjeros no pueden ponerse en vigor en Filipinas si son contrarias a las leyes, costumbres y orden público. Si dichas decisiones, por la simple teoría de reciprocidad, cortesía judicial y urbanidad internacional son base suficiente para que nuestros tribunales decidan a tenor de las mismas, entonces nuestros juzgados estarían en la pobre tesitura de tener que dictar sentencias contrarias a nuestras leyes, costumbres y orden público. Esto es absurdo." (Querubín contra Querubín, 47 O. G. (Supp. 12) 315.)

Por esta doctrina el demandante sostiene que la decisión de Nueva York no debe ser reconocida en Filipinas.

Hay confusión en cuanto a la semejanza de las dos causas. En el asunto de Querubín ocurrieron los siguientes hechos: Silvestre Querubín, filipino, y Margaret Querubín, americana, se casaron en América y tuvieron una hija llamada Querubina; porque la esposa cometió adulterio, el marido pidio divorcio; se le adjudico el decreto correspondiente, encomendándole la custodia de la menor. Posteriormente la esposa se casó con el hombre con quien había cometido adulterio, tuvieron una hija y después acogieron a una como protegida, y alegando que tenía bastantes recursos para mantener a la hija legal y a la protegida, la esposa pidió la custodia de su hija Querubina cuando Querubín y su hija ya no estaban en Los Angeles porque ya habían venido a Filipinas; el Tribunal Supremo de Los Angeles, California, se la concedió, ordenando al padre que pase una pensión mensual de $30 a Querubina. La esposa presentó en Vigan, Ilocos Sur, un recurso de *habeas corpus* pidiendo la custodia de la menor, fundando su reclamación en el segundo decreto del Tribunal de California en que se le había concedido la custodia de la menor. Este Tribunal no reconoció el decreto porque era contrario a la moral y a la ley; porque "la menor estaría bajo el cuidado de su madre que fué declarada judicialmente culpable de infidelidad conyugal; viviría bajo un techo juntamente con el hombre que deshonór a su madre y ofendió a su padre."

La custodia de hijos menores en Filipinas se encomienda al cónyuge inocente; por esta razón, este Tribunal, al decidir el recurso de habeas corpus en apelación, desatendió el decreto del Tribunal de California.

En el caso presente, la decisión del Tribunal de Nueva York no ha sido obtenida por la Sra. de Perkins a espaldas del demandante; al contrario, esa decisión fué dictada en virtud de la demanda entablada por el Sr. Perkins; él fué el actor, el iniciador de la causa en que se discutió por segunda vez la propiedad de las 24.000 acciones y, abandonando la decisión del Tribunal de Manila, pidió que dichas acciones fuesen declaradas de su exclusiva propiedad. Después de una vista en que las partes habían tenido amplia oportunidad de ser oídas, se dictó sentencia declarando a la Sra. de Perkins dueña de las acciones. Esta sentencia es final entre los dos. El demandante no tiene derecho a impugnar dicha decisión dictada en un asunto iniciado por él ante el Tribunal de Nueva York en que ellos, demandante y demandada, son ciudadanos. Es inaplicable la doctrina de Querubín contra Querubín en la presente causa.

Suponiendo que el Tribunal de Nueva York hubiera decidido que las 24,000 acciones eran de la exclusiva propiedad del demandante, y la Sra. de Perkins hubiera venido a Filipinas para pedir judicialmente la partición de dichas 24,000 acciones que son bienes gananciales, se habría allanado el demandante a tal demanda de partición? Indudablemente que no; él habría alegado como defensa de *res judicata* la decisión del Tribunal de Nueva York en que se le declaraba dueño exclusivo de las 24,000 acciones; habría alegado que el Tribunal de Nueva York tenía jurisdicción sobre la cosa litigiosa no habría permitido que la decisión del Tribunal de Manila fuese reconocida. Precisamente pidió que fuese declarado dueño de las 24,000 acciones porque no estaba conforme en que dichas acciones fuesen solamente gananciales: su interés entonces era obtener una sentencia incompatible con la del Tribunal de Filipinas. Y ahora que la decisión no favorece al demandante pero sí a la Sra. de Perkins, ¿por que esa decisión no constituye *res judicata* y tiene que ser nula, por qué el Tribunal de Nueva York no tiene jurisdicción sobre la materia litigiosa, y por qué la decisión del Tribunal de Nueva York no debe tener ningún valor en Filipinas? Para el demandante el Tribunal de Nueva York tiene jurisdicción si la sentencia le es favorable, pero no si le es contraria. Es inconsistente la teoría del demandante y, por inconsistente, insostenible.

"One who subjects himself to the jurisdiction of a Court, even where he would not otherwise be subject to suit, becomes subject to any valid claim asserted against him directly relating to the subject matter of his voluntarily initiated proceeding." (Hoxsey vs. Hoffpauir, 180 F.2d 84.)

"It does not lie in the mouth of one who has affirmed the jurisdiction of a court in a particular matter, to accomplish a purpose to afterward deny such jurisdiction to escape a penalty." (Littleton v. Burgess, 16 L.R.A. [N.S.] 49, 16 Wyo. 58, 91 Pac. 832.)

"To permit one to invoke the exercise of a jurisdiction within the general powers of a court and then to reverse its order upon the ground that it had no jurisdiction would be to allow one to trifle with the courts. The principle is one of estoppel in the interest of a sound administration of the laws x x x closes the mouth of the complainant." (Spence et ux. v. State Nat. Bank of El Paso et al., 5 S. W. (2d), 754.) (Commission of Appeals of Texas, Sec. B, May 2, 1928.)

El demandante contiende que la decisión del Tribunal de Nueva York no tiene efecto como *res judicata* en Filipinas, porque Manresa dice que "En cuanto a las sentencias extranjeras, de mayor importancia cada día, deberá atenderse a las reglas que sobre su ejecución, con la cual se relaciona su firmeza, contiene la lay Procesal, dis-

tinguiendo según los varios casos que ésta regula, y no atribuyendo efecto de cosa juzgada a la sentencia mientras no se haya autorizado su ejecución." (Manresa, 531.)

La ley de enjuiciamiento civil española no está en vigor en Filipinas. En su lugar está la Regla 39, artículo 44, que dispone lo siguiente:

> "El efecto de una sentencia u orden finales dictadas por un tribunal o juez de Filipinas o de los Estados Unidos, o de cualquier estado o territorio de los Estados Unidos, que tenga jurisdicción para dictar dicha sentencia u orden, pueden ser el siguiente: x x x (b) En los demás casos, *la sentencia así dictada es,* respecto de la materia sobre la cual recayó, *concluyente entre las partes y sus derechohabientes por título subsiguiente al comienzo de la acción o actuación especial, que litiguen sobre la misma cosa, bajo el mismo título y en la misma capacidad.*"

Y el artículo 48 (a) trata del efecto de las sentencias dictadas en el extranjero, dice:

> "Si la sentencia fuere sobre una cosa determinada, será concluyente en cuanto al título de la misma;"

No es preciso, según estos artículos, que para que la excepción de cosa juzgada, consistente en una decisión extranjera, pueda ponerse con exito en Filipinas, haya mediado un juicio admitiendo dicha decisión.

No debe confundirse la ejecución de una sentencia extranjera con la excepción de *res judicata*. Existe diferencia entre pedir en Filipinas el cumplimiento de una decisión extranjera (enforcement of foreign judgment) y presentar la defensa de *res judicata*. Ordenar el cumplimiento de una sentencia extranjera implica acto directo de soberanía; reconocer la excepción de cosa juzgada solamente interviene el sentido de justicia; de ahí que el artículo 44, de la Regla 39, no dispone que haya mediado actuación especial para que la excepción de *res judicata* fuese aceptada como se exige en el artículo 47.

El procedimiento para pedir el cumplimiento de una decisión extranjera no es igual en las siguiente naciones:

En Filipinas, antes de la derogación por este Tribunal en su resolución de 9 de agosto de 1946, del artículo 47 de la Regla 39, era el siguiente:

> "El efecto de un expediente judicial de un tribunal de los Estados Unidos, o de unc de sus Estados o territorios, es en las Islas Filipinas el mismo que en los Estados Unidos o en el Estado o territorio en donde se tramitó, sólo que, para que tenga vigor aquí, es menester que haya mediado un juicio o actuación especial al efecto." (Art. 47, Regla 39.)

A falta de procedimiento previamente establecido, creemos que para que se pueda pedir cumplimiento de una decisión extranjera en Filipinas, deberá presentarse una acción fundada en ella.

En Italia: "Of all the foreign countries enforcing foreign judgments as such, Italy has had the distinction for many years of having adopted the most liberal policy. According to this system the *status* of the foreign judgment is fixed once for all. The review of the judgment relates only to certain points which have no reference to the correctness of the decision. Before the foreign judgment is enforced a preliminary proceeding takes place (Guidizio di delibazione) whose object it is to ascertain whether the judgment was rendered by a court of competent jurisdiction, whether the defendant had due notice of the original proceeding, whether he appeared or was duly defaulted, and whether the enforcement of the foreign judgment would be contrary to the public policy of Italy. If the judgment satisfies these requirements, the justice or injustice of the plaintiff's claim will not be reviewed. The above system is derived from the principle of the equality of all states, and rests upon the fundamental assumption that the judgments of other states are entitled to full trust and confidence. As in the case of domestic judgments, a foreign judgment so far as its merits are concerned, imports absolute verity — an irrebuttable presumption being created in favor of its fairness and inherent justice."

En Francia: "Under the ordinance of 1629 the French courts would enforce foreign judgments obtained by Frenchmen without a review of the merits. No effect would be given, however, to foreign judgments against a Frenchman. As against them a new suit would have to be brought on the original cause of action. According to Maleville the law was not changed by the Code Napoleon, but this view is now generally abandoned. The system actually prevailing is one which reviews the merits of the case (révision au fond). It does not content itself with inquiring into the jurisdiction of the foreign court, the regularity of the service of the summons, appearance or default, and the public policy of the state in which the proceeding for the enforcement of the foreign judgment is brought; but examines the merits of the decision itself. The French doctrine rests upon an assumption diametrically opposed to that underlying the Italian system, and emphasizes the fact that while the different states of the civilized world are in theory equal and entitled to the same respect, their courts do not actually inspire the same degree of confidence in regard to their decisions. It takes notice of the fact that the judges of certain countries are less competent than those of others and are sometimes not free from bias against defendants belonging to a foreign country. Under these circumstances it is felt to be the duty of a state, before allowing the execution of foreign judgments within its territory, to ascertain whether the foreign judgment was fair and just."

En Inglaterra: "The English law by requiring a suit on the foreign judgment differs from the other foreign systems in the mode of enforcing judgments for the payment of money. It differs from them also in that it regards foreign judgments as enforceable in principle and imposes upon the defendant the burden of establishing the defenses recognized by law. As regards the conclusive effect of foreign judgments the English law stands between the French and Italian systems. Originally foreign judgments were regarded as being only prima facie evidence of the justice of plaintiff's claim, but since the case of Godard v. Gray they are ordinarily conclusive. In this respect the English law has abandoned the viewpoint of the French law and accepted that of Italy (before the decree of July 30, 1919). It does not go so far, however, as does the former Italian law, for in exceptional cases it will try the merits of the case over again. The law appears to be established in England that foreign judgments may be impeached if procured by false and fraudulent representations and testimony of the plaintiff, even if the same question of fraud was presented to and decided by the foreign court. Such fraud may be shown although it cannot be done without a retrial of the case. The object of such retrial is not, however, to show that the foreign court came to a wrong conclusion. Courts of equity may enjoin the enforcement of judgments, domestic or foreign, if they have been procured through fraud, accident, mistake or surprise." (29 Yale Law Journal 194-199.)

En cuanto al reconocimiento de decisiones extranjeras como res judicata, varios autores sostienen que, siguiendo la teoría del derecho romano, una sentencia tiene la naturaleza de un contrato o cuasicontrato y que la obligación que emana de dicha sentencia cuando se presenta como defensa de *res judicata*, debe considerarse como cualquiera otra obligación. "By submitting the case to the foreign court, the parties are deemed, according to this view, to have made an implied agreement that they will abide by the decision of the court. The obligation arising from the judgment is referred, therefore, to the will of the parties rather than being derived directly from the sovereign power of the foreign state." (29 Yale Law Journal 190.)

En Filipinas no es necesario teorizar porque los artículos 44 y 48 (a) de la Regla 39 son claros: no exigen que haya mediado actuación especial sobre la decisión extranjera para que ella surta efecto como defensa de cosa juzgada. La razón es sencilla: no se pide la ejecución de la *res judicata* como se pide al cumplimiento de una decisión extranjera; solamente se presenta contra una acción como defensa. Ahora bien, si se pidiese por la Sra. de Perkins

el pago en Filipinas de los dividendos de las 24 000 acciones de la Benguet Consolidated Mining Co., entonces ya no es suficiente la simple exhibición de la decisión del Tribunal de Nueva York; es indispensable que ella entable la acción correspondiente en el juzgado competente para pedir una sentencia fundada en la del Tribunal de Nueva York. Hemos estuidado detenidamente las decisiones extranjeras y nacionales que tienen relación con la presente causa, y no hemos encontrado ninguna razón por qué la decisión del Tribunal de Nueva York no debe tener efecto como *res judicata* entre las partes litigantes.

Si el demandante huhiera obtenido sentencia a su favor en su demanda pidiendo que fuese declarado dueño absoluto de las 24.000 acciones, él habría sostenido en América, en Filipinas y en todas partes que dicha decisión era válida; pero como la fué adversa, arguye hoy en la presente causa que dichá decisión es nula y de ningún valor y que no tiene efecto de cosa juzgada. Los litigantes, ya sean naturales; ya extranjeros, deben respetar las decisiones de los tribunales de Filipinas; pero si optaran por acudir a un tribunal extranjero, pidiendo un remedio incompatible con la disposición de la sentencia obtenida en Filipinas y obtuviesen una decisión adversa, no se les debería permitir que repudiaran luego la del tribunal extranjero y pidieran el cumplimiento de la decisión del tribunal de Filipinas que ellos habían abandonado. Permitirles litigar de esa manera es contrario al orden e interés público en Filipinas porque perturba la ordenada administración de la ley.

Los errores atribuídos a Tribunal del Nueva York hubieran sido resueltos por el Tribunal Supremo de los Estados Unidos si el demandante no hubiese abandonado su apelación.

El demandante pide que se aplique la siguiente doctrina de Coke: "That where there are two conflicting judgments on a claim or demand, there is an estoppel against an estoppel which 'setteth the matter at large'. Coke on Littleton, 3250. The two judgments neutralize each other and both parties may assert their claims anew." Sin decidir si esta doctrina debe adoptarse o no en esta jurisdiccion, se puede decir que la misma no es aplicable al caso presente. La parte petitoria de la demanda enmendada es del tenor siguiente:

"WHEREFORE, it is respectfully prayed that judgment be entered in favor of the plaintiff and against the defendants Benguet Consolidated Mining Company for the sum of ₱71.379.90, consisting of the dividends which have been declared and made payable on the said 52,874 shares in defendant Benguet Consolidated Mining Company registered in plaintiff's name which remain unpaid, as hereinbefore alleged, together with interest thereon at the rate of six per cent (6%) per annum from the date of filing of the original complaint herein until paid; that the defendant Benguet Consolidated Mining Company be ordered to pay to plaintiff all dividends declared in the future on the said shares, so long as they stand in plaintiff's name, whenever said dividends are made payable; that defendant Benguet Consolidated Mining Company be required and ordered to recognize the right of the plaintiff to the control and disposal of said shares, so standing in his name, to the exclusion of all others; that the additional defendants Idonah Slade Perkins and George H. Engelhard be each held to have no interest or claim in the subject matter of the controversy between plaintiff and defendant, Benguet Consolidated Mining Company, or in or under the judgment to be rendered herein and that by the said judgment they, and each of them, be excluded therefrom; and that the plaintiff be awarded the costs of this suit and general relief."

El demandante no pide ser declarado dueño de las 24,000 acciones: sólo pide al pago por la Benguet Consolidated Mining Company de los dividendos vencidos y no pagados y los dividendos que vayan venciendo, y no expresa en qué concepto ha de recibir los dividendos: si como administrador de los bienes gananciales o como dueño absoluto. Los dividendos son accesorios de las acciones, como el interés sigue al capital. El dueño de las acciones es el dueño de los dividendos y es el que debe recibirles, a menos que disponga otra cosa. Como la propiedad de las 24,000 acciones ha sido debidamente decidida ya por el Tribunal de Nueva York, a instancia precisamente del demandante, sus dividendos deben ser pagados a las dueña declarada. Los dividendos vencidos de dichas acciones, que ascienden a ₱1,019,245.92, ya habían sido satisfechos, por ejecución; en California, y no por acto voluntario de la demanda. Los mismos dividendos no deben pagarse o otra persona, especialmente al demandante que fué vencido en la cuestión sobre la propiedad. El sobresimiento de la demanda está bien fundado.

Se deniega la moción de reconsideración.

Paras, C.J., Bengzon, Padilla, Jugo; Bautista Angelo; Labrador and *Concepcion, J.J.*, conformes.

VI

Joseph Feldman, Petitioner, vs. Hon. Demetrio B. Encarnacion, as Judge of the Court of First Instance of Rizal, Victorio Lachenal, Alfonso Lachenal and Jose Villaflor, Respondents, No. L-7021, July 31, 1954, Padilla, J.

EXECUTION PENDING APPEAL; APPEALS; EFFECT OF PERFECTED APPEAL ON JURISDICTION OF TRIAL COURT: EXCEPTIONS; MATTERS INVOLVED AND LITIGATED IN APPEAL. — In a judgment rendered on the counterclaim by the defendants, the Court of First Instance ordered the plaintiff to vacate and surrender to the defendants the property in question and to pay the rentals up to the date the possession of the entire property shall have been received by them. Plaintiff appealed from this judgment to the Court of Appeals. After the approval of the record on appeal, defendants filed in the Court of First Instance a motion, praying that the plaintiff be ordered to deposit with the clerk of the trial court the accumulated rentals plus interest and the monthly rental until the decision appealed from shall have been finally disposed of by the appellate court. The trial court granted the motion. Plaintiff seeks by certiorari to annual the order of the trial court. Plaintiff contends that upon the approval of the record on appeal, the trial court losses its jurisdiction over the case and, consequently, the order complained of was entered without jurisdiction. On the other hand, defendants claim that despite the appeal, the trial court retains the power "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal." In support of their pretense, they cite the assignment of errors made by the plaintiff that the lower court erred in holding (1) that the consent of plaintiff to the waiver of his rights over the leased property was voluntary and for good consideration and not under duress; (2) that plaintiff had not exercised the option granted by the original lease; and (3) that plaintiff was a possessor in bad faith and the defendants in good faith. *Held*: It would seem that the defendants' theory is that taking into consideration the assignment of errors of the plaintiff, the directive to the latter to deposit with the clerk of court the accumulated unpaid rentals including interest thereon and the future rentals until the appeal is finally decided, does not involve a matter litigated in the appeal of the plaintiff in the original motion. The contention is not well taken, because if the consent of the plaintiff to the waiver was not voluntary and for good consideration but under duress, he might be entitled to exercise the option granted in the lease; because if plaintiff had exercised the option granted, he would be entitled to continue in possession of the leased premises, and because if he was a possessor in good faith, then the judgment of the trial court directing the plaintiff to vacate the premises and to pay the rentals would have been to be reversed. The accumulated unpaid rentals and interest thereon and the future rentals of the leased premises are then matters involved and litigated in the appeal. To order the deposit thereof with the clerk of court is virtually, if not actually, an execution of the judgment which the trial court cannot direct but for good reasons to be stated in a special order and to be set forth in the record on appeal.

Juan T. Chuidian and *Jose S. Zafra* for the peitioner.

Sixto de la Costa, Benjamin C. Alonzo and *Protasio Amonoy* for the respondents.

DECISION

PADILLA, *J.*:

The petition seeks to annul the order of the respondent court entered on 30 June 1953, the dispositive part of which reads as follows:

> IN VIEW OF THE FOREGOING, the second motion of the defendants in the opinion of this Court is in order, and the plaintiff is hereby ordered to deposit with the Clerk of Court of this Court the accumulated unpaid rentals including interest thereon in the total amount of ₱119,700.00 and the corresponding rental on the said property every month from May 1, 1953 until the appeal is finally decided; x x x

for lack of jurisdiction of the respondent court to enter it.

The petitioner and the respondents are agreed that in civil case No. 7799 of the Court of First Instance of Rizal entitled Joseph Feldman, plaintiff; Mercedes H. Vda. de Hidalgo, intervenor, as party-plaintiff; Hon. Herbert Brownell, Jr., Attorney General of the United States in lieu of the Philippine Alien Property Administrator of the United States, intervenor *-versus-* Ramon L. Corpus, etc., defendants; Victorio Lachenal, Ildefonso Lachenal, and José Villaflor, joinders, as parties-defendant, judgment was rendered on the counterclaim of the defendants, the pertinent dispositive part of which reads as follows:

> x x x. On the counterclaim of the defendants, the plaintiffs and his business partners, Henry File and George Feldman, are hereby ordered to vacate and to surrender to the defendants the property formerly known as Varadero de Navotas x x x and to pay the defendants, by way of rentals on the shipyard the amount of ₱1,000.00 a month from and beginning June 1, 1946, up to the date the physical possession of the entire property or shipyard with all its accessories and improvements thereon shall have been actually returned to and duly received by the defendants, the registered owners thereof, with legal interest thereon from the date of the filing of the counterclaims;

that from such judgment a notice of appeal, an appeal bond and a record on appeal were filed on 30 October 1950; that on 10 March 1952 the trial court issued an order which reads as follows:

> There being no opposition to the amended record on appeal, dated March 10, 1952, filed by counsel for the plaintiff, which is also adopted by the above-named intervenor, and finding the name to be correct and in order, the said amended record on appeal is hereby approved.
>
> The Clerk of Court is hereby directed to certify and elevate the same to the Court of Appeals, together with all the exhibits adduced during the trial, oral and documentary, within the period prescribed by the Rules of Court;

that the record on appeal was forwarded to and docketed in the Court of Appeals as CA-GR No. 9375-R; that on 3 August 1953 the case was forwarded to this Court by the Court of Appeals; that on 14 May 1953, the respondents Victorio Lachenal, Alfonso Lachenal and José Villaflor, defendants therein, filed in the respondent court a supplemental motion, the prayer of which reads as follows:

> 1. That the plaintiff (now petitioner) be ordered to deposit with the Clerk of this Court (Court of First Instance of Rizal) the accumulated rentals plus interest in the total amount of ₱119,700.00 and the monthly rental of ₱1,000.00 every month beginning June 1, 1953, until the decision appealed from shall have been finally considered and disposed of by the appellate court;
>
> 2. That the plaintiff and his business partners be ordered and enjoined not to sell, encumber, remove, dismantle, or otherwise dispose of any of the installation, equipments, machineries and motor vehicles listed in the Annex "B" hereto attached, without the consent and approval by this Honorable Court:

that on 30 June 1953 the respondent court granted the motion in an order the dispositive part of which is quoted at the beginning of this opinion; and that a motion for reconsideration of the order just referred to on the ground of lack of jurisdiction of the trial (respondent) court was denied.

It is the contention of the petitioner that upon approval or allowance of the record on appeal the respondent court lost its jurisdiction over the case and, consequently, the order of 30 June 1953 complained of was entered without jurisdiction.

On the other hand, the respondents claim that despite the appeal the respondent court retains the power "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal," pursuant to section 9, Rule 41. In support of their pretense they cite the assignment of errors made by the petitioner, appellant therein, to wit:

> 1. The lower court erred in holding that the consent of appellant to the waiver of his rights over the *varadero* on May 5, 1943 (Exhibit G-1) was voluntary and for good consideration and not under duress;
>
> 2. The lower court erred in holding that the appellant had not exercised the option granted by the original lease, Exhibit "A";
>
> 3. The lower court erred in finding that the appellant was a possessor in bad faith, and the appellees in good faith, for purposes of article 361 of the Civil Code. (pp. 10-11, appellant's brief, CA-GR No. 9375-R, now SC-GR No. L-7195.)

It would seem that the respondents' theory is that taking into consideration the assignment of errors of the petitioner, appellant therein, the directive to the petitioner to deposit with the clerk of court the accumulated unpaid rentals including interest thereon amounting to ₱119,700 and the corresponding rental of the property every month from 1 May 1953 until the appeal is finally decided, does not involve a matter litigated in the appeal of the petitioner in the original action. This contention is not well taken, because if the consent of the petitioner, appellant therein, to the waiver was not voluntary and for good consideration but under duress as he contends, he might be entitled to exercise the option granted in the lease; because if the petitioner, appellant therein, had exercised the option granted as he contends, he would be entitled to continue in possession of the leased premises; and because if he was a possessor in good faith, as he contends, then the judgment of the trial court, which unfortunately has not been brought to us by the parties but only the pertinent dispositive part directing the petitioner, appellant therein, to vacate the leased premises and to pay the rentals would have to be reversed. The accumulated unpaid rentals and interest thereon and the future rentals of the leased premises are then matters involved and litigated in the appeal. To order the deposit thereof with the clerk of court is virtually, if not actually, an execution of the judgment which the respondent court cannot direct but for good reasons to be stated in a special order and to be set forth in the record on appeal. (1) The good reasons do not appear. The order complained of is not the one contemplated in the rule just referred to because it was issued not while the case was still within the jurisdiction of the respondent court. If it be true as contended by the respondents, appellees therein, that the order of the respondent court complained of was just to supplement the writ of execution issued against Mercedes H. Vda. de Hidalgo, intervenor and party-plaintiff therein, who has not appealed from the judgment rendered against her, then it would be pertinent to ask why the liability under the judgment of the intervenor and party-plaintiff who has not appealed by making the petitioner, appellant therein, responsible for her obligation or liability

(1) Section 2, Rule 39.

under the judgment? Are they severally (*solidariamente*) responsible?

That part of the order which enjoins and prohibits the petitioner, appellant therein, "to sell, encumber, remove, dismantle or otherwise dispose of any of the installation, equipments, machineries and motor vehicles as listed aforesaid, without the consent and approval of this Court," is not being questioned by the petitioner. It need not be passed upon.

The order in so far as it directs the petitioner, appellant therein, to deposit with the clerk of court the accumulated unpaid rentals including interest thereon in the total amount of ₱119,700 and the corresponding rental of the property every month from 1 May 1953 until the appeal is finally decided, is annulled and set aside for lack of jurisdiction of the respondent court to enter it, without pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Montemayor; A. Reyes; Jugo; Bautista Angelo, Labrador, Concepcion and *J. B. L. Reyes, J.J.*, concur.

VII

Domingo de la Cruz, Plaintiff-Appellant, vs. Northern Theatrical Enterprises Inc., et al., Defendants and Apellees, No. L-7089, August 31, 1954, Montemayor, J.

1. EMPLOYER AND EMPLOYEE; DAMAGES CAUSED TO EMPLOYEE BY A STRANGER CAN NOT BE RECOVERED FROM EMPLOYERS; GIVING LEGAL ASSISTANCE TO EMPLOYEE IS NOT A LEGAL BUT A MORAL OBLIGATION.— A claim of an employee against his employer for damages caused to the former by a stranger or outsider while said employee was in the performance of his duties, presents a novel question which under present legislation can not be decided in favor of the employee. While it is to the interest of the employer to give legal help to, and defend, its employee charged criminally in court, in order to show that he was not guilty of any crime either deliberately or through negligence, because should the employee be finally held criminally liable and he is found to be insolvent, the employer would be subsidiarily liable, such legal assistance might be regarded as a moral obligation but it does not at present count with the sanction of man-made laws. If the employer is not legally obliged to give legal assistance to its employee and provide him with a lawyer, naturally said employee may not recover from his employer the amount he may have paid a lawyer hired by him.

2. ID.; ID.; PARTIES WHO MAY BE HELD RESPONSIBLE FOR DAMAGES. — If despite the absence of any criminal responsibility on the part of the employee he was accused of homicide, the responsibility for the improper accusation may be laid at the door of the heirs of the deceased at whose instance the action was filed by the State through the Fiscal. This responsibility can not be transferred to his employer, who in no way intervened, much less initiated the criminal proceedings and whose only connection or relation to the whole affair was that it employed plaintiff to perform a specific duty or task, which was performed lawfully and without negligence.

Conrado Rubio for plaintiff and appellant.

Ruiz, Ruiz, Ruiz, Ruiz and *Benjamin Guerrero* for defendants and appellees.

DECISION

MONTEMAYOR, *J.*:

The facts in this case based on an agreed statement of facts are simple. In the year 1941 the Northern Theatrical Enterprises Inc., a domestic corporation operated a movie house in Laoag, Ilocos Norte, and among the persons employed by it was the plaintiff DOMINGO DE LA CRUZ, hired as a special guard whose duties were to guard the main entrance of the cine, to maintain peace and order and to prevent the commission of disorders within the premises. As such guard he carried a revolver. In the afternoon of July 4, 1941, one Benjamin Martin wanted to crash the gate or entrance of the movie house. Infuriated by the refusal of plaintiff De la Cruz to let him in without first providing himself with a ticket, Martin attacked him with a bolo. De la Cruz defended himself as best he could until he was cornered, at which moment, to save himself, he shot the gate crasher, resulting in the latter's death.

For the killing, De la Cruz was charged with homicide in Criminal Case No. 8449 of the Court of First Instance of Ilocos Norte. After a re-investigation conducted by the Provincial Fiscal the latter filed a motion to dismiss the complaint, which was granted by the court in January 1943. On July 8, 1947, De la Cruz was again accused of the same crime of homicide, in Criminal Case No. 431 of the same Court. After trial, he was finally acquitted of the charge on January 31, 1948. In both criminal cases De la Cruz employed a lawyer to defend him. He demanded from his former employer reimbursement of his expenses but was refused, after which he filed the present action against the movie corporation and the three members of its board of directors, to recover not only the amounts he had paid his lawyer but also moral damages said to have been suffered, due to his worry, his neglect of his interests and his family as well as the supervision of the cultivation of his land, a total of ₱15,000.00. On the basis of the complaint and the answer filed by defendants wherein they asked for the dismissal of the complaint, as well as the agreed statement of facts, the Court of First Instance of Ilocos Norte after rejecting the theory of the plaintiff that he was an agent of the defendants and that as such agent he was entitled to reimbursement of the expenses incurred by him in connection with the agency (Arts. 1709-1729 of the old Civil Code), found that plaintiff had no cause of action and dismissed the complaint without costs. De la Cruz appealed directly to this Tribunal for the reason that only questions of law are involved in the appeal.

We agree with the trial court that the relationship between the movie corporation and the plaintiff was not that of principal and agent because the principle of representation was in no way involved. Plaintiff was not employed to represent the defendant corporation in its dealings with third parties. He was a mere employee hired to perform a certain specific duty or task, that of acting as special guard and staying at the main entrance of the movie house to stop gate crashers and to maintain peace and order within the premises. The question posed by this appeal is whether an employee or servant who in line of duty and while in the performance of the task assigned to him, performs an act which eventually results in his incurring in expenses, caused not directly by his master or employer or his fellow servants or by reason of his performance of his duty, but rather by a third party or stranger not in the employ of his employer, may recover said damages against his employer.

The learned trial court in the last paragraph of its decision dismissing the complaint said that "after studying many laws or provisions of law to find out what law is applicable to the facts submitted and admitted by the parties, has found none and it has no other alternative than to dismiss the complaint." The trial court is right. We confess that we are not aware of any law or judicial authority that is directly applicable to the present case, and realizing the importance and far-reaching effect of a ruling on the subject-matter we have searched, though vainly, for judicial authorities and enlightenment. All the laws and principles of law we have found, as regards master and servant, or employer and employee, refer to cases of physical injuries, light or serious, resulting in loss of a member of the body or of any one of the senses, or permanent physical disability or even death, suffered in line of duty and in the course of the performance of the duties assigned to the servant or employee, and these cases are mainly governed by the Employers' Liability Act and the Workmen's Compensation Act. But a case involving damages caused to an employee by a stranger or outsider while said employee was in the performance of his duties, presents a novel question which under present legislation we are neither able nor prepared to decide in favor of the employee.

In a case like the present or a similar case of say a driver employed by a transportation company, who while in the course of employment runs over and inflicts physical injuries on or causes the death of a pedestrian, and such driver is later charged criminally in court, one can imagine that it would be to the interest of the employer to give legal help to and defend its employee in order show that the latter was not guilty of any crime either deliberately or through negligence, because should the employee be finally held criminally liable and he is found to be insolvent, the employer would be subsidiarily liable. That is why, we repeat, it is to the interest of the employer to render legal assistance to its employee. But we are not prepared to say and to hold that the giving of said legal assistance to its employees is a legal obligation. While it might yet and possibly be regarded as a moral obligation, it does not at present count with the sanction of man-made laws.

If the employer is not legally obliged to give legal assistance to its employee and provide him with a lawyer, naturally said employee may not recover the amount he may have paid a lawyer hired by him.

Viewed from another angle it may be said that the damage suffered by the plaintiff by reason of the expenses incurred by him in remunerating his lawyer, is not caused by his act of shooting to death the gate crasher but rather by the filing of the charge of homicide which made it necessary for him to defend himself with the aid of counsel. Had no criminal charge been filed against him, there would have been no expenses incurred or damage suffered. So, the damage suffered by plaintiff was caused rather by the improper filing of the criminal charge, possibly at the instance of the heirs of the deceased gate crasher and by the State through the Fiscal. We say improper filing, judging by the results of the court proceedings, namely, acquittal. In other words, the plaintiff was innocent and blameless. If despite his innocence and despite the absence of any criminal responsibility on his part he was accused of homicide, then the responsibility for the improper accusation may be laid at the door of the heirs of the deceased and the State, and so theoretically, they are the parties that may be held responsible civilly for damages and if this is so, we fail to see how this responsibility can be transferred to the employer who in no way intervened, much less initiated the criminal proceedings and whose only connection or relation to the whole affair was that he employed plaintiff to perform a specific duty or task, which task or duty was performed lawfully and without negligence.

Still another point of view is that the damages incurred here consisting of the payment of the lawyer's fee did not flow directly from the performance of his duties but only indirectly because there was an efficient, intervening cause, namely, the filing of the criminal charges. In other words, the shooting to death of the deceased by the plaintiff was not the proximate cause of the damages suffered but may be regarded as only a remote cause, because from the shooting to the damages suffered there was not that natural and continuous sequence required to fix civil responsibility.

In view of the foregoing, the judgment of the lower court is affirmed. No costs.

Paras, C.J., reserved his vote

Bengzon, Padilla, A. Reyes, Bautista Angelo, Labrador, Concepcion and *J.L.B. Reyes, JJ., concur.*

Jugo and *Pablo, J.J.*, took no part.

VIII

Macario Enriquez, et al., Petitioners, vs. Honorable Alejandro Panlilio, in his capacity as the presiding Judge of Branch A, Court of First Instance of Manila; the Sheriff of Manila; Dee C. Chuan Co., Inc. and Standard Vacuum Oil Co., Respondents, G. R. No. L-7325, July 16, 1954, Montemayor, J.

1. EMINENT DOMAIN; SUSPENSION OF EJECTMENT PROCEEDINGS, WHEN PROPER; PURPOSE OF COMMONWEALTH ACT NO. 538. — Commonwealth Act No. 538 contemplates the expropriation of lands lawfully occupied, where said occupancy is known and permitted by the owner under an agreement, express or implied, of tenancy, and where the tenants and occupants are observing the terms of the agreement by paying the rentals agreed upon, or, a reasonable amount ascertained by the court for the use and occupation of the premises. The purpose of the law is to aid and benefit the lawful occupants and tenants, by making their occupancy permanent and giving them an opportunity to become owners of their holdings.

2. ID.; ID.; ID.; OCCUPANTS WHO CAN NOT INVOKE THE LAW. — Where petitioners entered the land in question without the knowledge and consent of the owner and lessee thereof, the relationship of landlord and tenant has not been established. Hence, they can not invoke the benefits of Commonwealth Act No. 538.

Castaño, Ampil, and Pronove for petitioner.

Ross, Selph, Carrascoso and Janda for respondent Standard-Vacuum Oil Company.

Quisumbing, Sycip, Quisumbing and Salazar for other respondents.

DECISION

MONTEMAYOR, *J.*:

This is a petition for certiorari with preliminary injunction. From the allegations of said petition and its annexes as well as of the answer filed by respondents, we gather the following:

Respondent Dee C. Chuan Co. (to be later referred to as Chuan Co.) is the owner of quite a large parcel of land situated in the City of Manila and adjoining the Juan Luna sub-division and the North Bay Boulevard. A portion of the same of about 1,000 sq. m. was leased to respondent Standard Vacuum Oil Co. (to be later referred to as Oil Co.). Sometime prior to 1947, without the knowledge and consent of Chuan Co. (owner) and the Oil Co. (lessee), a number of people including the petitioners entered the parcel, particularly that portion under lease, and erected thereon temporary houses (barong-barong), and thereafter refused to leave the same despite repeated demands made upon them by the owner and lessee. The oil company filed a suit in ejectment in the Municipal Court of Manila against the petitioners and obtained a favorable judgment ordering petitioners to vacate the portion occupied by them and denying their counterclaim. Petitioners as defendants appealed to the Court of First Instance of Manila which rendered judgment against them on December 27, 1949. For purposes of reference particularly as to the facts of the case, we are reproducing said decisions, to wit:

> "This is an ejectment case appealed from the Municipal Court. The lower court in its decision ordered the defendants to vacate the premises in question and denied defendants' counterclaim. Hence the appeal of the Defendants to this Court. While the case was pending trial, Dee C. Chuan prays the defendants be ejected from the premises and to pay jointly and severally a monthly rental of ₱90.00 from May 5, 1947 to October, 1949. Subsequently, counsel for the defendants filed a motion asking for the suspension of the trial of the case on the ground that the government was negotiating for the purchase of the land in question from the plaintiff-intervenor, Dee C. Chuan & Sons, Inc. Because the hearing of the case had been postponed already several times on the same ground, without any positive results having come out from said supposed negotiations, the petition was denied, and trial was then commenced. After the plaintiff has presented their evidence, counsel for the defendants asked for postponement alleging, as their reason, that not all the defendants were present in Court. To give the defendants their day in court, the case was then postponed to an agreed date among the parties. But on the said date, counsel for the defendants failed to appear on the unverified ground that he was indisposed. Further postpone-

ment of the case was objected to by the other parties, and the case was then submitted for decision.

"It appears that the plaintiff is the lessee of a parcel of land, as evidenced by a contract of lease (Exh. "A") between plaintiff and the owner, who is the plaintiff-intervenor herein; that the defendants, prior to February, 1947, without the knowledge and consent of the owner or plaintiff-intervenor, illegally entered and occupied the premises in question and erected barong-barong therein; that, in spite of repeated demands of the plaintiff-intervenor, as well as the plaintiff (Exhs. B, B-1, B-2, C, C-1 to C-5), the defendants refused to vacate the property.

"WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering all the defendants to vacate the premises in question, and each of them to pay the plaintiff-intervenor a monthly rental of P5.00 from May 1947 to October 1949. Defendants are further ordered to pay the costs in both instances.

"SO ORDERED."

The judgment above reproduced apparently became final and executory. Why it was not then executed, the record does not show. In July, 1950, the Republic of the Philippines instituted expropriation proceedings, Civil Case No. 11525, concerning a portion of the parcel belonging to Chuan Co., including that portion leased to the Oil Company, under the provisions of Commonwealth Act No. 538. By reason of said expropriation proceedings, the Court of First Instance of Manila, deciding the ejectment case against petitioners, suspended execution of its judgment by order dated April 17, 1951. Early in 1953, Chuan Co. moved to lift the order staying execution. We quote the order dated February 21, 1953 granting the motion.

"After a careful consideration of the grounds advanced by Counsel for Intervenor Dee C. Chuan & Sons, Inc., in support of the motion to lift order staying execution, the Court has reached the conclusion that said motion is well taken and meritorious, and hereby grants same.

"The defendants, not being bona-fide tenants or occupants of the land in question, and having failed, on the other hand, to pay to the landowner, or to deposit in Court, the current reasonable rental for the land they illegally occupy, can not avail themselves of the provision of Commonwealth Act No. 538.

"Accordingly, the Order of April 17, 1951, suspending the execution of the Judgment rendered in the case, is hereby lifted and set aside.

"SO ORDERED.

Manila, Philippines, February 21, 1953.

(Sgd.) Alejandro J. Panlilio
Judge"

A copy of said order was duly served on counsel for the defendants in said Civil Case No. 5654 (now petitioners herein). It was only on November 23, 1953, that defendants-petitioners filed a motion for reconsideration of the order of February 21, 1953, which was denied by order dated November 28, 1953. Claiming that in issuing the orders of February 21, 1953 and November 28, 1953, the trial court acted with grave abuse of discretion, amounting to excess of jurisdiction, petitioners have filed its present petition for certiorari with preliminary injunction.

We are reproducing section 1 of Commonwealth Act No. 538 by virtue of which the expropriation proceedings, as already stated, was initiated by the Government.

"Sec. 1. When the Government seeks to acquire through purchase or expropriation proceedings, lands belonging to any estate or chaplaincy (capellana), any action for ejectment against the tenants occupying said lands shall be automatically suspended, for such time as may be required by the expropriation proceedings or the necessary negotiations for the purchase of the lands, in which latter case, the period of suspension shall not exceed one year.

"To avail himself of the benefits of the suspension, the tenant shall pay to the landowner the current rents as they become due or deposit the same with the court where the action for ejectment has been instituted."

We agree with the trial court and the herein respondents that petitioners are in no position to invoke the benefits of Commonwealth Act No. 538, particularly section 1 thereof. As found by the trial court in the ejectment case, they are not bona-fide occupants or tenants because they entered the land without the knowledge and consent of the owner and lessee thereof. The relationship of landlord and tenant has not been established; on the contrary, as soon as their illegal occupation of the land was noted the owner and lessee made demands upon them to vacate the premises, which demands were ignored. Petitioners have not paid anything for their occupation. Even after judgment was rendered by the Court of First Instance against them ordering them to vacate the land illegally occupied by them and ordering them to pay a reasonable amount for their occupation, fixed by the Court, up to this time they have paid nothing. Commonwealth Act No. 538 contemplates the expropriation of lands lawfully occupied, where said occupancy is known and permitted by the owner under an agreement, express or implied, of tenancy, and where the tenants and occupants are observing the terms of the agreement by paying the rentals agreed upon, or, a reasonable amount ascertained by the court for the use and occupation of the premises. The purpose of the law is to aid and benefit the lawful occupants and tenants, by making their occupancy permanent and giving them an opportunity to become owners of their holdings. This is not the case with respect to petitioners.

Petitioners annexed to their petition a copy of an alleged agreement (Exhibit "E") between Chuan Co., the Oil Co., and the Rural Progress Administration to the effect that the land subject of expropriation would be leased to the owners of the houses standing thereon on a monthly rental not to exceed 1% of the assessed value of the land for the current year. Respondents in their answer explained that this agreement was made the basis of the motion for dismissal of the expropriation case, resulting in the dismissal of the same. However, with the abolition of the Rural Progress Administration and the taking over of its functions by the Bureau of Lands, the latter upon the instigation of the petitioners themselves, impugned the validity of the agreement, thus resulting in the lifting of the order of dismissal in the expropriation case. Moreover, the agreement itself excludes from its operation a portion of about 920 sq. m. which is apparently the portion involved in the ejectment (now occupied by the petitioners), the agreement providing for the removal from said portion of the houses and other improvements made by the petitioners.

In conclusion, we find that the respondent court did not commit any abuse of discretion, much less did exceed its jurisdiction in issuing its order of February 21, 1953 and in denying the motion for its reconsideration. The present petition for certiorari with preliminary injunction is hereby denied, with costs against petitioners. The writ of preliminary injunction heretofore issued, is hereby dissolved.

Paras, C.J., Bengzon, Padilla, Alex Reyes, Jugo; Bautista Angelo. Labrador, Concepcion and *J. B. L. Reyes, J.J.*, concur.

IX

Alicia Go, et al., Plaintiffs-Appellees, vs. Alberto Go, et al., Defendants-Appellants, G. R. No. L-7020, June 30, 1954, Bautista Angelo, J.

1. PLEADING AND PRACTICE; JOINDER OF PARTIES, APPLICABLE TO BOTH COMPLAINT AND COUNTERCLAIM. —The rule permitting the joinder of parties applies with equal

force to a counterclaim in view of the similarity of rules applicable to both complaint and counterclaim.

2. ID.; COUNTERCLAIM; TEST TO DETERMINE JURISDICTION OF JUSTICE OF THE PEACE COURT.—If the claim is composed of several accounts each distinct from the other or arising from different transaction, they may be joined in a single action even if the total exceeds the jurisdiction of the justice of the peace court. Each account furnishes the test. But if the claim is composed of several accounts which arise out of the same transaction and can not be divided, the same should be stated in one cause of action and cannot be divided for the purpose of bringing the case within the jurisdiction of the justice of the peace court.

3. ID.; ID.; CLAIM COMPOSED OF SEVERAL ACCOUNTING EACH DISTINCT FROM THE OTHER CAN NOT BE JOINED IN ONE SINGLE CLAIM.—Where the first claim refers to the recovery of an amount arising from the alleged unlawful taking by the plaintiffs of certain furniture and equipment belonging to the defendants while the second and third causes of action arose, not from the illegal taking of the property, but from the alleged unlawful institution by the plaintiffs of the action of ejectment in the Municipal Court, the claims can not be joined in one single claim because they arise from different sets of facts.

4. ID.; ID.; COMPULSORY COUNTERCLAIM TO BE SET UP REGARDLESS OF AMOUNT; CLAIM BARRED IF NOT SET UP.—If a counterclaim arises from, or is necessarily connected with, the facts alleged in the complaint, then that counterclaim should be set up *regardless of its amount.* Failure to do so would render it barred under the rules.

5. ID.; ID.; ID.; COMPULSORY COUNTERCLAIM SET UP, COGNIZABLE BY COURT OF FIRST INSTANCE.—The second and third claims of defendants being compulsory, and the respective amounts, considered separately, are within the jurisdiction of the municipal court, the Court of First Instance can not act on them in the exercise of its appellate jurisdiction.

Emmanuel T. Jacinto for plaintiffs and appellees.

Enrique V. Filamor and Nicolas Belmonte for defendants-appellants.

DECISION

BAUTISTA ANGELO, *J.*:

On December 18, 1951, plaintiffs brought an action in the Municipal Court of Manila to recover from defendants the possession of a house situated at 921 Dagupan St., Manila, and the sums of ₱2,000 as damages and ₱200.00 as attorney's fees.

Defendants in their answer set up several special defenses and a counterclaim. The counterclaim was divided into three causes of action as follows: the first is for ₱2,000 representing the value of certain furniture and equipment belonging to defendants and which are claimed to have been taken away by plaintiffs from the house in litigation; the second is for ₱1,000 representing expenses incurred by defendants arising from the falsity of the facts alleged in the complaint; and the third is for ₱500.00 as attorney's fees arising from the institution of the present action.

The court found for the plaintiffs, after due hearing, ordering defendants to vacate the house in litigation and to pay the costs, but denied the claim for damages both of plaintiffs and defendants on the ground that their amounts are beyond its jurisdiction. The defendants, in due time, perfected their appeal to the Court of First Instance, and after the latter had filed their answer as required by the rules, plaintiffs filed an amended complaint wherein they reiterated their original allegations with some slight modifications. To this amended complaint, defendants filed an amended answer reiterating the counterclaim they had alleged in their original answer which, as previously stated, has been divided into three causes of action involving an aggregate amount of ₱3,500.

Claiming that the amount involved in the counterclaim is beyond the jurisdiction of the Municipal Court, and, therefore, the Court of First Instance cannot act on it in the exercise of its appellate jurisdiction, plaintiffs filed a motion to dismiss under Rule 8, Section 1 (a), of the Rules of Court. This motion was resisted by defendants, but the court, in its order issued on March 30, 1953, overruled the opposition and granted the motion to dismiss. Hence, this appeal.

Appellants, in their brief, present the question for determination in this appeal in the following wise:

> "The issue involved in this appeal is purely a question of law: whether or not the counterclaim was within the jurisdiction of the Municipal Court, and, hence, whether or not the Court of First Instance has appellate jurisdiction thereon. We respectfully submit that the legal points involved are of paramount importance, as a definition is sought of the rule which should control, not only in the case at bar, but also in other cases, in the determination of the jurisdictional amount in case there are several causes of action: *whether the jurisdiction is determined by the amount of each cause of action, or by the aggregate amount of the several causes of action;* and whether in compulsory counterclaims the amount thereof is immaterial in the question of jurisdiction." (Underscoring supplied)

A case that may throw light on the issue before us is A. Soriano & Co. vs. Gonzalo M. Jose, et al., 47 O.G., 156, decided on May 30, 1950, where various employees brought a joint complaint against their employer in the municipal court to collect a month salary each in lieu of 30 days' notice. The question there decided was whether the jurisdiction of the municipal court is governed by the amount of each claim or by the aggregate sum of all the claims when there are several plaintiffs suing jointly but have independent causes of action. In that case, we held that "where several claimants have separate and distinct demands against a defendant or defendants, which may be properly joined in a single suit, the claims cannot be added together to make up the required jurisdictional amount; each separate claim furnishes the jurisdictional test." The purpose of the rule permitting the joining of parties is to save unnecessary work, trouble, and expense, consistent with the liberal spirit of the new rules. This ruling, no doubt, applies with equal force to a counterclaim in view of the similarity of rules applicable to both complaint and counterclaim.

The question that now rises is: Can this ruling be applied when there is only one plaintiff or one defendant, or several plaintiffs or defendants but with a common claim, divided into several causes of action involving transactions different one from the other? Stated in another way, does this ruling apply to a counterclaim set up by several defendants which have a common claim against the plaintiff divided into several causes of action for the reason that they arise from transactions one different from the other?

A case which may be considered on all fours with the present case is that of Villaseñor v. Erlanger & Galinger, 19 Phil., 574, wherein this Court, in discussing the test to be considered in determining the jurisdiction of a justice of the peace, laid down the following rule: "When a separate due is due, it is demandable in a separate action. Therefore, neither a debtor nor a third party may plead lack of jurisdiction because the sum of two separate debts exceeds the amount for which action may be brought in a court of a justice of the peace. On the other hand, if a debt is single a creditor may not divide it for the purpose of bringing the case within the jurisdiction of a justice of the peace." This case is authority for the statement that if a claim is composed of several accounts each distinct from the other or arising from different transactions they may be joined in a single action even if the total exceeds the jurisdiction of a justice of the peace. Each account furnishes the test. But if the claim is composed of several accounts which arise out of the same transaction and cannot be divided, the same

should be stated in one cause of action and cannot be divided for the purpose of bringing the case within the jurisdiction of the justice of the peace.

The same rule obtains in the American jurisdiction. Thus, it has been generally held that "In order that two or more claims may be united to make the jurisdictional amount, they must belong to a class that under the statute will permit them to be properly joined in one suit, and not such as should be made the subject of independent suits; and where two or more causes of action are improperly united in one suit the amounts involved in the different causes cannot be added together so as to make an amount in controversy sufficient to confer jurisdiction on the court in which the suit is brought x x x." But, "in so far as causes of action which may be properly joined are concerned, and which concern all the parties litigants, there is, however, a lack of harmony on the question of whether or not their various amounts should be aggregated in order to determine the amount in controversy for jurisdiction purposes." (21 C. J., pp. 76-78.)

In the last analysis, therefore, the question to be determined is whether the three causes of action into which the counterclaim of the defendants has been divided refer to transactions which should be stated separately, or transactions which have a common origin and should be joined in one cause of action for jurisdictional purposes. An analysis of the facts reveal that the three causes of action of the counterclaim are different one from the other, or at least the first is completely different and arises from a set of facts different from those which gave rise to the other two. The first refers to the recovery of the amount of ₱2,000 arising from the alleged unlawful taking by the plaintiffs of certain furniture and equipment belonging to the defendants; while the second and third causes of action arose, not from the illegal taking of property, but from the alleged unlawful institution by the plaintiffs of the action of ejectment in the Municipal Court. From this it can be seen that the first cause of action cannot be joined with the other two in one single claim because they arise from different sets of facts.

Another consideration that should be borne in mind is whether the counterclaim is compulsory or not. If it is, such as if it arises from, or is necessarily connected with, the facts alleged in the complaint, then that counterclaim should be set up *regardless of its amount*. Failure to do so would render it barred under the rules. In this particular case, while the first cause of action cannot be considered compulsory because it refers to a transaction completely unrelated with the main claim, the second and the third belong to this class because they necessarily arise from the institution of the main action. Viewed in this light, it can be said that the counterclaim of the defendants should be deemed as coming within the jurisdiction of the municipal court because the respective amounts, considered separately, do not exceed its jurisdiction. From all angles we view the order appealed from it would appear that it is unwarranted and has no legal basis.

Wherefore, the order appealed from is hereby set aside, without pronouncement as to costs.

Paras, C.J., Bengzon, Reyes, Jugo and *Concepcion, J.J.*, concur.

Pablo, Jr., took no part.

PADILLA, *J.*, dissenting:

This is an action of forcible entry and for recovery of ₱2,000 as damages, and ₱200 as attorney's fees. In their answer the defendants sought to recover a counterclaim of ₱2,000, the value of the furniture and equipment allegedly belonging to them and claimed to have been taken by the plaintiffs from the apartment (*accesoria*), the possession of which is sought to be recovered in the action; the sum of ₱1,000, the expense allegedly incurred by the defendants as a result of the action brought against them; and ₱500 as attorney's fees.

The municipal court of Manila rendered judgment ordering the defendants to vacate the apartment but did not award the sums sought to be recovered by both parties on the ground that the same are beyond its jurisdiction. The defendants appealed to the Court of First Instance setting up the same counterclaim they had sought to recover in the municipal court. Plaintiffs moved for the dismissal of the counterclaim on the ground that the Court of First Instance has no jurisdiction to try and decide on appeal a counterclaim involving ₱3,500 set up by the defendants in the municipal court and repeated on appeal in the Court of First Instance which the municipal court had refused to try and decide for lack of jurisdiction. The motion was granted and from the order dismissing the counterclaim the defendants have appealed.

In the first place, the defendants should not have been allowed to appeal from the order of dismissal of their counterclaim but should have waited until after final jurgment shall have been rendered by the Court of First Instance in the forcible entry action. (1) By allowing this appeal the case may be submitted twice to an appellate court when all the issues joined and questions incident thereto raised by the parties should be passed upon and decided in one appeal. Granting, nevertheless, that the defendants may appeal from an order of dismissal of a counterclaim, I disagree with the majority that the amount of each claim arising from different transactions and not the aggregate amount of the counterclaim is determinative of the jurisdiction of the Court.

Section 86, Republic Act No. 296, as amended by Republic Act No. 644, provides:

> The jurisdiction of justices of the peace and judges of municipal courts of chartered cities shall consist of:
>
> x x x
>
> (b) Original jurisdiction in civil actions arising in their respective municipalities and cities, and not exclusively cognizable by the Courts of First Instance; and
>
> x x x

Section 88, Republic Act No. 296, as amended by Republic Act Nc. 644, provides:

> In all civil actions x x x arising in his municipality or city, and not exclusively cognizable by the Court of First Instance, the justice of the peace and the judge of a municipal court shall have exclusive original jurisdiction where the value of the subject-matter or amount of the demand does not exceed two thousand pesos, exclusive of interest and costs. x x x

The first claim for ₱2,000 which represents the value of certain furniture and equipment allegedly belonging to the defendants and claimed to have been taken by the plaintiffs from the apartment (*accesoria*), the possession of which is sought to be recovered from the defendants who, plaintiffs claim, forcibly entered upon the same and deprived them of the possession thereof, is not an independent transaction or claim because it arose from the alleged unlawful entry upon the premises by the defendants. Hence, the three items of the counterclaim arose from the alleged unlawful entry by the defendants upon the premises, the possession of which the plaintiffs seek to recover. The aggregate amount being beyond the jurisdiction of the municipal court to hear, try and decide, the order of the Court of First Instance of Manila to which the case was appealed is in accordance with law.

The jurisdiction of the municipal court is limited whereas that of the Court of First Instance is general. The limited jurisdiction of the former should not be enlarged or stretched at the expense of that of the latter. Enlarging the jurisdiction of the municipal court would be illegal.

The case of A. Soriano y Cia. vs. José, 47 Off. Gaz. Supp. No. 12, 156, cited by the majority is not in point. There several employees having each a cause of action against the employer were allowed to join in one suit brought in the municipal court of Manila, although the aggregate amount of the several causes of action

(1) Section 2, Rule 41.

constituting the demand was beyond the jurisdiction of the municipal court, because the amount of each cause of action which is less than ₱2,000 determines the jurisdiction of the court, and the joinder of such parties is permitted by section 6, Rule 3. In other words, if the several employees having a claim against the employer were not permitted to join in one suit by the above mentioned rule, each would have to bring a separate action and the action of each would be within the jurisdiction of the municipal court because the amount claimed by each plaintiff would not exceed ₱2,000 exclusive of interest and costs.

The rule in the case of Villaseñor vs. Erlanger & Galinger, 19 Phil. 574, invoked by the majority does not support its opinion. There the action was one of interpleading brought by the sheriff of Tayabas for determination as to who among the defendants were entitled to the funds he had in his possession. The question of jurisdiction of the justice of the peace court of Manila was not the *lis mota* but rather the question of preference of credits. There were two actions brought by Ruiz y Rementeria against Manuel Abraham and two judgments rendered by the justice of the peace court of Manila in favor of Ruiz y Rementeria — one for ₱572.91 and the other for ₱304.73 — both amounts being within the concurrent jurisdiction of the justice of the peace court and the Court of First Instance of Manila. This Court in reversing the judgment of the trial court, which disallowed the two credits of Ruiz y Rementeria ordered by the justice of the peace court of Manila in two judgments to be paid to Ruiz y Rementeria correctly ruled that such credits were allowable.

For these reasons, the order appealed from should be affirmed, with costs against the appellants.

Labrador, J., concurs.

X

Marta Banclos de Esparagoza et al., Petitioners, vs. Benvenido A. Tan, etc. et al., Respondents, G. R. No. L-6525, April 12, 1954; Bautista Angelo, J.

CERTIORARI; DENIAL OF DUE PROCESS CONSTITUTES ABUSE OF DISCRETION. — Where a written charge for contempt was filed against petitioners, but no copy thereof has been served on them, and their plea to be given an opportunity to answer the charge before any action is taken against them was disregarded, this action is tantamount to a denial of due process which may be considered as a grave abuse of discretion.

Pio L. Pestano for petitioners.

Ricardo N. Agbunag for respondent Angela Fernandez.

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition for certiorari with preliminary injunction seeking to set aside certain orders of respondent Judge which direct the immediate arrest of petitioners for their failure to appear to show cause why they should not be punished for contempt, and to set aside the decision rendered by the Court of Appeals dated November 17, 1952, sustaining and giving effect to the aforesaid orders.

The orders herein referred to had arisen in a case instituted in the Court of First Instance of Rizal by the Judge Advocate General of the Armed Forces of the Philippines against Marta Banclos de Esparagoza, et al., in connection with the disposition of the amount of $1,190.83 accruing to one Aniceto Esparagoza, deceased, as pay in arrears due the said deceased (Civil Case No. 877). The case was instituted in order that it may be determined who among the different claimants as heirs of the deceased is entitled to the amount in question. After due hearing, the court found that Marta Banclos, the widow, is the only person entitled to receive the benefits of the estate, and, accordingly, it ordered that the amount of $1,190.83 be paid to her. However, as the widow, and her lawyer, in a gesture of nobility, agreed to give one-half of said amount to the four illegitimate children of the deceased, the court also included in the decision an injunction that the widow deposit with the Philippine National Bank said one-half, or the sum of $595.41, in the name of the four minor children, in equal shares, to be disposed of in accordance with law.

Two months after the money was received by the widow as directed in the decision, Angela Fernandez, mother of the four minor children demanded that the money be given to her instead of being deposited in the bank alleging as reason that if it be so deposited, she would encounter difficulties in withdrawing the money for the benefit of the children. The widow refused to agree to the request unless the mother secure from the court an order authorizing her to receive the money in line with her request. The mother failed to do so, nor was she able to disclose the whereabouts of the children, and instead the widow came to know that the children were no longer living with their mother but had been given away to well-to-do couples who promised to bring them up and take care of them, and so, upon advice of Atty. Pio L. Pestaño, her counsel. the widow declined to give the money either to the mother or to the children. The result was that, on March 28, 1952, Angela Fernandez, the mother, instituted contempt proceedings against the herein petitioners in view of their failure to deliver the money as ordered by the court in its decision in Civil Case No. 877.

The petition for contempt was set for hearing, and after the widow and her counsel were duly heard, the court found the petition without merit, and denied the same. Six months thereafter, a similar petition for contempt was filed by Angela Fernandez wherein she reiterated the same act of dereliction of duty on the part of herein petitioners, copy of which was never served on the petitioners. However, the same was acted upon *ex parte* by the court who, on October 18, 1952, issued an order directing them to appear and show cause why they should not be punished for contempt for having disobeyed the order of the court. Copy of this order was served on petitioner Pestaño on October 22, 1952, and on October 25, the latter submitted to the court a written statement explaining the circumstances why he could not show cause as directed among which was the failure of the movant to serve on him a copy of the petition containing the charges for contempt. In said written manifestation, petitioner Pestaño made the special request that the order requiring his appearance be held in abeyance until after he shall have been served with copy of the petition for contempt as required by the rules, and that no action thereon be taken until after he shall have been given an opportunity to answer said motion. Instead of acceding to this request, the court, on October 25, 1952, issued an order directing his immediate arrest and that of his client Marta Banclos de Esparagoza. They sought to set aside said order by bringing the matter to the Court of Appeals by way of certiorari, but their petition was dismissed for lack of merit.

The only issue to be determined is whether respondent Judge has exceeded his jurisdiction or acted with grave abuse of discretion in issuing his order of October 25, 1952, directing the immediate arrest of petitioners herein in view of their failure to appear and show cause why they should not be punished for contempt for having disobeyed the order of the court. The determination of this would depend upon an examination of the facts leading to the issuance of the disputed order.

It should be recalled that because of the refusal of Marta Banclos de Esparagoza, following the advice of her counsel and co-petitioner, Pio L. Pestaño, to deposit the money belonging to the four minor children with the Philippine National Bank, or to deliver it to their mother, Angela Fernandez, as demanded by the latter, Angela Fernandez filed a petition for contempt in the main case praying that the two be ordered to show cause why they should not be punished for contempt for their failure to obey the decision of the court. This petition was acted upon by the court *ex parte*,

and because petitioners herein never received copy of the petition for contempt, they submitted a written manifestation to the court praying that action thereon be held in abeyance and that they be not required to appear until after they shall have been given an opportunity to answer as required by the Rules of Court. This special request was disregarded by the court and considering their failure to appear as a defiance, the court ordered their immediate arrest. Is this attitude of the court justifiable under the rules?

Section 3, Rule 64, of the Rules of Court provides:

"SEC. 3. *Contempt punished after charged and hearing.*— After charge in writing has been filed and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following act may be punished for contempt:

"x x x x x x x x x x

"(b) Disobedience of or resistance to a lawful writ, process, or order, judgment, or command of a court, or injunction granted by a court or judge;

"x x x x x x x x x x

"But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

As may be seen, a contempt proceeding as a rule is initiated by filing a charge in writing with the court, and after the charge is filed, an opportunity should be given the accused to be heard, by himself or counsel, before action could be taken against him. Here, it is true, a written charge was filed against petitioners, but no copy thereof has been served on them, nor have they been given an opportunity to be heard. The petitioners asked for this opportunity, but it was denied them. Instead, their arrest was immediately ordered. It is true that, under the same rule, "nothing x x shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings", but such drastic step can only be taken if good reasons exist justifying it. Apparently, this reason does not exist. Petitioners not having received copy of the written charge, they asked that they be given one. They also asked that they be given an opportunity to answer said charge before action is taken against them. Both pleas were disregarded. Such action, in our opinion, is tantamount to a denial of due process, which may be considered as a grave abuse of discretion. As this court has aptly said: "Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey should the power be exercised. A *bona fide* misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings." (Gamboa v. Tesodoro, L-4893, May 13, 1952.)

Wherefore, the orders of respondent Judge dated October 18, 1952 and October 25, 1952, are hereby set aside and it is hereby ordered that before action be taken on the motion for contempt, petitioners herein be given an opportunity to answer said motion as prayed for in their written explanation dated October 24, 1952, without costs.

Paras, C.J., Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Labrador, Concepcion and *Diokno, J.J.*, concur.

XI

Leopoldo R. Jalandoni, Protestant and Appellee, vs. Demetrio N. Sarcon, Protestee and Appellant, G. R. No. L-6496, January 27, 1954, Bautista Angelo, J.

1. ELECTIONS; MOTION OF PROTEST, SUFFICIENCY OF. —Where a motion of protest contains allegations that the protestant is a qualified elector and one of the registered candidates voted for in the general elections held on November 13, 1951, these allegations substantially comply with the law and are sufficient to confer upon courts of first instance the requisite jurisdiction.
2. ID.; ID.; CERTIFICATE OF CANDIDACY. — A motion of protest need not in so many words state that the protestant has presented his certificate of candidacy or that he is a candidate for the office of mayor because all these allegations may be clearly inferred or deduced from the facts expressly alleged therein for it cannot be denied that one cannot be a registered candidate unless he has duly filed the required certificate of candidacy for the office he seeks to be a candidate.

Emigdio V. Nietes for protestee and appellant.

Sixto Brillantes, Primitivo Buagas and *Melquiades Sucaldito* for protestant and appellee.

DECISION

BAUTISTA ANGELO, *J.*:

Demetrio N. Sarcon and Leopoldo R. Jalandoni were candidates for the office of Mayor of Midsayap, province of Cotabato, and had been voted for as such in the elections held on November 13, 1951. In the canvass made by the Municipal Board of Canvassers, Sarcon obtained 3,181 votes and Jalandoni 3,088 votes, and as a result the former was proclaimed elected. In due time, the latter filed an election protest in the Court of First Instance of Cotabato.

The trial court, upon petition of protestant, directed the National Bureau of Investigation to examine all the ballots contained in the white boxes as well as the stubs contained in the boxes for spoiled ballots, the corresponding voters affidavits and lists of voters, and all the pads containing the stubs of ballots used, of precincts Nos. 19 and 34 of Midsayap, to determine if the ballots cast in said precincts were genuine, or were cast by persons other than the legitimate voters. Angel H. Gaffud, examiner of said Bureau, made the examination as directed and submitted his report to the court.

During the trial, the protestant, through counsel, introduced as part of his evidence the certificate of candidacy he had filed as required by law but its admission was objected to on the ground that his motion of protest does not contain any allegation that he has filed any certificate, but the objection was overruled and the certificate was admitted in evidence. Upon the conclusion of the trial, the court rendered judgment nullifying 226 ballots cast for the protestee and declaring the protestant as the mayor elect with a majority of 133 votes.

The case was orginally taken to the Court of Appeals, but, as appellant has raised as one of the errors that the lower court had no jurisdiction to try the case because the motion of protest does not allege sufficient jurisdictional facts, it was later certified to this Court.

Appellant contends that the motion of protest does not contain jurisdictional facts because it fails to state that the protestant is a candidate voted for in the elections held on November 13, 1951 and that he has presented the required certificate of candidacy. He claims that these allegations are essential and the failure to include them in the motion of protest operates to divest the court of its jurisdiction over the case.

We agree with counsel that court of first instance, when taking cognizance of election protests, act as courts of special jurisdiction. In this sense they have a limited jurisdiction. They can only act when the pleadings aver jurisdictional facts. As this Court aptly said: "The Court of First Instance has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the motion of protest. There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. x x x Such court cannot, by any supposed analogy to ordinary proceedings, exercise any power beyond that which the legislature has given." (Tengco v. Jocson, 43 Phil. 715.) But we disagree with counsel that the motion of protest in the

present case does not allege facts sufficient to confer jurisdiction upon the lower court.

Among the important allegations appearing in the motion of protest are that protestant is a qualified elector and one of the registered candidates voted for in the general elections held on November 13, 1951, that, in accordance with the certificate of canvass of the Municipal Board of Canvassers, the protestee received 3,181 votes and the protestant 3,088 votes, and on December 3, 1951, the protestee was declared elected to the office of Mayor of Midsayap. In our opinion, these allegations substantially comply with the law and are sufficient to confer upon the court the requisite jurisdiction. It is true that the motion of protest does not in so many words state that protestant has presented his certificate of candidacy, or that he is a candidate for the office of Mayor of Midsayap, but all these allegations are clearly inferred or deducible from the facts expressly alleged therein for it cannot be denied that one cannot be a registered candidates unless he has duly filed the required certificate of candidacy for the office he seeks to be a candidate. This is a requirement which must needs be met before a person can be eligible or be voted for (Section 31, Revised Election Code). This is also the interpretation placed by the Senate Electoral Tribunal on the words "registered candidate" in a case involving a similar issue (Sanidad v. Vera, et al., Case No. 1, Senate Electoral Tribunal). Indeed, to countenance the plea of appellant would be to defeat an otherwise good case through a mere technical objection, which is the duty of the courts to prevent, for "It has been frequently decided, and it may be stated as a general rule recognized by all the court, that statutes providing for election contest are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by merely technical objections. To that end immaterial defects in pleadings should be disregarded and necessary and proper amendments should be allowed as promptly as possible." (Heyfrom v. Mahoney, 18 Am. St. Rep., 757, 763; McCrary on Elections, 3rd Ed., sec. 396; Galang v. Miranda, 35 Phil., 269.) As a corollary, it should be stated that the lower court did right in allowing the presentation in evidence of the certificate of candidacy of protestant which is necessary to establish a material jurisdictional fact.

Let us now come to the merits of the case. Note that the ballots disputed by appellant are those cast in precincts Nos. 19 and 34, and that these were all examined as ordered by the court by Angel H. Gaffud, a handwriting expert of the National Bureau of Investigation. The ballots disputed among those cast in precinct No. 19 amount to 306 of which 226 were found to be spurious. And among those cast in precinct No. 34 those disputed amount to 200 ballots and of these 53 were found also to be spurious. The handwriting expert classified the first batch into 14 groups, and basing his opinion on the striking similarities of the handwriting found in each group, he gave the opinion that the 226 ballots had been written by one and the same hand. The second batch was classified into 10 groups and following the same process he reached the same conclusion. The lower court concurred in this opinion as regards the 226 ballots but disagreed with regard to the 53. It found that these 53 ballots were all written in Moro characters, and considering that these characters were not known to the handwriting expert, it entertained doubt as to the veracity of his findings. This doubt the court resolved in favor of the protestee and counted them in his favor.

Counsel for appellant disagrees with these findings concerning the 226 ballots and, pointing out the individual characteristics of the writer of each ballot shown by his habit of writing, "such as his slant, the proportional heights of his one spaced to his two spaced letter, or to one another; the pressure of writing, the spacing, the penlift of the writer, the crossing of his 't's', the dotting of his 'i's', his habitual initial and terminal strokes, whether they are blunt or flying, the loops of his letters, his speed in writing, and the use of capital letters", he now vehemently contends that the ballots in question cannot be considered as having been written by one and the same hand. And to make his opinion more impressive and factual he made his own grouping of the ballots and proceeded to compare one with the other pointing out certain differences which in his opinion tend to destroy the findings of the handwriting expert and of the trial court. In view of these conflicting opinions, and in order to reach a conclusion as close as may be possible to the truth, we have examined these ballots one by one and have found that, with the exception of 15 ballots which appear to have been written by different persons, the findings of the handwriting expert are correct and should be sustained. For the purpose of this decision, and in order that the characteristics of the writing may be better appreciated, we have placed the ballots in small groups within the classification made by the handwriting expert and the following are the reasons supporting our conclusion:

GROUP I

45 ballots (Exhs. A; A-1; A-4; A-10; A-14; A-25; A-36; A-42; A-62; A-63; A-9; A-12; A-30; A-34; A-35; A-37; A-46; A-49; A-50; A-52; A-53; A-66; A-67; A-72; A-74; A-81; A-85; A-86; A-90; A-91; A-94; A-96; A-97; A-100; A-102; A-103; A-107; A-109; A-110; A-2; A-3; A-15; A-93; A-45 and A-101) were undoubtedly written by only one person. While there is an attempt to disguise the handwriting by using different writing instruments, as indelible pencil, lead pencil and blue-colored pencil, and by varying the slant of the writing, pen pressure and spelling of the words, the general characteristics of the writer as to form, formation of letters and habits are clearly noticeable. In all these ballots, except one or two, one cannot help but notice the peculiar form of the capital letter T in "Tadio" and "Tan". Except the first ballot, the M in "Mantel" has four "legs". The capital letter C in "Cambronero" and "Carlos" has a peculiar formation, that is, the initial stroke begins from below, has a loop on top and is brought down with the usual curve. The capital F in "Flores", the capital S in "Sarcon", and the capital R in "Roganton" are similar in practically all these ballots as "Suluezeta", or "Suluezta", or "Suluezela" having forgotten to place the cross-bar in the t, "Suluezat", and the terminal "a" is separate from the "t", a practice habitual to the writer.

12 ballots (Exhs. A-6; A-8; A-16; A-39; A-40; A-43; A-51; A-54; A-58; A-61; A-70; and A-73). These were clearly written by same person who wrote the above 45 ballots. The characteristic formations of the capital letter M in "Martel", C in "Cambronero" and "Carlos", T in "Tan" and "Tadio" and R in "Roganton" in the above 45 ballots are all found in these 12 ballots. In all these ballots the name Zulueta begins with capital Z in printed form. The terminal letter "a" is separate from the "t" just like the 45 ballots above.

14 ballots (Exhs. A-13; A-19; A-20; A-21; A-22; A-26; A-29; A-41; A-44; A-55; A-57; A-75; A-76; and A-87). In all these ballots one hand wrote the votes for Senators with indelible pencil, without any attempt to disguise the penmanship. Another hand, which is the same one that wrote the above-mentioned 45 ballots, wrote in lead pencil the votes for the provincial and municipal officials, with the usual characteristic formation of the capital letters M in "Mantel", C in "Cambronero" and "Carlos", R in "Roganton" and T in "Tadio" and "Tan".

11 ballots (Exhs. A-5; A-7; A-32; A-38; A-60; A-69; A-71; A-77; A-78; A-80; and A-106). One hand wrote the votes for Senators in all these 11 ballots, but different from the hand that the above 14 ballots. This writer is a more accomplished writer. He tried to disguise his writing in 3 of these ballots (Exhs. A-5, A-78 and A-80) by making his letters smaller, but this betrayed by his usual formation of the capital letter Z in "Zulueta" which is the same in all the ballots. He also wrote in the last 2 ballots the votes for members of the Provincial Board. The rest of the votes in these 11 ballots was written by another hand, the same that wrote the 45 ballots, *supra*, as shown by the capital letters M in "Mantel", C in "Cambronero" and "Carlos", T in "Tadio" and "Tan", R in 'Roganton", B in "Bangas" and Y in "Yerno". He tried to disguise his handwriting in the last ballot by changing his slant.

3 ballots (Exhs. A-27; A-31 and A-84). These were pre-

pared by the same person who wrote the 45 ballots, *supra*, with an indelible pencil. The usual characteristics of his writing as already described are present, like the C in "Cambronero" and "Carlos", F in "Flores", R in "Roganton" and others.

6 ballots (Exhs. A-68; A-79; A-99; A-33 and A-56). The first four ballots were each prepared by different voters and could have been regular were it not for the insertion of the name of candidate Carlos Tan in the space for special election by the same guilty hand that invalidated all the ballots discussed. But this cannot invalidate them. In the last two ballots, "Sarcon", and "Yerno" in the spaces for Mayor and Vice-Mayor, respectively, were written by the same guilty hand as shown by the capital letter C in "Carlos", T in "Tan" and Y in "Yerno". These two ballots are, therefore, invalid.

5 ballots (Exhs. A-23; A-59; A-64; A-89 and A-105). The voter in the first ballot voted only for "Borra" and "Cambronero"; in the second, the voter voted only for "Quirino" and "Roganton", in the third the voter voted for "Sarcon", "Yerno" and four councilors; in the fourth the voter voted for "Zuelueta", "Borra" and "Cambronero", and in the last voted for seven councilors from line 2 to 8. With the exception of the third ballot, the name "Sarcon" was written by the same guilty hand and should therefore be declared invalid. Only the third is valid.

3 ballots (Exhs. A-11; A-24 and A-83). Similarly, those three ballots were tampered by the same guilty hand. The first 2 ballots were voted in Arabics while the third voted only for "Kimpo" in blue pencil. The guilty hand wrote "Carlos Tan" and the other writing as can be seen by his characteristic capital letters "C" and "T".

2 ballots (Exhs. A-98 and A-48). These were each prepared by two hands. "Zulueta" in both ballots were written by one hand, the same person who wrote this word in the 11 ballots, *supra*. This hand wrote also the rest, written in blue-colored pencil, in the second ballot. The rest of the writing in the first ballot was written by the same guilty hand that prepared the 45 ballots, *supra*.

2 ballots (Exhs. A-17 and A-47). These two ballots were each prepared by 2 hands. "Carlos Tan" was written in both ballots by the same guilty person in the 45 ballots, *supra*, but the name "Sarcon" was written by the same hand in the two ballots.

4 ballots (Exhs. A-82; A-95; A-104 and A-108). These were prepared by the same guilty hand that prepared the 45 ballots, *supra*. He tried to disguise his writing but he could not escape judgment by one who has become used to his letter formation.

3 ballots (Exhs. A-18; A-65 and A-88). A careful scrutiny of these ballots shows that nothing in them indicates that they have been tampered with. They are valid.

GROUP II

30 ballots (Exhs. B to B-30, inclusive, with the exception of B 28). They were all prepared by only one individual, the same person who wrote the votes for Senators in the group of 11 ballots, *supra*, of Group I. The writer made an attempt to disguise his handwriting which may be classified into *three groups*, as follows: first group, Exhs. B; B-1; B-7; B-8; B-10; B-12; B-15; B-16; B-17; B-18; B-22; B-25; B-24; B-26 and B-27; second group, Exhs. B-2; B-3; B-4; B-5; B-9; B-13; B-19; and B-21, and third group, Exhs. B-6; B-11; B-14; B-20; B-23; B-29 and B-30. The first group may be described as the writer's ordinary handwriting with his usual slant; in the second group, he changed his slant making it a little bit vertical; and in the third group, he made his letters smaller but in his usual slant. The writer is an accomplished one. He comouflaged his handwriting by using lead, indelible and blue-colored pencils, but this did not vitally change his habitual form. His formation of capital Y in "Yerno" in all the ballots, except a few, is eye-catching, in that, it starts with a flourish from below. This is also true in his capital V in "Villareal". One can easily notice his formation of Z in "Zulueta", K in "Kimpo", M in "Mantel", C in Cambronero" and T in "Tadio" and "Tan". They are all alike in all the ballots.

1 ballot (Exhs. B-20). This is void because the writings therein were written by three different hands. This is apparent by a mere examination of the ballot.

GROUP III

17 ballots (Exhs. C to C-16, inclusive). They were all written by one and the same person. The general appearance of the handwriting in all the ballots shows that the writings therein were made hurriedly, but the writer did not attempt to disguise his penmanship. The ballots may be grouped into three: first group, Exhs. C; C-1; C-2; C-3; C-6; C-9; C-10 C-11; C-12 and C-14 were all written in lead pencil; second group, Exhs. C-4; C-5; C-7; C-8; C-13 and C-15, all written in blue-colored pencil; and the last group, Exhs. C-16, written in indelible pencil.

GROUP IV

9 ballots (Exhs. D to D-8, inclusive). They were all written by one hand with apparently the same indelible pencil. No attempt was made to disguise the handwriting. The most distinguishing characteristic of the handwriting is the upward flourish in all terminal letters of the name of the candidates, especially the terminal letter "o" in "Yerno", "Carbronero" and "Kimpo".

GROUP V

8 ballots (Exhs. E-1; E-4; E-5; E-6; E-11; E-12; E-13 and E-16). They were all written by one hand. The similar formation of the following capital letters betray the fraud committed: S in "Sarcon", Y in "Yerno"; B in "Bengzon" and "Borra", R in "Ragonton" and "Randing"; F in "Flores" and V in "Villareal". In all the ballots, the capital letter C in "Cuenco" and "Cambronero" were written like a small letter c.

4 ballots (Exhs. E-9; E-18; E-21 and E). They were written by the same person who wrote the 8 ballots in the preceding paragraph. The writing was disguised by the writer changing his slant, making it vertical and using different pencils. But the characteristic formation of his capital letters Y in "Yerno", F in "Flores", V in "Villareal", R in "Ragonton" and "Randing" are unmistakably present.

4 ballots (Exhs. E-10; E-17; E-19 and E-20). They were all written by one hand using a blue-colored pencil. The writing in all the ballots is very similar with the same light pen pressure. The heavier downward stroke in the terminal "l" in "Laurel", "Mantel" and "Villareal" is glaringly noticeable.

3 ballots (Exhs. E-3; E-7 and E-14). They were written by the same hand that wrote the 8 ballots, *supra*. The writing in these ballots was disguised by making the letters a little bigger than the group referred to. But the same letter formation can be found in these ballots.

2 ballots (Exhs. E-2 and E-15). They were written by one person. This is apparent by a mere examination of the ballots. His letter formation and slant are alike in both ballots.

3 ballots (Exhs. E-8; and E-22 and E-23). Nothing in these ballots shows that they were tampered with. They were each written by different voters. They are valid.

GROUP VI

4 ballots (Exhs. F to F-3). They were all written by one and the same person, the first ballot, in indelible pencil, and the last three in blue-colored pencil. The handwriting in these 4 ballots is very much alike. Even the spelling of the senators voted for in these 4 ballots is the same. "Laurel" for Laurel, "Zulueta" for Zulueta, and "Locsin" for Locsin.

GROUP VII

2 ballots (Exhs. G and G-1). They were each written by

two hands. One hand wrote the name "Sarcon" in both ballots, while the Arabic votes each ballot were written by two different persons. This is apparent by a mere examination of the ballots. These ballots are, therefore, void.

GROUP VIII

8 ballots (Exhs. H to H-7, inclusive). They were all written by one person using a blue-colored pencil. The handwriting in these ballots is all identical, the writer having made no attempt to disguise his penmanship. This is apparent by a mere examination of the ballots.

GROUP IX

7 ballots (Exhs. I-1 to I-7, inclusive). They were all written by only one individual who tried to disguise his handwriting by using indelible, lead and blue-colored pencils. But his attempt is belied by his identical formation of the four-legged capital M in "Mantel", the capital letter D in "D. Sarcon" and "Q. Mantel" in 4 of the ballots, capital letter Z in "Zulueta" and L in "Locsing" and "Laurel". His attempt is further exposed by his wrong spelling of Zulueta as "Zuleta" and Locsin as "Locsing" which are found in all the ballots.

1 ballot (Exhs. I-8). This was written by at least two hands. One hand wrote the names "Sarcon" and "Yermo" in the spaces for Mayor and Vice-Maor, respectively. One can immediately detect that the writer of these names is more accomplished than the hand that wrote the votes for senators, members of provincial board and councilors.

1 ballot (Exhs. I). This appears to be good. There is nothing to indicate that it was tempered with.

GROUP X

2 ballots (Exhs. J and J-2). They were written by one individual. The handwriting in both ballots is identical in all respects. The name of Carlos Tan was written in both ballots as one word.

1 ballot (Exh. J-1). The handwriting in this ballot appears to be different from that in the other ballots and there is nothing to indicate that it was tampered with.

GROUP XI

2 ballots (Exhs. K and K-1). They were written by one hand. No attempt to disguise the writing was made and the similarity of the penmanship in both ballots is very apparent. These two are void.

GROUP XII

2 ballots (Exhs. L and L-1). These two ballots were written by two different persons. The disimilarities between the handwriting in both ballots are more striking than any similarity that can be seen. The slant, letter distances, stroke, penlift and pen pressure are different. These two ballots are, therefore valid.

GROUP XIII

1 ballot (Exh. M). This was written by two persons. One hand wrote the senatorial candidates from line 3 to 7, while the rest was written by another. The first hand is the same one that wrote the senatorial candidates in the group of 14 ballots, *supra*, under Group I. The slant, pen pressure and terminal strokes are different from the second hand.

1 ballot (Exh. M-1). This was written by the same person who wrote the votes for provincial and municipal officials in the ballot discussed in the preceding paragraph. The letter formation, slant and the penlift in "Yerno" are identical.

GROUP XIV

2 ballots (Exhs. N and N-1). They were written by one and the same person. No attempt to disguise the writing was made. The sizes of the letters, spacing, alignment and letter formations in both ballots are identical. These two ballots are, therefore, void.

In *resumé*, we find that of the 226 ballots declared spurious by the lower court, 15 are legitimate and should be cast in favor of the protestee. These ballots are Exhibits A-68; A-79; A-92; A-99; A-64; A-18; A-65; A-88; E-8; E-22; E-23; I; J-1; L and L-1. The findings of the lower court as to the balance of 211 ballots should be sustained. Deducting this number from the votes awarded to the protestee by the Board of Canvassers, we have that the protestant has won the election with a majority of 118 votes.

Wherefore, with the above modification, we hereby affirm the decision appealed from, without pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla Montemayor; A. Reyes; Jugo; and *Labrador*, J.J. concur.

XII

Marc Donnelly & Associates, Inc., Petitioner, vs. Manuel Agregado, Auditor General; Cornelio Balmaceda, Secretary of Commerce and Industry; and Ramon L. Paguia, Chief of the Sugar Quota Office, Respondents, No. L-4510, May 31, 1954, Bautista Angelo, J.

1. CONSTITUTIONAL LAW; DELEGATION OF LEGISLATIVE POWERS; POWERS MAY BE DELEGATED IF AUTHORIZED BY THE CONSTITUTION; ACT OF CABINET IS ACT OF PRESIDENT.—On July 10, 1946, the President, acting upon the authority vested in him by Commonwealth Act No. 728, making it unlawful to export agricultural or industrial products without a permit from the President, prohibited the exportation of certain materials but allowed the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration. The Cabinet, upon recommendation of the National Development Company, approved a resolution fixing the schedule of royalty rates to be charged on metal exports and authorized their collection. Petitioner exported large amounts of scrap metals for which it paid by way of royalty fees the total amount of ₱54,862.84. Petitioner now seeks the refund of said royalty fees, contending that the aforesaid resolution constitutes an undue delegation of legislative powers because, in substance, it creates and imposes an *ad valorem tax*. *Held*: The resolution approved by the Cabinet is perfectly legal because it was done by authority of Commonwealth Act No. 728 and in pursuance of an express provision of the Constitution that Congress may by law authorize the President, subject to certain limitations, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues. The fact that the resolution was approved by the Cabinet and the collection of the royalty fees was not decreed by virtue of an order issued by the President himself does not invalidate said resolution because it cannot be disputed that the Act of the Cabinet is deemed to be, and essentially is, the act of the President.

2. ID.; ID.; RULE FORBIDDING DELEGATION OF LEGISLATIVE POWERS, NOT ABSOLUTE; EXCEPTIONS.—The rule which forbids delegation of legislative power is not absolute. It admits of exceptions as when the Constitution itself authorizes such delegation.

3. ID.; PROPERTY RIGHTS; EXPORTATION OF SCRAP METALS NOT A RIGHT BUT A PRIVILEGE; AUTHORITY OF PRESIDENT TO REGULATE EXPORTATION INCLUDES AUTHORITY TO IMPOSE CONDITIONS AND LIMITATIONS FOR THE EXERCISE OF PRIVILEGE.—Commonwealth Act No. 728 expressly authorizes the President not merely to regulate but to prohibit altogether the exportation of scrap metals. Hence, there is no absolute right on the part of any person or entity to export such materials. If, however, the President chooses to grant the privilege, he can impose conditions and limitations he may deem proper, one of them being

the payment of royalties for permissive or lawful use of property right.

4. ROYALTY RATES, MAY TAKE THE FORM OF TARIFF RATES; IMPOSITION THEREOF CAN BE DELEGATED TO THE PRESIDENT.—Royalty rates may take form of tariff rates, the imposition of which can be delegated to the President by Congress in pursuance of an express provision of the Constitution.

5. ID.; ROYALTIES NOT IMPOSITION; PAYMENT OF ROYALTY IS THE CONSIDERATION FOR THE EXERCISE OF THE PRIVILEGE; EXPORTER WHO PAYS, GUILTY OF ESTOPPEL.—The payment of royalty rates cannot be considered as an imposition or one exacted under duress, for the exporter who wants to avail of this privilege is free to act on the matter as his interest might dictate. The payment of royalty can be considered as the consideration for the exercise of the privilege and one who avails of that privilege and pays the consideration is guilty of estoppel.

Arturo Agustines for the petitioner.

Solicitor General Pompeyo Diaz, Assistant Solicitor General Francisco Carreon, and *Solicitor Augusto M. Luciano* for the respondents.

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition for review of a decision of the Auditor General denying the claim of petitioner for the refund of the export fees paid by it to the Sugar Quota Office in the amount of ₱54,862.84

On July 2, 1946, Congress enacted Commonwealth Act No. 728, making it unlawful for any person, association or corporation to export agricultural or industrial products, merchandise, articles, materials, and supplies without a permit from the President of the Philippines. This Act confers upon the President authority to "regulate, curtail, control, and prohibit the exportation of materials abroad and *to issue such rules and regulations as may be necessary* to carry out the provisions of this Act, through such department or office as he may designate."

On July 10, 1946, the President, acting upon the authority vested in him by Commonwealth Act No. 728, promulgated Executive Order No. 3, prohibiting the exportation of certain materials therein enumerated but allowing the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration.

On April 24, 1947, the Chief of the Executive Office, by authority of the President, sent a communication to the Philippine Sugar Administration authorizing the exportation of scrap metals upon payment by the applicants of a fee of ₱10.00 per ton of the metals to be exported. Subsequently, the Cabinet, upon recommendation of the National Development Company, approved a resolution fixing the schedule of royalty rates to be charge on metal exports.

Petitioner herein exported large amounts of scrap iron, brass, copper, and aluminum during the period from December, 1947 to September, 1948, for which it paid by way of royalty fees the total amount of ₱54,862.84. This amount was collected by the Sugar Quota Office under the authority granted by the Chief of the Executive Office and the resolution of the Cabinet above mentioned. The case is now before us by way of appeal from the decision of the Auditor General who denied the request for refund of said royalty fees.

Petitioner contends that the resolution of the Cabinet of October 24, 1947, fixing the schedule of royalty rates on metal exports and providing for their collection constitutes an undue delegation of legislative powers because, in substance, it creates and imposes an *ad valorem* tax.

Article VI, Section 22 (2), of the Constitution provides:

> "The Congress may by law authorize the President, subject to such limitations and restrictions, as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues."

It is clear from the above that Congress may by law authorize the President, subject to certain limitations, to fix, within specified limits, *tariff rates*, import or export quotas, and tonnage and wharfage dues. And pursuant to this constitutional provision, Congress approved Commonwealth Act No. 728 conferring upon the President authority to regulate, curtail, control, and prohibit the exports of scrap metals and to issue such rules and regulations as may be necessary to carry out its provisions. And implementing this broad authority, the Cabinet approved the resolution now in question authorizing the levy and collection of cretain royalty fees as a condition for the exportation of scrap metals and other merchandise.

In our opinion, this resolution is perfectly legal because it was done by authority of Commonwealth Act No. 728 and in pursuance of an express provision of our Constitution. The fact that the resolution was approved by the Cabinet and the collection of the royalty fees was not decreed by virtue of an order issued by the President himself does not, in our opinion, invalidate said resolution because it cannot be disputed that the act of the Cabinet is deemed to be, and essentially is, the act of the President. And this is so because, as this Court has aptly said, the secretaries of departments are mere assistants of the Chief Executive and "the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, *and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.*" (Villena v. The Secretary of Interior, 67 Phil., 451.) To hold otherwise would be to entertain technicality over substance. And with regard to the acts of the Cabinet, this conclusion acquires added force because, unless shown otherwise, the Cabinet is deemed to be presided over always by the President himself.

It is contended that the royalty rates prescribed in the Cabinet resolution are not fees but in effect partake of the nature of an *ad valorem* tax the imposition of which cannot be delegated to the President by Congress. The rule which forbids delegation of legislative power is not absolute. It admits of exceptions as when the Constitution itself authorizes such delegation (Constitution of the Philippines by Tañada and Fernando, p. 449). In the present case, our Constitution expressly authorizes such delegation. [Article VI, Section 22 (2).] This is so because the royalty rates may take the form of tariff rates. At any rate, Commonwealth Act No. 728 confers upon the President authority to regulate, curtail, control, and prohibit the exportation of scrap metals, and in this authority is deemed included the power to exact royalties for permissive or lawful use of property right. (Raytheon Mfg. Co. v. Radio Corporation of America, 190 N. E. 1, 5, 286 Mass. 34, cited in Words and Phrases, Vol. 37, p. 810)

One point that should be considered is the distinction between the business of exporting scrap metals, on one hand, and other merchandise on the other. As a rule, common trades or industries, for the exportation of merchandise in general, cannot be prohibited, but may only be regulated in the exercise of the police power of the States; not so with regards to scrap metals whose exportation may be completely banned. This is the core of Commonwealth Act No. 728. It authorizes the President not merely to regulate but to prohibit altogether the exportation of certain articles, among them scrap metals. Hence, there is no absolute right on the part of any person or entity to export such materials. But the President, acting under the authority granted by said Act, did not, in promulgating Executive Order No. 3, choose to place a complete ban on the exportation of scrap metals, but permitted such exportation upon payment of certain royalty. If the President can prohibit altogether such exportation, *a fortiori* he can, as he did, impose conditions and limitations he may deem proper in granting the privileges, one of them being the payment of royalties similar to the one subject of the present litigation.

The payment of these royalties cannot be considered, as contended by petitioner, as an imposition or one exacted under duress, for the exporter who wants to avail of this privilege is free to act on the matter as his interest might dictate. Compliance with the resolution was optional. It was left entirely to his discretion. If with full knowledge of the condition imposed by the resolution the exporter of the prohibited article deems it convenient to traffic on it because of the profit he expects to derive from the transaction, he cannot later be heard to complain of what the Government has exacted because of the presumption that, in spite of that charge, the transaction would still bring him a substantial profit. The payment of the royalty can be considered as the consideration for the exercise of the privilege and one who avails of that privilege and pays the consideration is guilty of estoppel. This is the predicament of petitioner.

Wherefore, petition is dismissed, without pronouncement as to costs.

Paras, C.J., Labrador, Montemayor and *Jugo, J.J.*; concur in the result.

PABLO, *M*, concurrente:

La recurrente pide la devolució de la cantidad de ₱54,968.41 que había pagado a la Sugar Quota Office por el permiso que obtuvo para exportar desperdicios de metal, "scrap metals." Cuando la recurrente pidió permiso estaba enterada de que la Ley del Commonwealth No. 728 declaraba ilegal, sin permiso del Presidente de Filipinas, la exportación de productos, mercancías, artículos. materiales y efectos agrícolas e industriales. En su artículo 2. dicha ley autoriza al Presidente a regular, restringir, controlar y prohibir dicha exportación y dictar los reglamentos necesarios para llevar a efecto las disposiciones de dicha ley. En 10 de julio de 1946, ejerciendo los poderes que le confería dicha ley, el Presidente promulgó la orden ejecutiva No. 3 que prohibía la exportación de los materiales enumerados en el artículo 1.o; pero permitía la exportación de otras mercancías como los desperdicios de metal con la condición de que se obtuvierantes licencia de la Philipoine Sugar Administration.

En 24 de octubre de 1947 el Gabinete, por recomendación del Administrador de la National Development Company, aprobó una resolución estableciendo un "schedule of royalty rates on metal exports."

La recurrente contiende que la cantidad que pagó de acuerdo con dicha tarifa (schedule) y que hoy reclama fué un impuesto sobre las cantidades de desperdicios de hierro, latón, bronce y aluminio que habiá exportado desde diciembre de 1947 hasta septiembre de 1948.

En 2 de diciembre de 1947 la recurrente, acogiéndose a las disposiciones de la ley del Commonwealth No. 327, presentó su reclamación al Auditor General, alegando que el impuesto era anticonstitucional, porque el Gabinete no tenía autoridad para adoptar dicho impuesto y que solamente el Congreso es el que esta autorizado para aprobar ley sobre impuestos. En su decisión de 8 de noviembre de 1950 el Auditor denegó el reembolso, y contra ella la recurrente apeló en 25 de enero de 1951.

Los artículos 1 y 2 de la Ley del Commonwealth No. 327, en que se funda se reclamación, dicen así:

"SECTION 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their presentation. If said accounts or claims need reference to other persons. office or offices. or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him. With respect to the accounts of accountable officers, the Auditor General shall act on the same within one hundred days after their submission, Sundays and holidays excepted.

"In case of accounts or claims already submitted to but still pending decision by the Auditor General or before the approval of this Act, the periods provided in this section shall commence from the date of such approval.

"SEC. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing:

"(a) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or

"(b) To the President of the Philippines, or

"(c) To the Supreme Court of the Philippines if the appellant is a private person or entity.

"If there are more than one appellant, all appeals shall be taken to the same authority resorted to by the first appellant.

"From a decisicn adversely affecting the interests of the Government, the appeal may be taken by the proper head of the department or in case of local governments by the head of the office or branch of the Government immediately concerned.

"The appeal shall specifically set forth the particular action of the Auditor General to which exception is taken with reasons and authorities relied on for reversing such decision."

Toda reclamación, al parecer, está incluída en la palabra "claims" porque su significado es amplio; pero no está incluída la reclamación que pide el reembolso de una contribución indebidamente cobrada, porque el Código Administrativo de 1916, el Código Administrativo Revisado de 1917, la Ley No. 3685 y el Código Nacional de Rentas Internas disponen específicamente ante qué autoridad deben presentarse reclamaciones de reembolso de impuestos ilegalmente cobrados.

Si el Auditor General tiene facultad o jurisdicción para resolver asuntos como el presente, entonces una reclamación presentada antes de la proclamación de la independencia sería apelable al Presidente de los Estados Unidos. No creemos que la Legislatura haya intentado, ni en sueños, que el Presidente de Estados Unidos y el de Filipinas se entretuviesen en asuntos de tal naturaleza. Si se tratase, por ejemplo, de recobrar un impuesto ilegalmente cobrado por poseer licencia de armas de fuego, ¿apelaría el interesado al Presidente de Estados Unidos si no estuviese satisfecho de la decisión del Auditor? La palabra "claims" de que habla el artículo 1.o de la Ley del Commonwealth No. 327 que se aprobó en 18 de junio de 1938 no debe referirse a reclamaciones de reintegro de impuestos indebidamente cobrados, porque la resolución de las mismas ya estaba encomendada expresamente al Administrador de Rentas Internas y a los tribunales de justicia por el Código Administrativo Revisado de 1917, tal como fué enmendado por la Ley No. 3685.

El artículo 1721 del Código Administrativo de 1916, el artículo 1579 del Código Administrativo Revisado de 1917 y el artículo 1579 del último código, tal como fué enmendado por la Ley No. 3685, dicen textualmente: "When the *validity of any tax is questioned*, or its amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within thirty days, (10 días en el Cód. Adm. de 1916 y Cód. Adm. de 1917) and shall thereupon request the decision of the Collector of Internal Revenue. If the decision of the Collector of Internal Revenue is adverse, or if no decision is made by him within six months from the date when his decision was requested, the taxpayer may proceed, at any time within two years after the payment of the tax to bring an action against the Collector of Internal Revenue for the recovery x x x." (Art. 1579, Cód. Adm. Rev., tal como fué enmendado por la Ley No. 3685.)

En las palabras "any tax" empleados en los tres códigos están incluídas todas las reclamaciones sobre *cualquier* impuesto inde-

bidamente cobrado: no se refieren a impuestos de rentas internas solamente.

La disposición específica del Código Administrativo Revisado, tal como fué enmendado, debe prevalecer sobre la disposición de carácter general de la Ley del Commonwealth No. 327: así lo exige la hermenéutica legal.

El asunto citado por la mayoría de la Manila Electric Company contra la Auditor General y Comisión de Servicios Públicos, 73 Phil., 128, no puede servir de precedente; no se percataron el Auditor y este Tribunal del artículo 1579 del Código Administrativo Revisado, tal como fué enmendado, de que el asunto era de la incumbencia del Administrador de Rentas Internas y del Juzgado de Primera Instancia.

El artículo 584 del Código Administrativo Revisado dice así: "The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. x x x" Esta disposición no incluye la reclamación de impuestos indebidamente cobrados. Darle al Auditor facultad para resolver semejante reclamación es concederle función judicial.

El Código Nacional de Rentas Internas (en sustitución del Código Administrativo Revisado y otras leyes enmendatorias) en vigor cuando la recurrente presentó su reclamación dispone lo siguiente:

> "SEC. 306. RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED. — No suit of proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

La cantidad que reclama la recurrente está incluída en las siguientes palabras: "of any sum alleged to have been excessive or in any manner wrongfully collected", que equivalen a *any tax* empleadas por los códigos anteriores.

No es de la incumbencia del Auditor General decidir la reclamación sobre la devolución de impuestos ilegalmente cobrados o declarar que una ley, orden o resolución que dispone el cobre de un impuesto, sea a no anticonstitucional. Son dos questiones que deben resolver las tribunales de justicia, porque son asuntos esencialmente judiciales y no administrativos. La recurrente, por tanto, debió de haber planteado la devolución del impuesto anticonstitucionalmente cobrado ante el Administrador de Rentas Internas primero o la Philippine Sugar Administration, y si denegara o no se resolviera su reclamación, presentar demanda ante el Juzgado de Primera Instancia dentro de dos años después de pagados los impuestos. (Art. 306, Cód. Nac. de Rentas Internas.)

Podría arguir la recurrente que el impuesto hoy discutido no es de rentas internas sino de exportación y, por lo tanto, no debiera plantearse ante el Administrador de Rentas Internas ni en el Juzgado de Primera Instancia. Tal contención sería insostenible, porque en Visayan Electric, S.A. contra Saturnino David, etc., G.R. No. L-5157, abril 27, 1953; Philippine Railway Co. vs. Collector of Internal Revenue, G.R. No. L-3859, marzo 25, 1952; y Manila Railroad Co. contra Rafferty, 40 Jur. Fil., 237, se trataba de un indebido aumento de impuesto sobre franquicia, y la cuestión se planteó ante el Administrador de Rentas Internas y luego ante el Juzgado de Primera Instancia.

El Auditor General no tiene jurisdicción para resolver la reclamación fundada en la anticonstitucionalidad del impuesto cobrado; tampoco este Tribunal adquiere jurisdicción apelada.

Por estas razones, concurro con el sobreseimiente de la causa.

Creo, con el Magistrado Pablo, que el Auditor General carece de autoridad para determinar la validez de los derechos o "royalties" envueltos en la presente causa.

(*Fdo.*) *Roberto Concepcion*

BENGZON, *J. dissenting*:

With due deference to the majority opinion, my vote is for the petitioner.

On several occasions, between December 1947 and September 1948, the domestic corporation Marc Donnelly and Associates Inc. exported considerable quantities of scrap iron, brass, copper and aluminum, for which it paid under protest to the Sugar Quota Office as "Royalties" the total amount of ₱54,862.84. Such royalties were admittedly demanded "under the authority granted to it (Sugar Quota Office) by the resolution of the Cabinet of October 24, 1947", which reads as follows:

"Upon recommendation of the General Manager of the National Development Company, the Cabinet approved the following schedule of royalty rates on metal exports:

Scrap copper	₱50.00 per metric ton
Scrap brass	50.00 per metric ton
Scrap aluminum	20.00 per metric ton
Scrap lead	40.00 per metric ton
Scrap cast iron	5.00 per metric ton
Scrap steel	2.00 per metric ton
other than burnt copper wire	5.00 per metric ton

Contending that the Cabinet's resolution was invalid, and that the payments were involuntary, Marc Donnelly and Associates Inc. submitted to the Auditor General, in September 1950, a formal claim for refund, which was denied with the explanation:

> "The collection of the royalties in question is based on the resolution of the Cabinet, dated October 24, 1947, which is assailed by you as unconstitutional. Inasmuch as this Office has no power to pass upon the constitutionality or validity of said resolution and the fact that the resolution is presumed to be constitutional unless declared by a competent court to be otherwise, the request for refund of royalties collected by virtue of said resolution is hereby denied."

Reversal of the Auditor's decision is now requested under the provisions of Com. Act No. 327 and Rule 45 of the Rules of Court. In Manila Electric v. Auditor General, 73 Phil. 128, we entertained a similar petition.

It is urged that the execution is illegal, the Cabinet having no lawful power to require the collection of "royalty" fee on metal exports.

As the Auditor General Disapproved the refund solely upon the ground that the Cabinet's resolution "should be presumed to be constitutional unless declared by a competent court to be otherwise", the question is the Cabinet's authority to direct the collection of the aforesaid royalties.

No statute has been quoted authorizing the Cabinet to levy the assessment. Observe that "the taxing power of the State is

exclusively a legislative function, and taxes can be imposed only in pursuance of legislative authority" (61 C.J. p. 81).

However, seeking to justify the collection, the respondents have formulated these propositions:

1. Commonwealth Act No. 728, July 1946, made it unlawful to export agricultural or industrial products, materials or supplies, without a permit from the President. It authorized the President to regulate, control or prohibit exportation of materials and to issue rules and regulations in connection therewith.

2. In the exercise of such authority, the President promulgated Executive Order No. 3 prohibiting the exportation of scrap metal unless an export license was first obtained from the Philippine Sugar Administration. Subsequently the Cabinet at its 132nd meeting of Otcober 24, 1947 approved the resolution in question.

3. And the President authorized the collection by the indorsement of the Chief of the Executive Office dated April 24, 1947 which reads as follows:

> "Respectfully referred to the Philippine Sugar Administration, Manila, hereby authorizing the exportation of scrap brass and scrap metals representing only the balance of the expert permits issued before November 1, 1946, upon payment by the applicants concerned of a fee of ₱10.00 per ton of scrap brass and scrap metals to be exported."

4. The President was validly authorized by Congress (delegation of legislative power) (Art. VI Sec. 22 (2) Constitution) to regulate, control and prohibit the exportation of metals.

5. "When the Cabinet, the highest advisory-body to the President approved the resolution in question and the President himself authorized the Sugar Quota Office to levy and collect royalties as fixed in said resolution, this was done by authority of Com. Act No. 728."

6. The authority to regulate included the authority to exact royalties or export dues.

To repeat, the respondents' defense is founded on the above propositions which for convenience, have been numbered in six separate paragraphs to facilitate examination or analysis.

The first two paragraphs are undeniable. The third is incorrect insofar as it asserts that these royalties were demanded pursuant to the indorsement of April 24, 1947. The Auditor-General expressly found they were demanded by virtue of the resolution of the Cabinet —not by the indorsement— and this involves a question of fact, the indorsement referring specifically to exports "representing only the balance etc." which did not evidently cover herein petitioner's consignments abroad.

The fourth proposition is correct.

Inasmuch as the indorsement of the Executive office is inapplicable, the fifth proposition poses the crucial question whether the Cabinet approved the resolution by authority of Com. Act No. 728. The authority to regulate —and to require payment of fees on — exports was entrusted to the President. That power was not expressly delegated by the President to the Cabinet. (It is doubtful whether he could validly do so.) And the Cabinet is not the President. True, the President presides Cabinet meetings, but his voice is only one, convincing though it may be. Furthermore, the Cabinet may meet without the presence of the President. The conclusions of the Cabinet and its resolutions are not necessarily the President's. We may not, therefore, hold that, in the eyes of the law, the Cabinet's resolution of October 24, 1947 was the act of the President. It was the act of the Cabinet, that had *no statutory authority* to require payment of royalties or export fees. Our ruling in the Villena case[3] followed by the majority, applies only to *executive* powers of the President — not to legislative powers delegated to him. *Delegata potestas delegari non potest.*

As a suppletory proposition, the respondents claim the entire transaction "might be regarded as a contract between the government, the latter conceded to the exporters the privilege of exporting certain goods the export of which could otherwise have been prohibited. The government, therefore, collected the royalty, not by virtue of its taxing power, but in the exercise of a contractual right."

But the comparison is unacceptable, because the exporter was not *on equal footing* with the government; it was virtually under duress. The officers said, "pay, otherwise your metals will not be exported." And the exporter had to disgorge, under protest; otherwise his goods would rust and rot. And then, accepting the comparison for the sake of argument, I think "the Government"(X) means the appropriate governmental agency, which in this instance should be the Legislature or the President (at most). Surely not the Cabinet.

Supposing however that the resolution of the Cabinet might be regarded as a Presidential directive, the question remains whether the President himself had power to exact the "royalty". In my opinion he had not. Under Com. Act 728 he could, at most, require a license fee; but a "royalty" is not a fee. It connotes some kind of ownership[4], far different from that power of regulation justifying the exaction of license fees. Yet even supposing the royalty had been labeled "export fees", it would undoubtedly be also unauthorized, because, virtually, it was a *tax*, for it ended to produce revenue — *ad valorem* charges. It was not collected merely as compensation for services rendered, in the interest of necessary regulations. This difference between fees and taxes is well-known in this jurisdiction[5]. the one implying the exercise of police power, and the other the taxing power. And authority to collect fees, does not ordinarily embrace the power to impose taxes[6].

In this regard it is noteworthy that, doubting the validity of these exactions, the House approved in 1950 a bill (H. Bill No. 511) validating the Cabinet action re royalties on metal exports. Such bill, nowever, failed to pass the Senate, because there were objections to its retroactive operations.

It is said that, because the President had the power to regulate and prohibit exportation of metals, he could permit exportation thereof upon payment of taxes. This is a tantamount to saying, as the Secretary of Education has the power to regulate the establishment and operation of schools, he may, instead of regulating, just require the schools to pay taxes — without supervision, inspection, etc. And because the City of Baguio has authority to control or prohibit the establishment of gambling houses, and houses of ill fame (Sec. 2553 (u) Rev. Adm. Code), it may permit their operation upon payment of taxes. Extreme examples indeed: but they illustrate the idea that the police power to *prohibit*, or regulate, does not include the power to permit upon payment of taxes.

The power of regulation and prohibition in the case of schools or gambling houses is founded upon the same principles as the power to prohibit exportation of metals: *pro bono publico*. Police power. Such regulation of prohibition cannot be bartered away in exchange for thousands of pesos.

It is also said that the matter was not within the jurisdiction

(3) Villena v. Secretary of the Interior 67 Phil. 451

(x) The question is not whether the **Government** may tax metal exports

(4) Apparently such was the Cabinet's view. It approved the resolution induced by a memorandum of the General Manager, National Development Co. saying: "However, it is an indisputable fact that the scrap iron, scrap metals, scrap brass, etc. that were lying in any public places and waters. especially sunken ships and barges, belong to our government and we would, therefore, recommend that the parties who were issued licenses be required to pay our government a royalty of a minimum of $5.00 or ₱10.00 per ton or scrap iron, scrap metals, scrap brass, etc. that may be exported." But this "ownership" was not pressed here. Obviously, collection in this case was a mistaken application of the Cabinet's resolution, as the metals exported were not shown to be "lying in public places and waters especially sunken ships and barges."

(5) Manila Electric C. v. Auditor General, 73 Phil. 128; Cu Unjieng v. Falstone, 42 Phil. 818; Phil. Transit v. Treasurer' L-1274 May 27, 1949.

(6) cf. Cooley on Taxation (1924) Vol. 4 pp. 3531-3534; Kiowa County v. Dunn, 21 Colo. 185, 40 Pac. 357; Jackson v. Newman, 59 Miss. 385; Western U. Tel. Co. v. City Council 56 Fed. 419.

of the Auditor General's Office. It was a "claim x x x due from x x x the government of the Philippine Islands" within the meaning of Art. 584 of the Revised Administrative Code. It was also a claim within the scope of C.A. 327. The fact that appeal to the President of the U.S. is no longer feasible, does not have, in my opinion, the effect of annulling the whole law (C.A. No. 327).

Granted that the Auditor General had no authority to annul the Cabinet's resolution, still it does not follow that the Auditor had no power to take cognizance of the monetary claim against the Government. Before him were two questions: Was the tax collected in accordance with the Cabinet's resolution? Was this resolution valid or constitutional? He answered the first in the affirmative. As to the second he said he must hold it valid because he had no power to annul it. He thought prudently; but he acted on the claim. And we now *have appellate* jurisdiction. Had he decided both questions in the negative, appeal could still be made to this Court.

Let us remember that this being a government of laws, its officers may only exercise those powers expressly or implied by them without authority are void, confer no rights, afford no protection. Royalties in taxes demanded without lawful authority and paid under protest, should be returned[7] no matter the consequent loss of revenue. The citizens will thus be imbued with the fullest respect, the utmost loyalty to constituted authority and republican government.

A. Reyes, J., concur in this dissent.

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(7) Zaragoza v. Alfonso, 46 Phil. 159

XIII

Ignacio Arnido, Plaintiff-Appellee, vs. Alfonso Francisco, Defendant-Appellant, G. R. No. L-6764, June 30, 1954, Labrador, J.

1. PUBLIC LAND; MERE OCCUPATION AND PLANTING DOES NOT CONVERT IT INTO PRIVATE LAND; ACQUISITION IN ACCORDANCE WITH PUBLIC LAND LAW. — The mere occupation of public land by the applicant and the planting thereon of improvements do not convert it into a private land, and it may, therefore, be acquired only in accordance with the public land law.

2. ID.; JUDGMENT BASED ON ADMISSION, NOT BINDING ON DEFENDANT WHO IS NOT PARTY TO THE ACTION. — A judgment based on an admission contained in a compromise agreement between the parties can not bind the defendant who was not a party to the action, especially where there is no showing that he has acquired his right fraudulently.

Jose M. Angustia for plaintiff and appellee.

Jose L. Almario for defendant and appellant.

DECISION

LABRADOR, *J.*:

This is an action to recover the title to and possession of a certain parcel of land in the barrio of Kabangkalan, Placer, Masbate, designated as Lot 1 in sketch plan attached to Exhibit A, together with damages. The case was presented for decision upon an agreed statement of facts, the most pertinent of which are as follows: The land forms part of the homestead application of one Albaro Vergara, H. A. No. 123545, which was presented in July, 1926 (Exhibit A). The application was approved on June 2, 1931, and given Entry No. 83952. On October 17, 1941, Albaro Vergara sold the land applied for to defendant Alfonso Francisco for P370 (Exhibit C), and on August 10, 1948, Vergara assigned his homestead rights thereto (Exhibit B), and after proper investigation and report by a land officer (Exhibits E and E-1), the assignment was recommended for approval. Thereupon, Alfonso Francisco filed his own homestead application for the land (Exhibit D).

It also appears from the agreed statement of facts that in an action of forcible entry and detainer filed by Arnido against Vergara, which was appealed to the Court of First Instance, it was found by that court that on July 13, 1939, one Joaquin Ferrer sold a land, eleven hectares in area to Arnido, and in the same deed of sale, Vergara sold the coconuts and bamboes on the land purchased; that the land had been the object of controversy between the said Ferrer and Vergara before the Bureau of Lands, and that the latter had adjudicated it to Vergara; that Ferrer could not have sold the land, because it was not his, and that Vergara had a better right thereto. The court absolved the defendant from the action (Exhibit F).

It further appears that in September, 1940, Arnido presented an action to recover the title to the property against Albaro Vergara, Civil Case No. 989-R (Exhibit G). The records of the case were destroyed during the last war, and after its reconstitution in November, 1948, Vergara recognized Arnido's title to the property in a compromise (Exhibit H-1), as a result of which judgment was entered in favor of Arnido (Exhibit H). The agreed statement is to the effect that the lands officer who investigated the transfer of homestead rights in favor of Francisco was not aware of this case or of the compromise and judgment. The judgment entered upon the compromise is dated November 27, 1948, and was executed by the sheriff, but defendant herein refused to deliver the property to plaintiff (Exhibits I & I-1).

The trial court held that the land is private land, solely on the alleged ground that it was improved. The alleged improvements consist of some 15- to 35-year old coconut trees and bananas existing thereon even before Vergara applied for it as homestead in the year 1926, but which are admitted to belong to Vergara. Some of the trees must have been planted on the land before Vergara applied for it in 1926. No evidence, however, has been presented that the land was owned by any one prior to Vergara's occupation. But mere occupation of public land and the planting thereon of improvements do not convert it into private land. The mere fact that Vergara applied for it as homestead shows that he occupied it as public land. His admission in the compromise agreement that it belonged to Arnido, which is contrary to his conduct in applying for the land as homestead, is no evidence that the land is private land. The agreed statement also expressly concedes that it is part of H. A. No. 123545 The conclusion of the trial court that it is private land is, therefore, without any foundation in law or fact. We find that the land is not private but public land, and as such it is subject to acquisition in accordance with the public land law.

The other conclusions of the trial court, especially those based on its findings that the land in question is private land, are also incorrect. The judgment in Civil Case No. 989-H, based on an admission contained in a compromise agreement between the parties dated November 27, 1948, can not bind the defendant Francisco, who was not a party to the action. When Vergara made the compromise, he was no longer in possession of the land, as he had sold his rights thereto to Francisco in October, 1941, and executed the deed of assignment of his homestead rights in favor of Alfonso Francisco also on August 10, 1948 (Exhibits C and B); all his acts prejudicial to Francisco's rights can not be binding or effective against the latter. Franciscos' purchase of Vergara's rights can not be said to be fraudulent. There is no evidence to prove bad faith, and good faith is presumed.

It is unnecessary to consider the other conclusions of the trial court, such as the applicability of Article 1473 of the Spanish Civil Code and the fraudulent acts of Francisco's transferor, as these are not material to the decision of the case. If Vergara has been guilty of fraud perpetrated on Arnido, let him be made to account therefor to the latter, but in no case may Francisco, a third party, be made to suffer from the effects of his double-dealing.

The judgment entered in the case is hereby reversed, and the action dismissed, and the defendant-appellant Alfonso Fran-

cisco absolved from the complaint, with costs against the plaintiff-appellee.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and *Concepcion, J.J.*, concur.

XIV

Damaso Cabuyao, Plaintiff-Appellant, vs. Domingo Caagbay, el at., Defendants-Appellees, G. R. No. L-6636, August 2, 1954, Concepcion, J.

1. EXTRAJUDICIAL PARTITION; AFFIDAVIT OF EXTRAJUDICIAL AJUDICATION; REQUISITES.—An affidavit of extrajudicial adjudication suffices to settle the entire estate of the decedent if the following conditions are present, namely: (a) that the decedent left no debts; and (b) that the heirs and legatees are all of age, or the minors are represented by their judicial guardian.

2. ID.; ID.; JUDICIAL DECLARATION TO SUCCEED DECEASED, NOT NECESSARY TO ASSERT A CAUSE OF ACTION AS AN HEIR.—Where the pleadings in question alleged, and it was not denied, (1) that plaintiff was the sole heir of the decedent, (2) that he was of age, and (3) that the decedent left no debts — he has a right to assert a cause of action as an alleged heir without judicial declaration to that effect.

Jose L. Desvarro for the plaintiff and appellant.

Ed. Espinosa Antona for the defendants and appellees.

DECISION

CONCEPCION, *J.*:

This is an appeal from as order of the Court of First Instance of Quezon dismissing civil case No. 5308 of said court.

It appears that said case was instituted on April 9, 1952. In the original complaint, plaintiff-appellant Damaso Cabuyao alleged that he is the "lone compulsary heir" of the spouses Prudencio Cabuyao and Dominga Caagbay, who died leaving the eleven (11) parcels of land therein described, and that, although plaintiff had adjudicated said properties to himself, pursuant to section 1 of Rule 74 of the Rules of Court, the corresponding transfer certificates of title could not be issued in his name because the original owner's duplicate certificates were being witheld by the defendants, Domingo Caagbay and Eugenio Caagbay, who had also taken possession of said parcels of land, and would continue unlawfully using the same and committing acts of dispossession thereof, unless enjoined by the court. Hence, he prayed that a writ of preliminary injunction be issued against the defendants and that, thereafter, judgment be rendered; (a) sentencing them to vacate said lands, to turn them over to the plaintiff, and to indemnify him in the sum of ₱4,000.00; (b) "removing clouds and quieting title of the plaintiff" over said properties; and (c) ordering the defendants to surrender to him or to the Register of Deeds the aforesaid owner's duplicate certificates of title and, should they fail to do so, to order the cancellation thereof and the issuance of the corresponding transfer certificates of title in favor of the plaintiff.

On April 21, 1952, defendants filed a motion to dismiss for lack of "jurisdiction over the subject-matter", the original complaint being entitled "Unlawful Entry and Detainer". By an order, dated April 29, 1952, plaintiff was required to file an amended complaint, stating therein the date on which the defendants had seized the properties in dispute and their grounds therefor.

On April 30, 1952, plaintiff moved for the admission of an amended complaint, which excluded Eugenio Caagbay as party defendant, and included, as such, Vicente, Irineo, Antonio, Emilio, Aurea and Felisa, all surnamed Caagbay. Stating that plaintiff's counsel was "converting this simple case into a complicated one", the court, by an order dated June, 4, 1952, granted plaintiff another five (5) days within which "to file an amended complaint, in accordance with section 3, Rule 17 of the Rules of Court," setting forth the data required in the order of April 29, 1952. In compliance therewith, plaintiff filed, on June 12, 1952, an amended complaint, which the defendants sought to be dismissed upon the ground that "plaintiff has no legal capacity to sue," there being no allegation that "plaintiff had been judicially declared lone compulsory heir" of the deceased spouses Prudencio Cabuyao and Dominga Caagbay. On motion of the defendants, dated July 5, 1952, the court issued, on July 22. 1952, an order dismissing the case, with costs against the plaintiff, for the reason that, "under the facts and circumstances of this case, as disclosed by the pleadings, no action can be maintained until a judicial declaration of heirship has been legally secured."

Soon later, or on August 1, 1952, plaintiff moved for the reconsideration of said order of July 22, 1952, and for the admission of another amended complaint thereto attached. In this pleading, plaintiff alleged that he owns the parcels of land above-mentioned, having acquired the same by inheritance from his parents, Prudencio Cabuyao and Dominga Caagbay, who died on April 8, 1919 and August 14, 1944, respectively; that despite the above mentioned extrajudicial adjudication of said properties made by plaintiff in his favor, as the "only issue and/or successor" of his aforementioned parents, pursuant to section 1 of Rule 74 of the Rules of Court, the corresponding transfer certificates of title could not be issued in his name, the owner's duplicate of the original certificates of title having been taken by the defendants, who are nephews and nieces of the deceased Dominga Caagbay, except defendant Domingo Caagbay, who is her brother; that, upon the death of Dominga Caagbay on August 14, 1944, the defendants took possession of the lands in dispute and have continuously enjoyed the fruits and rents thereof, aggregating ₱4,000; and that the defendants will continue unlawfully exercising and/or claiming ownership over said properties and violating plaintff's dominical rights, unless a writ of injunction be issued against them. The prayer in the last amended complaint reads:

> "WHEREFORE, it is hereby respectfully asked that a preliminary injunction be issued against the defendants, their representatives, tenants, or any other person receiving instructions from them or acting in their behalf prohibiting them from re-entering the lands above-described or collecting the fruits thereof, for which purpose plaintiff is willing and ready to file corresponding bond, and, after due hearing, judgment be rendered:
>
> (a) removing clouds and quieting the title of the plaintiff over the properties in question and ordering the defendants to vacate and restitute sold properties to the herein plaintiff;
>
> (b) ordering said defendants, jointly and severally to pay the herein plaintiff the amount of Four Thousand Pesos (₱4,000.00) as damages;
>
> (c) ordering the defendants to surrender to the Register of Deeds of the Province, or to herein plaintiff the titles of the lands above-described and, in case of failure to do so to order the cancellation of said titles and to issue corresponding duplicates in the name of the herein plaintiff, upon payment of the corresponding fees; and to pay costs of this suit.
>
> PLAINTIFF, prays for any other relief or remedy just and equitable in the premises."

Attached to said pleading was plaintiff's affidavit of extrajudicial adjudication (Exhibit A), as well as the documents appended thereto, namely: the death certificate of Prudencio Cabuyao (Annex A); the certificate of burial of Dominga Caagbay (Annex B); and the baptismal certificate of plaintiff Damaso Cabuyao (Annex C). In said Exhibit A, plaintiff declared that he was born in Tayabas on December 13, 1925, "the only child or heir of the espouses Prudencio Cabuyao and Dominga Caagbay," both in question, and left no debts whatsoever, and prayed that the corresponding transfer certificates of title be issued in his name. It appears from Annex A, that Prudencio Cabuyao, married to Dominga Caagbay, died on April 8, 1919 and was burried in Tayabas, Quezon, the next day. Annex B shows that Dominga Caagbay, widow of Prudencio Cabuyao, was buried in Tayabas, Quezon, on

August 5, 1944. Annex C, states that Damaso Cabuyao, the legitimate son of Prudencio Cabuyao and Dominga Caagbay, who were lawfully married, was born on December 10, 1896, was christened by the parish priest of San Miguel Arcangel, Tayabas, province of Quezon, on December 13, 1896.

Defendants objected to said motion for reconsideration and to the admission of the amended complaint and, on August 6, 1952, the court issued the following:

ORDER

"AFTER considering plaintiffs motion for the reconsideration of the order of July 22, 1952, and the admission of the amended complaint thereto attached and defendant's opposition thereto, this Court has arrived at the conclusion that said motion should be, as it is hereby, DENIED for lack of merit. As stated in the order of the reconsideration of which is prayed, it is impossible for plaintiff to maintain the action in this case because he and the party defendants alleged to be the heir of the same decedents and there has been no showing that they have been judicially declared as heir of the deceased. Once the question of who are the heirs is determined, it may not be necessary for the plaintiff to file the complaint in this case." (Amended Record on Appeal, pp. 49-50)

Plaintiff has appealed to this Court, and now he contends:

"I. That the court below erred in sustaining the motion to dismiss dated July 15, 1952.

II. That the court below erred in holding that 'in this case no action can be maintained until a judicial declaration of heirship has been legally secured'.

III. That the court below erred in denying the motion for reconsideration dated July 21, 1952, and in not giving due course to the second amended complaint." (Brief for Appellant, p. 3)

In the pleadings in question, it is alleged and, in the orders and briefs before us, it is not denied, that the lands in dispute belonged originally to the espouses Prudencio Cabuyao and Dominga Caagbay, who were legally married; that plaintiff Damaso Cabuyao is their "lone" legitimate child; and that the defendants are nephews and nieces of Dominga Caagbay, except of defendant Domingo Caagbay, who is her brother. The only question for determination before us is whether, under the foregoing facts, which, for purpose of this appeal, must be assumed to be true, plaintiff has a cause of action to recover the properties in dispute and to quiet his alleged title thereto. The defendants maintain, and the lower court held, that plaintiff's alleged right to succeed the deceased must be settled by a judicial declaration to such effect before said cause of action could be asserted in his favor. This view is, however, in conflict with the law and with a rule well established in our jurisprudence. Section 1, of Rule 74 of the Rules of Court reads:

"If the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so is an ordinary action of partition. *If there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds.* It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two years after the death of the decedent." (Underscoring supplied.)

Pursuant thereto, plaintiff's affidavit of extrajudicial adjudication in his favor sufficed to settle the estate in question, if the following conditions are present, namely: (a) that the decedents left no debts and (b) that the heirs and legatees are all of age, or the minors are represented by their judicial guardians. The presence of the first requirement is presumed, no creditor having filed a petition for letters of administration within two (2) years after the death of the decedents. The allegations of the original and the amended complaints — which, for the purpose of this appeal, should be regarded as true — show that plaintiff is the sole heir of the decedent, that he is of age, and that the second requirement is, likewise, present. Hence, plaintiff can not be denied the full force and effect of the provision above quoted.

Moreover, the Spanish Civil Code, which was in force when the events material to the issue before us took place, provided:

"Art. 657. The rights to the succession of a person are transmitted *from the moment of his death.*

Art. 661. Heirs succeed to all the rights and obligations of the decedent *by the mere fact of his death.*"

Thus, as early as 1904, this Court entertained, in the case of Mijares v. Nery (3 Phil. 195), the action of an acknowledged natural child to recover property belonging to his deceased father — who had not been survived by any legitimate decedent — notwithstanding the absence of a previous declaration of heirship in favor of the plaintiff, although the latter's claim did not prosper for it was predicated upon the theory that the defendant — as illegitimate children of the deceased pursuant to the laws of Toro, which were in force at the time of their birth — had no right to succeed their common father, and such pretense was not sustained, the latter having died after the promulgation of the Civil Code of Spain, under the provisions of which said defendants were, likewise, acknowledged natural children, and, as such, had the same rights as the plaintiff.

The right to assert a cause of action as an alleged heir, although he has not been judicially declared to be so, has been acknowledged in a number of subsequent cases.

"The property of the deceased, both real and personal, became the *property of the heir by the mere fact of death of* his predecessor in interest, and he could deal with it in precisely the same way in which the deceased could have dealt with it, subject only to the limitations which by law or by contract were imposed upon the deceased himself. x x x" (Suiliong & Co. vs. Marine Insurance Co., Ltd. et al., 12 Phil. 13, 19.)

"Claro Quison died in 1902. It was proven at the trial that the present plaintiffs are the next of kin and heirs, but it is said by the appellant that they are not entitled to maintain this action because there is no evidence that any proceedings have been taken in court for the settlement of the estate of Claro Quison, and that, without such settlement, the heirs can not maintain this action. There is nothing in this point. As well by the Civil Code as by the Code of Procedure, the title to property owned by a person who dies intestate passes at once to his heirs. Such transmission is, under the present law, subject to the claim of administration and the property may be taken from the heirs for the purposes of paying debts and expenses, but *this does not prevent the immediate passage of the title,* upon the death of the intestate, from himself to his heirs. Without some showing that a judicial administrator had been appointed in proceedings to settle the estate of Claro Quison, the right of the plaintiffs to maintain this action is established." (Quison vs. Salud, 12 Phil. 109, 113-114)

"It is alleged in the complaint that the plaintiff, Silvestre Lubrico, is an only child, and therefore the sole general heir of the original owners of the property, and no proof was offered at the trial to show that there was any other descendant entitled to succeed besides the plaintiff, who, on her part, has shown herself to be the legitimate daughter of the late Guillermo Lubrico and Venancia Jaro.

If heirs succeed the deceased by their own right and operation of law in all his rights and obligation by the mere fact of his death, it is unquestionable that the plaintiff, in fact and in law, succeeded her parents and *acquired the ownership of the land* referred to in the said title, *by the mere fact of their death.* (Arts. 440, 657, 658, 659, and 661, Civil Code.)

Even in the event that there should be a coheir or a coowner of the parcel of land is question, once the right of the plain-

(Continued on page 571)

DECISION OF THE COURT OF INDUSTRIAL RELATIONS

Hotel & Restaurant Free Workers (FFW), Complainant vs. Kim San Cafe & Restaurant et al., Respondents, Case No. 159-ULP, Lanting, J.

1. COURT OF INDUSTRIAL RELATIONS; UNFAIR LABOR PRACTICES; REMEDIES AND PENALTIES. — In the event of a finding by the Court in an unfair labor practice case initiated under section 5, Republic Act No. 875, that any person has engaged or is engaging in unfair labor practice, only the remedies provided in said section may be granted. In such case, the Court should not and cannot at the same time impose the penalties prescribed in section 25, Republic Act No. 875. On the other hand, in case the imposition of the penalties prescribed in section 25 is sought, a criminal complaint or informaiton must be filed and the requirements of due process as to procedure and evidence in ordinary criminal cases must be observed.

2. ID.; ID.; CHARGE OF UNFAIR LABOR PRACTICE NOT A CRIMINAL COMPLAINT. — The charge filed by the complainant union cannot in any way be considered as a criminal complaint or information which could serve as the basis of a criminal proceeding. Moreover, the absence of an arraignment and plea which, among others, are fundamental requirements of due process in criminal cases, is sufficient to cause the setting aside of the imposition of a fine in such case.

3. ID.; ID.; PROCEDURE TO BE FOLLOWED IN UNFAIR LABOR PRACTICE CASES. — In a case initiated under Section 5 of Republic Act No. 875, this Court cannot in the same proceeding consider both the unfair labor practice aspect and the criminal aspect. The procedure to be followed in unfair labor practice cases is prescribed in said section and it is certainly very lax and liberal as compared to the procedure followed in criminal cases. The imposition of a fine or imprisonment pursuant to Section 25 in an unfair labor practice case initiated under Section 5 would result in the criminal conviction of a person in violation of due process. Furthermore, there is marked incompatibility between the two proceedings as regards the sufficiency of evidence. In an unfair labor practice case, only substantial evidence is required to sustain a finding that unfair labor practice has been committed; on the other hand, to justify a judgment of conviction in a criminal case, there must be proof beyond reasonable doubt.

4 ID.; ID.; IMPOSITION OF A FINE; WHEN PROPER. — Imposition of a fine under the first paragraph of section 25, Republic Act No. 875, can only be done in case there is an express finding that a person has violated section 3 of that Act. On the other hand, to justify the imposition of the fine under the second paragraph of section 25, there must be an express finding that a person has committed a violation of Republic Act No. 875, which is declared unlawful. Where there had been no such findings but only the imposition of the fine, the requirement of section 2 of Rule 116 of the Rules of Court that a judgment of conviction shall state "the legal qualification of the offense constituted by the acts committed by the defendant" had not been complied with.

5. ID.; ID.; INITIAL STEPS IN UNFAIR LABOR PRACTICE PROCEEDINGS. — Under the provision of section 5 (b) of Republic Act No. 875, there are three initial steps which must be followed in unfair labor practice proceedings, namely:

(1) The filing of a charge by the offended party or his representative that a person has engaged or is engaging in unfair labor practice;

(2) The investigation of such charge by this Court or any agency or agent designated by it;

(3) The issuance and service by this Court or its designated agency or agent of a complaint upon the person charged with committing unfair labor practice. The above steps, among others, are indispensable requirements of due process in unfair labor practice proceedings and not mere technicalities of law and procedure.

6 ID.; ID.; FUNCTION OF A CHARGE. — The function of a charge is merely that of putting the machinery of the Board in motion. A charge may, by limited analogy, be compared with an 'information' in criminal procedure A charge, like an information, is neither a pleading nor proof, but is merely a verified notification to an appropriate government agency of the commission by a designated person of a specific violation of the law over which such agency has jurisdiction. At this point the similarity between a charge and an information ends. In the case of an information, if the information complies with the requirements of the law, appropriate process may issue forthwith to bring the offender into court. However, in the case of the charge filed with the Board, such is not the procedure. In proceedings before the Board the mere filing of the charge, no matter how grave the alleged offense nor how adequately the offense may be recited, does not in and of itself sanction and precipitate issuance of summoning process. With the filing of the charge, it devolves upon the Board's General Director, but subject to review and final decision by the Board's General Counsel, to conduct the preliminary investigation to determine the necessity for the issuance of and, if required by the facts, to issue the complaint.

7. ID.; ID.; INDISPENSABILITY OF A PRELIMINARY INVESTIGATION. — Under the original Act it was held that once a charge was filed it was incumbent upon the Board to investigate the matter. While in evaluating the results of the investigation the Board enjoyed broad discretion and the right

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SUPREME COURT DECISION (*Continued*)

tiff, and consequently her personality, has been proven the defendant has no right to dispute them. x x x." (Lubrico vs. Arbado, 12 Phil. 591, 596-597)

"There is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status on heirs to an intestate estate on these who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor." (Hernandez vs. Padua, syllabus, 14 Phil. 194.)

See, also, Inocencio v. Gat-Panden, 14 Phil. 491; Sy Joe Lieng vs. Sy Quia, 16 Phil. 137; Alnea v. Alcantara, 16 Phil. 439; Irlando v. Pitargas, 28 Phil. 383; Castillo v. Castillo, 23 Phil. 364; Noble Jose v. Uson, 27 Phil. 73; Beltran v. Soriano, 32 Phil. 66; Bona v. Briones, 38 Phil. 276; Uy Coque v. Navas L. Sioca, 45 Phil. 430; Fule v. Fule, 46 Phil. 317; Orozco v. Garcia, 50 Phil. 149; Gibbs v. Gov't of the P.I., 59 Phil. 293; Mendoza Vda. de Bonnevie v. Cecilio Vda. de Pardo, 59 Phil. 456; Lorenzo v. Posadas, 64 Phil. 363; Gov't v. Serafica, 32 Off. Caz. 334; De Vera vs. Galauran, 67 Phil. 213; and Cuevas v. Abesamis, 71 Phil. 147.

In view of the foregoing, the order appealed from is hereby reversed, and let the record of this case be, as it is hereby remanded to the court of origin for further proceedings not inconsistent with this decision, with costs against the defendants-appellees.

It is so ordered.

Paras, C.J., Pablo, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, and *J. B. L. Reyes, J.J.,* concur.

Order appealed from, reversed