It is true, as respondent De Leon argues, that the consent or pardon of either spouse constitutes a bar to a criminal prosecution for adultery and concubinage, but, as the Solicitor General observes, said crimes are not thereby legalized, the result being merely that prosecution in such cases would not lie. The contention that the affidavit is only a unilateral declaration of facts is of no moment, since it undoubtedly enabled respondent De Leon to attain his purpose of winning over Regina S. Balinon with some degree of permanence.

It is likewise insisted that the acts imputed to respondent De Leon had no relation with his professional duties and therefore cannot serve as a basis for suspension or disbarment under section 25 of Rule 127. It should be remembered, however, that a member of the bar may be removed or suspended from office as a lawyer on ground other than those enumerated by said provision (In re Pelaez, 44 Phil. 567). Moreover, we can even state that respondent De Leon was able to prepare the affidavit in question because he is a lawyer, and has rendered professional service to himself as a client. He surely employed his knowledge of the law and skill as an attorney to his advantage. (Manalo v. Gan, Adm. Case No. 72, May 18, 1953.)

With reference to respondent Velayo, there is no question that he did nothing except to affix his signature to the affidavit in question as a notary public. While, as contended by his counsel, the duty of a notary public is principally to ascertain the identity of the affiant and the voluntariness of the declaration, it is nevertheless incumbent upon him at least to guard against having anything to do with illegal or immoral arrangement. In the present case respondent Velayo was somewhat negligent in just affixing his signature to the affidavit, although his fault is mitigated by the fact that he had relied on the good faith of his co-respondent.

Wherefore, we hereby decree the suspension from the practice of law of respondent Celestino M. De Leon for three years from the date of the promulgation of this decision. Respondent Justo T. Velayo is hereby merely reprimanded. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and *Labrador, JJ.*, concur.

III

King Mau Wu, Plaintiff-Appellee vs. Francisco Sycip, Defendant-Appellant, G. R. No. L-5897, April 23, 1954, Padilla, J.:

PLEADING AND PRACTICE; ACTION BY A NON-RESIDENT PLAINTIFF AGAINST A RESIDENT DEFENDANT. — Where in a contract of agency it is contended that inasmuch as the contract was executed in New York, the Court of First Instance of Manila has no jurisdiction over the case, the contention is without merit because a non-resident may sue a resident in the courts of this country where defendant may be summoned and his property leviable upon execution in case of a favorable, final and executory judgment. (Marshall-Wells Co. vs. Henry W. Elser & Co., 46 Phil. 70; Western Equipment and Supply Co. vs. Reyes, 51 Phil. 115.)

I. C. Monsod for appellant.
J. A. Wolfson and *P. P. Gallardo* for appellee.

DECISION

PADILLA, *J.*:

This is an action to collect P59,082.92, together with lawful interests from 14 October 1947, the date of the written demand for payment, and costs. The claim arises out of a shipment of 1,000 tons of coconut oil emulsion sold by the plaintiff, as agent of the defendant, to Jas. Maxwell Fassett, who in turn assigned it to Fortrade Corporation. Under an agency agreement set forth in a letter dated 7 November 1946 in New York addressed to the defendant and accepted by the latter on the 22nd day of the same month, the plaintiff was made the exclusive agent of the defendant in the sale of Philippine coconut oil and its derivatives outside the Philippines and was to be paid 2-1/2% on the total actual sale price of sales obtained through his efforts and in addition thereto 50% of the difference between the authorized sale price and the actual sale price.

After trial where the depositions of the plaintiff and of Jas. Maxwell Fassett and several letters in connection therewith were introduced and the testimony of the defendant was heard, the Court rendered judgment as prayed for in the complaint. A motion for reconsideration was denied. A motion for new trial was filed, supported by the defendant's affidavit, based on newly discovered evidence which consists of a duplicate original of a letter dated 16 October 1946 covering the sale of 1,000 tons of coconut oil soap emulsion signed by Jas. Maxwell Fassett to the defendant; the letter of credit No. 20122 of the Chemical Bank & Trust Company in favor of Jas. Maxwell Fassett assigned by the latter to the defendant; and letter dated 16 December 1946 by the Fortrade Corporation to Jas. Maxwell Fassett whereby the corporation placed a firm order of 1,000 metric tons of coconut oil soap emulsion and Jas. Maxwell Fassett accepted it on 24 December 1946, all of which documents, according to the defendant, could not be produced at the trial, despite the use of reasonable diligence, and if produced they would alter the result of the controversy. The motion for new trial was denied. The defendant is appealing from said judgment.

Both parties are agreed that the only transaction or sale made by the plaintiff, as agent of the defendant, was that of 1,000 metric tons of coconut oil emulsion f.o.b. in Manila, Philippines, to Jas. Maxwell Fassett, in whose favor letter of credit No. 20122 of the Chemical Bank & Trust Company for a sum not to exceed $400,000 was established and who assigned to Fortrade Corporation his right to the 1,000 metric tons of coconut oil emulsion and to the defendant the letter of credit referred to for a sum not to exceed $400,000.

The plaintiff claims that for that sale he is entitled under the agency contract dated 7 November 1946 and accepted by the defendant on 22 November of the same year to a commission of 2-1/2% on the total actual sale price of 1,000 tons of coconut oil emulsion, part of which has already been paid by the defendant, there being only a balance of $3,794.94 for commission due and unpaid on the last shipment of 379.494 tons and 50% of the difference between the authorized sale price of $350 per ton and the actual selling price of $400 per ton, which amounts to $25,000 due and unpaid, and $746. 52 for interest from 14 October 1947, the date of the written demand.

The defendant, on the other hand, contends that the transaction for the sale of 1,000 metric tons of coconut oil emulsion was not covered by the agency contract of 22 November 1946 because it was agreed upon on 16 October 1946; that it was an independent and separate transaction for which the plaintiff has been duly compensated. The contention is not borne out by the evidence. The plaintiff and his witness depose that there were several drafts of documents or letters prepared by Jas. Maxwell Fassett preparatory or leading to the execution of the agency agreement of 7 November 1946, which was accepted by the defendant on 22 November 1946, and that the letter, on which the defendant bases his contention that the transaction on the 1,000 metric tons of coconut oil emulsion was not covered by the agency agreement, was one of those letters. That is believable. The letter upon which defendant relies for his defense does not stipulate on the commission to be paid to the plaintiff as agent, and yet if he paid the plaintiff a 2-1/2% commission on the first three coconut oil emulsion shipments, there is no reason why he should not pay him the same commission on the last shipment amounting to $3,794.94. There can be no doubt that the sale of 1,000 metric tons of coconut oil emulsion was not a separate and independent contract

from that of the agency agreement of 7 November and accepted on 22 November 1946 by the defendant, because in a letter dated 2 January 1947 addressed to the plaintiff, referring to the transaction of 1,000 metric tons of coconut oil emulsion, the defendant says—

> x x x I am doing everything possible to fulfill these 1,000 tons of emulsion, and until such time that we completed this order I do not feel it very sensible on my part to accept more orders. I want to prove to Fortrade, yourself and other people that we deliver our goods. Regarding your commission, it is understood to be 2-1/2% of all prices quoted by me plus 50-50 on over price. (Schedule B.)

In another letter dated 16 January 1947 to the plaintiff, speaking of the same transaction, the defendant says—

> As per our understanding when I was in the States the overprice is subject to any increase in the cost of production. I am not trying to make things difficult for you and I shall give your 2-1/2% commission plus our overprice provided you can give me substantial order in order for me to amortize my loss on this first deal. Unless such could be arranged I shall remit to you for the present your commission upon collection from the bank. (Schedule C.)

In a telegram sent by the defendant to the plaintiff the former says—

> x x x YOUR MONEY PENDING STOP UNDERSTAND YOU AUTHORIZED SOME LOCAL ATTORNEYS AND MY RELATIVES TO INTERVENE YOUR BEHALF. (Schedule D.)

The defendant's claim that the agreement for the sale of 1,000 metric tons of coconut oil emulsion was agreed upon in a document, referring to the letter of 16 October 1946, is again disproved by his letter dated 2 December 1946 to Fortrade Corporation where he says:

> The purpose of this letter is to confirm in final form the *oral agreement* which we have heretofore reached, as between ourselves, during the course of various conversations between us and our respective representatives upon the subject matter of this letter.
>
> It is understood that I am to sell to you, and you are to purchase from me, one thousand (1,000) tons of coconut oil soap emulsion at a price of four hundred dollars ($400.) per metric ton, i.e., 2,204.6 pounds, F.O.B. shipboard, Manila, P.I. (Exhibit S, Special. Underscoring supplied.)

The contention that as the contract was executed in New York, the Court of First Instance of Manila has no jurisdiction over this case, is without merit, because a non-resident may sue a resident in the courts of this country [1] where the defendant may be summoned and his property leviable upon execution in case of a favorable, final and executory judgment. It is a personal action for the collection of a sum of money which the courts of first instance have jurisdiction to try and decide. There is no conflict of laws involved in the case, because it is only a question of enforcing an obligation created by or arising from contract; and unless the enforcement of the contract be against public policy of the forum, it must be enforced.

The plaintiff is entitled to collect ₱7,589.88 for commission and ₱50,000 for one-half of the overprice, or a total of ₱57,589.88, lawful interests thereon from the date of the filing of the complaint, and costs in both instances.

As thus modified the judgment appealed from is affirmed, with costs agains the appellant.

(1) Marshall-Wells Co. vs. Henry W. Elser & Co., 46 Phil. 70; Western Equipment and Supply Co. vs. Reyes, 51 Phil. 115.

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

IV

The Shell Company of P.I., Ltd., Plaintiff-Appellant, vs. E. E. Vaño, as Municipal Treasurer of the Municipality of Cordova, Province of Cebu, Defendant-Appellee, G. R. No. L-6093, February 24, 1954, Padilla J.

PLEADING AND PRACTICE; ACTION FOR REFUND OF MUNICIPAL TAXES; REAL PARTY IN INTEREST. — In an action for refund of municipal taxes claimed to have been paid and collected under an illegal ordinance, the real party in interest is not the municipal treasurer but the municipality concerned that is empowered to sue and be sued.

C. D. Johnston and *A. P. Dean* for appellant.

Provincial Fiscal Jose C. Borromeo and *Assistant Provincial Fiscal Ananias V. Mariabao* for appellee.

DECISION

PADILLA, *J.*:

The Municipal Council of Cordova, province of Cebu, adopted the following ordinances: No. 10, series of 1946, which imposes an annual tax of ₱150 on occupation or the exercise of the privilege of installation manager; No. 9, series of 1947, which imposes an annual tax of ₱40 for local deposits in drums of combustible and inflammable materials and an annual tax of ₱200 for tin can factories; and No. 11, series of 1948, which imposes an annual tax of ₱150 on tin can factories having a maximum annual output capacity of 30,000 tin cans. The Shell Company of P.I. Ltd., a foreign corporation, filed suit for the refund of the taxes paid by it, on the ground that the ordinances imposing such taxes are *ultra vires*. The defendant denies that they are so. The controversy was submitted for judgment upon stipulation of facts which reads as follows:

> Come now the parties in the above-entitled case by their undersigned attorneys and hereby agree to the following stipulation of facts:
>
> 1. That the parties admit the allegations contained in Paragraph 1 of the Amended Complaint referring to residence, personality, and capacity of the parties except the fact that E. E. Vaño is now replaced by F. A. Corbo as Municipal Treasurer of Cordova, Cebu;
>
> 2. That the parties admit the allegations contained in Paragraph 2 of the Amended Complaint. Official Receipts Nos. A-1280606, A-3760742, A-3760852, and A-21030388 are herein marked as Exhibits A, B, C, and D, respectively, for the plaintiff;
>
> 3. That the parties admit that payments made under Exhibits B, C, and D were all *under protest* and plaintiff admits that Exhibit A was *not* paid under protest;
>
> 4. That the parties admit that Official Receipt No. A-1280606 for ₱40.00 and Official Receipt No. A-3760742 for ₱200.00 were collected by the defendant by virtue of Ordinance No. 9, (Secs. E-4 and E-6, respectively) under Resolution No. 31, Series of 1947, enacted December 15, 1947, approved by the Provincial Board of Cebu in its Resolution No. 644, Series of 1948. Copy of said Ordinance No. 9, Series of 1947 is herein marked as Exhibit "E" for the plaintiff, and as Exhibit "1" for the defendant;