I

Alejandro Samson, Petitioner, vs. Andrea B. Andal de Aguila, et al., Respondents, G.R. No. L-5932, Feb. 25, 1954, Paras, C.J.:

OBLIGATION PAYABLE DURING THE JAPANESE OCCUPATION; PAYMENT AFTER LIBERATION MUST BE ADJUSTED WITH THE BALLANTYNE SCHEDULE.— The Supreme Court has heretofore sustained the proposition that, when an obligation is payable within a certain period of time, and the whole or part thereof coincides with the Japanese occupation, payment after the liberation must be adjusted in accordance with the Ballantyne schedule, because the debtor could have paid said obligation in Japanese war notes during the occupation. (Asis vs. Agdamag, G.R. No. L-3709, October 25, 1951; Ang Lam vs. Peregrina, G.R. No. L-4871, January 26, 1953); Jales vs. Gamara, G.R. No. L-4460, Oct. 31, 1953.)

The debtor's mere failure to accomplish payment during the Japanese occupation did not make him liable to pay, as damage or penalty, the difference between the value of the Japanese war notes at the time the obligation became payable and of the Philippine currency at the time of payment. (Gomez vs. Tabia, 47 O.G. 641.)

It is true that the creditors herein could not demand payment prior to October 25, 1945, but this did not preclude the debtor, herein petitioner, from paying his obligation at any time within one year from October 25, 1944, if he had wanted to do so. (Ibid.)

Seven S. Ceniza for petitioner.
Sison, Sevilla, Aquino & Paras and *Pedro P. Colina* for respondents.

DECISION

PARAS, C.J.:

On March 4, 1947, Alejandro Samson filed against Agapito B. Andal and Valentina Berana de Andal in the Court of First Instance of Manila a complaint for declaratory relief, praying that judgment be rendered fixing the amount which Alejandro Samson should pay to Agapito B. Andal and Valentina Berana de Andal under a deed of mortgage executed by the former in favor of the latter, and that the defendants be ordered to cancel the mortgage upon payment of said amount. On August 26, 1949, the court rendered a decision, declaring that the amount due from the plaintiff to the defendants is ₱150.00, Philippine currency, plus annual interest at the rate of 7% from October 25, 1944, and ordering the defendants to execute the proper deed of cancellation upon payment by the plaintiff of said amount. The court applied the Ballantyne scale of values. Agapito B. Andal and Valentina Berana de Andal appealed to the Court of Appeals which, on June 9, 1952, rendered a decision holding that the plaintiff should pay to the defendants ₱6,000.00 (the full amount of the loan obtained by the plaintiff from the defendants on October 25, 1944), in actual Philippine currency, plus the stipulated interest, but subject to the moratorium law. From this decision Alejandro Samson has appealed to this Court by way of certiorari. By resolution of October 17, 1952, Agapito B. Andal and Valentina Berana de Andal (who had died) were ordered substituted as parties respondents by their heirs, Andrea B. Andal de Aguila and others.

The Court of Appeals found that Alejandro Samson, herein petitioner, obtained from Agapito B. Andal and Valentina B. de Andal on October 25, 1944, a loan of ₱6,000.00, with interest at 7% per annum and, to secure its payment, the former executed in favor of the latter a real estate mortgage. That court, in holding that the petitioner should pay ₱6,000.00 in present Philippine currency, argued that while the loan was made during the Japanese occupation, it became due and payable only after said period. We have heretofore sustained the proposition that, when an obligation is payable within a certain period of time, and the whole or part thereof coincides with the Japanese occupation, payment after the liberation must be adjusted in accordance with the Ballantyne schedule, because the debtor could have paid said obligation in Japanese war notes during the occupation. (Asis vs. Agdamag, G.R. No. L-3709, October 25, 1951; Ang Lam vs. Peregrina, G.R. No. L-4871, January 26, 1953.) As Mr. Justice Feria indicated in his concurring opinion in the case of Gomez vs. Tabia, 47 O.G. 641, the debtor's mere failure to accomplish payment during the Japanese occupation did not make him liable to pay, as damage or penalty, the difference between the value of the Japanese war notes at the time the obligation became payable and of the Philippine currency at the time of payment. It is true that the creditors herein could not demand payment prior to October 25, 1945, but this did not preclude the debtor, herein petitioner, from paying his obligation at any time within one year from October 25, 1944, if had wanted to do so.

Wherefore, the decision of the Court of Appeals is hereby reversed, and it is declared that the amount which the petitioner should pay to cancel his mortgage is only the sum of ₱150.00, the equivalent in actual Philippine currency of ₱6,000.00 in Japanese war notes on October 25, 1944, plus annual interest at the rate of 7% on the said sum of ₱150.00 from October 25, 1944. So ordered without costs.

Bengzon, Reyes, Jugo, Bautista Angelo and *Labrador, J.J.*, concur.
Justice Padilla concurred in the result.
Justice Montemayor and *Justice Pablo* took no part.

II

Benita S. Balinon, Petitioner, vs. Celestino M. de Leon et al., Respondents, ADM. Case No. 104, Jan. 20, 1954, Paras, C.J.:

ATTORNEY AT LAW; SUSPENSION; CASE AT BAR. — This Court had heretofore imposed the penalty of suspension upon an attorney who prepared a document stipulating, among other, that the contracting parties, who are husband and wife, authorized each other to marry again and that each renounced whatever right of action one might have against the party so marrying (*In re* Roque Santiago, 40 Off Gaz. [5th Supp.] p. 208). In effect the affidavit prepared and signed by respondent De Leon has similar implication, in that although it does not bluntly authorize said respondent to marry another during his subsisting wedlock with Vertudes Marquez, he made it appear that he could take in another woman as a lifetime partner to whom he would remain loyal and faithful as a lawful and devoted loving husband and whom he could take and respect as his true and lawful wife; thereby virtually permitting himself to commit the crime of concubinage. 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 is 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.

First Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Juan T. Alano* for petitioner.
Jose W. Diokno, Justo T. Velayo and *Celestino de Leon* for respondent.

DECISION

PARAS, *C. J.*:

The Solicitor General has filed a complaint against the res-

pondents Celestino M. De Leon and Justo T. Velayo, duly qualified members of the bar in active practice, alleging that, since December, 1949, respondent De Leon, still legally married to Vertudes Marquez lived as husband and wife with Regina S. Balinon; that said respondent prepared and subscribed on February 4, 1949, before respondent Velayo, a notary public, an affidavit which reads as follows:

"KNOW ALL MEN BY THESE PRESENTS:

"I, CELESTINO DE LEON, of legal age, married, filipino citizen, after being duly sworn to according to law depose and say:

"That there exists a contract of separation executed and perfected between my wife, Vertudes Marquez and myself;

"That said contract states among other things that each of us is at liberty and free to take for himself and herself a lifetime partner with the full consent and authorization of each other;

"That by the same contract our conjugal partnership was dissolve and our existing property, rights and interest were divided and apportioned;

"That in the said contract my wife shall have the full control, care and custody of the children, and as such all of our conjugal property rights and interests were apportioned to her with the exception of my private personal belongings and things pertaining to my law profession;

"That, besides the said dissolution and apportionment, said contract further states about my wife's and also my children's share to my current income by way of alimony and support;

"NOW, therefore, by virtue of the said contract of separation, I now by these presents take my new found life-partner REGINA S. BALINON, as my true and lawful wife;

"That, in order to protect her rights and interests with regards to her personality and future property rights, I, hereby voluntarily and of my own free will solemnly swear under oath;

"That I will uphold and defend her honor and dignity and prestige as a woman of the weaker sex as well as any and all members of her family arising by reasons of said relationship;

"That I will maintain and preserve the new existing companionship, the love, respect and goodwill prevailing among the members of her family of which I am now a member as well as equally mine;

"That I will not do any act that may tend to degrade or dishonor her or any member of her family unbecoming the dignity of said relationship but would rather take and respect her as my true and lawful wife;

"That in case of intentional desertion on my part thereby frustrating the true and honest intent of my affirmations, the same may be sufficient ground for my perpetual disbarment upon her instance or any third party in interest;

"That except for such minor dues and allowances by way of alimony and support mentioned above, any and all such future properties, rights and interests that we shall acquire during said relationship shall exclusively appertain and belong to her as her due share and shall bear her name in all such titles and documents thereto, subject to her legal heirs as such;

"That any offspring that we shall bear by reason of said companionship and relationship shall be acknowledge by me as my true and legal child with all the rights and privileges accorded by law pertaining to that of a legitimate child;

"That this contract of companionship is done of my own accord, freely and voluntarily without any mental reservation or purpose of evasion, So HELP ME GOD.

"IN WITNESS WHEREOF, I have hereunto set my signature this 4th day of February 1949.

"SGD.) CELESTINO M. DE LEON
CELESTINO DE LEON

"SIGNED IN THE PRESENCE OF:

"REPUBLIC OF THE PHILIPPINES)
CITY OF BACOLOD) S.S.

"Personally appeared before this 4th day of February 1949, CELESTINO DE LEON with Residence Certificate No. ..... issued at ..... on ..... 1949, who executed the foregoing affidavit with contract of companionship consisting of two pages, and acknowledge by me that the same is his own free and voluntary act and deed.

"IN WITNESS WHEREOF, I have hereunto set my hand and seal on the place and date first wrtiten above.

"(SGD.) JUSTO V. VELAYO"
NOTARY PUBLIC
Until Dec. 31, 1948

"Doc. No. 484
"Page No. 97
"Book No. XVI
"Series of 1949."

The complaint also alleges that, notwithstanding the unlawful and immoral purposes of the foregoing affidavit, respondent Velayo knowingly signed the same in violation of his oath of office as attorney and notary public.

Respondent De Leon admits his continuous cohabitation with Regina S. Balinon during his subsisting marriage with Vertudes Marquez and the fact that he prepared and subscribed the affidavit above quoted, but contends that he has not yet been finally convicted of a crime involving moral turpitude; that while the affidavit may be illicit, it is not an agreement but a mere innocent unilateral declaration of facts; and that while the execution of said affidavit may be illegal and void *ab initio*, no specific law has been violated so as to give rise to an action. Respondent Velayo alleges, on the other hand, that his participation was limited to the task of notorizing the affidavit, as a matter of courtesy to a brother lawyer and without knowing its contents, and this allegation is corroborated by respondent De Leon who further stated that no consideration whatsoever passed to the former.

This Court had heretofore imposed the penalty of suspension upon an attorney who prepared a document stipulating, among other, that the contracting parties, who are husband and wife, authorized each other to marry again and that each renounced whatever right of action one might have against the party so marrying (*In re* Roque Santiago, 40 Off. Gaz. 5th Supp. p. 208). In effect the affidavit prepared and signed by respondent De Leon has similar implication, in that although it does not bluntly authorize said respondent to marry another during his subsisting wedlock with Vertudes Marquez, he made it appear that he could take in another woman as a lifetime partner to whom he would remain loyal and faithful as a lawful and devoted loving husband and whom he could take and respect as his true and lawful wife; thereby virtually permitting himself to commit the crime of concubinage.

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