is brought under the provisions of the Revised Penal Code.

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

IT IS SO ORDERED.

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

IV

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

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

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

Calanog and *Alafriz* for the plaintiffs and appellants.

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

DECISION

REYES, *J.*:

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

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

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

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

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

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

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

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

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

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

Padilla, J., did not take part.

PARAS, *C.J., dissenting*:

I am constrained to dissent from the decision of the majority upon the ground that the Municipal Board of Manila cannot outlaw what Congress of the Philippines has already authorized. The plaintiffs-appellants — two lawyers, a physician, an accountant, a dentist and a pharmacist — had already paid the occupation tax under section 201 of the National Internal Revenue Code and are thereby duly licensed to practice their respective professions throughout the Philippines; and yet they had been required to pay another occupation tax under Ordinance No. 3398 for practising in the City of Manila. This is a glaring example of contradiction — the license granted by the National Government is in effect withdrawn by the City in case of non-payment of the tax under the ordinance. If it be argued that the national occupation tax is collected to allow the professional residing in Manila to pursue his calling in other places in the Philippines, it should then be exacted only from professionals practising simultaneously in and outside of Manila. At any rate, we are confronted with the following situation: Whereas the professionals elsewhere pay only one occupation tax, in the City of Manila they have to pay two, although all are on equal footing insofar as opportunities for earning money out of their pursuits are concerned. The statement that practice in Manila is more lucrative than in the provinces, may be true perhaps with reference only to a limited few, but certainly not to the general mass of practitioners in any field. Again, provincial residents who have occasional or isolated practice in Manila may have to pay the city tax. This obvious discrimination or lack of uniformity cannot be brushed aside or justified by any trite pronouncement that double taxation is legitimate or that legislation may validly affect certain classes.

My position is that a professional who had paid the occupation tax under the National Internal Revenue Code should be allowed to practice in Manila even without paying the similar tax imposed by Ordinance No. 3398. The City cannot give what said professional already has. I would not say that this Ordinance, enacted by the Municipal Board pursuant to paragraph 1 of Section 18 of the Revised Charter of Manila, as amended by Republic Act No. 409, empowering the Board to impose a municipal occupation tax not to exceed ₱50.00 per annum, is invalid; but that only one tax, either under the Internal Revenue Code or under Ordinance No. 3398, should be imposed upon a practitioner in Manila.

V

Fortunato Halili, Plaintiff-Appellee, vs. Maria Lloret and Ricardo Gonzales Lloret, Administrator of the Intestate Estate of Francisco A. Gonzales, Defendants-Appellants, G. R. No. L-6306, May 26, 1954, Bautista Angelo, J.

1. OBLIGATIONS AND CONTRACTS; SALE OF PROPERTIES SUBJECT TO JUDICIAL ADMINISTRATION; SALE WITHOUT APPROVAL OF COURT CANNOT SERVE AS BASIS FOR ACTION OF SPECIFIC PERFORMANCE. — The sale of properties subject to judicial administration can not have any valid effect until it is approved by the court. Where the terms that were made to appear in the document of sale differ substantially from the conditions prescribed in the authorization given by the court for the sale of the properties, the document cannot have any binding effect upon parties nor serve as basis for an action for specific performance in the absence of judicial approval.

2. ID.; ID.; RESCISSION OF CONTRACT OF SALE. — Plaintiff's attitude in suspending the payment of the two checks issued in favor of the defendants, in view of the latter's refusal to sign the documents of sale, clearly indicates that the understanding between the parties was merely in the stage of negotiation for otherwise the plaintiff could not have withdrawn legally from a transaction which had ripened into a consummated contract. And even if the transaction had reached the stage of perfection, it became rescinded when plaintiff withdrew from his part in the transaction.

3. ID.; ID.; AMBIGUITY IN A CONTRACT OF SALE. — Where the receipt merely recited the fact of receipt of the two checks without mentioning the purpose for which they were delivered. it cannot be said that the checks were delivered as advance payment of the consideration of the sale of the lands in question Such ambiguity shall be construed against the party who had drafted the receipt in view of the rule that an obscure clause in a contract can not favor the one who has caused the obscurity.

4. ID.; ID.; CONSENT OF CO-OWNERS INDISPENSABLE. — Where the lands subject of the contract of sale are owned *pro-indiviso* by the defendants, the consent of each co-owner to the terms of the sale is indispensable.

5. ID.; ID.; PURCHASE PRICE TO BE RETURNED WHEN TRANSACTION IS CALLED OFF. — Where one of the defendants had received the check representing the value of the purchase price of the lands in question and had deposited the same in his current account and the transaction was called off, the mere offer to return the money cannot relieve him from liability. His duty was to consign the amount in court and his failure to do so makes him answerable therefor to the plaintiff.

M. G. Bustos for the plaintiff and appellee.
Diokno and *Diokno* for the defendant and appellant.

DECISION

BAUTISTA ANGELO, *J.*:

This is an action brought by plaintiff against the defendants to compel the latter to execute a deed of sale of certain parcels of land described in the complaint, and to recover the sum of ₱50,000 as damages.

The lower court decided the case in favor of the plaintiff, and the case is now before us because it involves an amount which is beyond the jurisdiction of the Court of Appeals.

The evidence for the plaintiff discloses the following facts:

The six parcels of land subject of the present action were owned *pro-indiviso* by Maria Lloret and the estate of Francisco A. Gonzales, of which Ricardo Gonzales Lloret is the judicial administrator. On May 8, 1944, the judicial administrator filed a motion in the intestate proceedings praying for authority to sell the said parcels of land for a price of not less than ₱100,000, to which Maria Lloret and the other heirs of the estate gave their conformity. The court granted the motion as requested. Plaintiff became interested in the purchase of said parcels of land and to this effect he sought the services of Atty. Teofilo Sauco who readily agreed to serve him and took steps to negotiate the sale of said lands in his behalf. Sauco dealt on the matter with Ricardo Gonzales Lloret. After several interviews wherein they discussed the terms of the sale, especially the price, Gonzales Lloret told Sauco that if plaintiff would agree to pay the sum of ₱200,000 for the lands, he may agree to carry out the transaction. Sauco broached the matter to plaintiff who thereupon agreed to the proposition, and so, on June 17, 1944, Sauco went to see Gonzales Lloret in his office in Manila wherein, according to Sauco it was agreed between them, among other things, that the lands would be sold to the plaintiff for the sum of ₱200,000 and that, after the execution of the sale, the plaintiff would in turn resell to Ricardo Gonzales Lloret one of the parcels of land belonging to the estate for an undisclosed amount. It was also agreed upon that since the lands subject of the sale were then in litigation between the estate and one Ambrosio Valero, the deed of sale would include a clause to the effect that, if by March, 1945, the vendors would be unable to deliver to the purchaser the possession of the lands peacefully and without encumbrance, said lands would be substituted by others belonging to the estate, of equal area, value, and conditions. It was likewise agreed upon that Sauco would prepare the necessary documents, as in fact he did in the same office of Gonzales Lloret.