XI

Emiliano M. Perez, Petitioner-appellant, vs. The City Mayor of Cabanatuan, et al., Respondent-appellees, G.R. No. L-16786, October 31, 1961, De Leon, J.

1. SECRETARY OF HEALTH; SUPERVISION AND CONTROL OF GOVERNMENT HOSPITALS; AND REGULATIONS TO GOVERN HOSPITAL FINANCING.— Section 7 of the Hospital Financing Law (Republic Act No. 1939) vests upon the Secretary of Health the supervision and control over all the government hospitals established and operated under the Act and empowers him to promulgate rules and regulations to implement its provisions. Pursuant to this section, the said Secretary has promulgated rules and regulations, (Circular No. 262 of the Department of Health, dated July 24, 1958) to govern hospital financing.
2. ID.; FUNDS FOR THE CONSTRUCTION OF PROVINCIAL HOSPITAL; MANDAMUS; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— Circular No. 262, Department of Health, dated July 24, 1958 clearly specifies the proper course and the particular official of the Department of Health who, with the Auditor General, may pursue the said course whenever any province, city and/or municipality fails to provide and remit their respective contributions under the Hospital Financing Law. There is no mention whatsoever that the chief of a provincial hospital may bring any action against the province, city and/or municipality concerned in order that the latter may be made to give their contributions. Under the circumstances of the present case, the most that the herein petitioner could do is to report to his superior official the failure of respondents to set aside the amount that the City of Cabanatuan is obliged to give for the support of the provincial hospital of which he is the chief. The record does not show that petitioner had taken this step before coming to court.

HELD: There being an appropriate administrative remedy — plain, speedy and adequate — that could have first been availed of by petitioner, his action for mandamus is, therefore, premature. Special civil actions have been held not entertainable if superior administrative officers could grant relief (Peralta vs. Salcedo, G.R. No. L-10771, April 30, 1957). In other words, no recourse to the courts can be had until all administrative remedies have been exhausted.

D E C I S I O N

This is an appeal from a decision of the Court of First Instance of Nueva Ecija, dismissing a petition for mandamus seeking to compel the respondents to appropriate the sum of ₱24,983.12 from the general fund of Cabanatuan City to be paid to the Nueva Ecija Provincial Hospital.

In his petition, the Chief of the Nueva Ecija Provincial Hospital, who claims to be the officer bound by law to administer and protect the interests of said hospital alleged that under section 2(a) of Republic Act No. 1939, otherwise known as the Hospital Financing Law, which took effect on June 22, 1957, the City of Cabanatuan is under obligation to appropriate by ordinance at least 7% of its annual general income as contribution for the support of the hospital; that, accordingly, for the fiscal year 1957-58, the amount of ₱34,983.12 should have been appropriated by the city council for that purpose because the city then had an annual general income of ₱555,700.00, but only ₱10,000.00 of said amount was set aside, leaving a deficiency of ₱24,983.12. It is this last mentioned amount that is the object of the action for mandamus against the City Mayor, the Municipal Board and the City Treasurer of Cabanatuan.

After the filing of the answer by the respondents, the case was submitted for judgment on the pleadings. Whereupon, the lower court rendered judgment dismissing the petition on the ground that the petitioner is not the real party in interest. Insisting that he has the right to bring the action for mandamus, the petitioner has appealed directly to this Court.

The appeal cannot prosper.

Section 7 of the Hospital Financing Law vests upon the Secretary of Health the supervision and control over all the government hospitals established and operated under the Act and empowers him to promulgate rules and regulations to implement its provisions. Pursuant to this section, the said Secretary has promulgated rules and regulations (Circular No. 262 of the Department of Health, dated July 24, 1958) to govern hospital financing. It is provided under section 3(c) thereof that:

> "(c) In case of failure on the part of the province, city and/or muncipality concerned to provide for and remit their respective obligations, as provided for in sections 2(a) and 2 (2) of the Act, the Secretary of Finance, upon recommendation of the Secretary of Health and the Auditor General, shall order the withholding of the amount needed from their respective shares in the Internal Revenue allotments."

The above-quoted rule clearly specifies the proper course and the particular official of the Department of Health who, with the Auditor General, may pursue the said course whenever any province, city and/or municipality fails to provide and remit their respective contributions under the Hospital Financing Law. There is no mention whatsoever that the chief of a provincial hospital may bring any action against the province, city and/or municipality concerned in order that the latter may be made to give their contributions. Under the circumstances of the present case, the most that the herein petitioner could do is to report to his superior official the failure of respondents to set aside the amount that the City of Cabanatuan is obliged to give for the support of the provincial hospital of which he is the chief. The record does not show that petitioner has taken this step before coming to court. There being an appropriate administrative remedy — plain, speedy and adequate — that could have first been availed of by petitioner, his action for mandamus is, therefore, premature. Special civil actions have been held not entertainable if superior administrative officers could grant relief (Peralta vs. Salcedo, G.R. No. L-10771, April 30, 1957). In other words, no recourse to the courts can be had until all administrative remedies have been exhausted (Peralta vs. Salcedo, G.R. No. L-10771, *supra;* Panti vs. The Provincial Board of Catanduanes, G.R. No. L-14047, January 30, 1960; Booc vs. Osmeña, Jr., G.R. No. L-14810, May 31, 1961; De la Torre vs. Trinidad, G.R. No. L-14907, May 31, 1960).

In view of the foregoing, the decision of the lower court dismissing the petition for mandamus is hereby affirmed, without pronouncement as to costs.

Padilla, Bautista Angelo, Labrador, Concepcion, J.B.L. Reyes, Paredes and Dizon, JJ., concurred.

Barrera, J., took no part.

XII

Board of Liquidators, Petitioner-Appellant, vs. Exequiel Floro, et al., Oppositors-Appellees, G.R. No. L-15155, Dec. 29, 1960, Reyes, J.B.L., J.

1. BOND; IT STANDS AS GUARANTY FOR A PRINCIPAL OBLIGATION.— A bond merely stands as guaranty for a principal obligation which may exist independently of said bond, the latter being merely an accessory contract.
2. NOVATION; REQUISITES. — Novation is never presumed, it being required that the intent to novate be expressed clearly and unequivocally, or that terms of the new agreement be incompatible with the old contract.
3. ID.; EXTENSION OF PERIOD OF PAYMENT OR PERFORMANCE NOT NOVATION.— A mere extension of the term (period) for payment or performance is not novation.
4. INSOLVENCY; PROCEEDINGS TO SET ASIDE FRAUDULENT TRANSFERS BE BROUGHT BY ASSIGNEE.—Under section 36, No. 8, of the Insolvency Act, all proceedings to set aside fraudulent transfers should be brought and prosecuted by the assignee, who can legally represent all the credit-

ors of the insolvent (Maceda, et al. v. Hernandez, et al., 70 Phil. 261).

5. ID.; ID.; REASON OF THE LAW.—To allow a single creditor to bring such a proceeding would invite a multiplicity of suits, since the resolution of his case would not bind the other creditors, who may refile the same claim independently, with diverse proofs, and possibly give rise to contradictory rulings of the courts.

D E C I S I O N

From an order of the Court of First Instance of Manila, dated August 10, 1955, denying its petition to exclude certain pieces of steel matting from the assets of the insolvent M. P. Malabanan, the Board of Liquidators appealed to the Court of Appeals. The latter certified the case to this Court on the ground that only questions of law are involved.

The Board of Liquidators (hereinafter referred to as the Board) is an agency of the Government created under Executive Order No. 372 (November 24, 1950), and, pursuant to Executive Order No. 377 (December 1, 1950), took over the functions of defunct Surplus Property Liquidating Committee.

On June 14, 1952, Melecio Malabanan entered into an agreement with the Board for the salvage of surplus properties sunk in territorial waters off the provinces of Mindoro, La Union, and Batangas (Exhibit "A"). By its terms, Malabanan was to commence operations within 30 days from execution of said contract, which was to be effective for a period of not more than six (6) months. On June 10, 1953, Malabanan requested for an extension of one (1) year for the salvage in waters of Mindoro and Batangas; and the Board extended the contract up to November 30, 1953. On November 18, 1953, Malabanan requested a second extension of one (1) more year for the waters of Occidental Mindoro, and the Board extended the contract up to August 31, 1954. Malabanan submitted a recovery report dated July 26, 1954, wherein it is stated that he had recovered a total of 13,107 pieces of steel mattings, as follows:

1—December, 1953-April 30, 1954	2,555
2—May 1, 1954-June 30, 1954	10,552
	13,107 (pieces)

Four months previously, Malabanan had entered into an agreement with Exequiel Floro, dated March 31, 1954 (Exhibit 1, Floro), in which among other things, it was agreed that Floro would advance to Malabanan certain sums of money, not to exceed ₱25,000.00, repayment thereof being secured by quantities of steel mattings which Malabanan would consign to Floro; that said advances were to be paid within a certain period, and upon default at the expiration thereof, Floro was authorized to sell whatever steel mattings were in his possession under said contract, in an amount sufficient to satisfy the advances. Pursuant thereto, Floro claims to have made total advances in the sum of ₱24,224.50.

It appears that as Malabanan was not able to repay Floro's advances, the latter, by a document dated August 4, 1954, sold 11,047 pieces of steel mattings to Eulalio Legaspi for the sum of ₱24,303.40.

Seventeen days later, on August 21, 1954, Malabanan filed in the Court of First Instance of Manila a petition for voluntary insolvency, attaching thereto a Schedule of Accounts, in which the Board was listed as one of the creditors for ₱10,874.46, and Exequiel Floro for ₱24,220.50, the origin of the obligations being described as "Manila Royalty" and "Salvaging Operations", respectively. Also attached was an inventory of Properties, listing certain items of personal property allegedly aggregating ₱33,707.00 in value. In this list were included 11,167 pieces of steel mattings with an alleged estimated value of ₱33,501.00.

Soon after, the Board, claiming to be the owner of the listed steel matting, filed a petition to exclude them from the inventory; and to make the insolvent account for a further 1,940 pieces of steel matting, the difference between the number stated in the insolvent's recovery report of July 26, 1954 and that stated in the inventory. Exequiel Floro opposed the Board's petition and claimed that the steel matting listed had become the property of Eulalio Legaspi by virtue of a deed of sale in his favor, executed by Floro pursuant to the latter's contract with Malabanan on March 31, 1954. The court below, after reception of evidence as to the genuineness and due execution of the deed of sale to Legaspi, as well as of the contract between Malabanan and Floro, denied the Board's petition, declaring that Malabanan had acquired ownership over the steel mattings under his contract with the Board; that Exequiel Floro was properly authorized to dispose of the steel mattings under Floro's contract with Malabanan; and that the sale to Eulalio Legaspi was valid and not contrary to the Insolvency Law.

In this appeal, the Board contends that Malabanan did not acquire ownership over the steel mattings due to his failure to comply with the terms of the contract, allegedly constituting conditions precedent for the transfer of title, namely: payment of the price; audit and check as to the nature, quantity and value of properties salvaged; weighing of the salvaged properties to be conducted jointly by representatives of the Board and of Malabanan; determination of the site for storage; audit and verification of the recovery reports by government auditors; and filing of performance bond.

We are of the opinion, and so hold, that the contract (Exhibit "A") between Malabanan and the Board had the effect of vesting Malabanan with title to, or ownership of, the steel mattings in question as soon as they were brought up from the bottom of the sea. This is shown by pertinent provisions of the contract as follows:

"10. For and in consideration of the assignment by the BOARD OF LIQUIDATORS to the CONTRACTOR (Malabanan) of all right, title and interest in and to all surplus properties salvaged by the CONTRACTOR under this contract, the CONTRACTOR shall pay to the Government NINETY PESOS (₱90.00) per long ton (2,240 lbs.) of surplus properties recovered.

"11. Payment of the agreed price shall be made monthly during the first ten (10) days of every month on the basis of recovery reports of sunken surplus properties salvaged during the preceding month, duly verified and audited by the authorized representative of the BOARD OF LIQUIDATORS."

That Malabanan was required under the contract to post a bond of ₱10,000.00 to guarantee compliance with the terms and conditions of the contract; that the operations for salvage were entirely at Malabanan's expense and risk; that gold, silver, copper, coins, currency, jewelry, precious stones, etc. were excepted from the contract, and were instead required to be turned over to the Board for disposition; that the expenses for storage, including guard service, were for Malabanan's account—all these circumstances indicated that ownership of the goods passed to Malabanan as soon as they were recovered or salvaged (i.e., as soon as the salvor had gained effective possession of the goods), and not only after payment of the stipulated price.

While there can be reservation of title in the seller until full payment of the price (Article 1478, N.C.C.), or until fulfillment of a condition (Article 1505, N.C.C.); and while execution of a public instrument amounts to delivery only when from the deed the contrary does not appear or cannot clearly be inferred (Article 1498, supra), there is nothing in the said contact which may be deemed a reservation of title, or from which it may clearly be inferred that delivery was not intended.

The contention that there was no delivery is incorrect. While there was no physical tradition, there was one by agreement (tradition *longa manu*) in conformity with Article 1499 of the Civil Code.

"Article 1499 — The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale. x x x"

As observed earlier, there is nothing in the terms of the public instrument in question from which an intent to withhold delivery or transfer of title may be inferred.

The Board also contends that as no renewal of the bond required was filed for the extension of the contract, it ceased to have any force and effect; and, as the steel mattings were recovered during the extended period of the contract, Malabanan did not acquire any rights thereto. The pertinent portion of the contract provides:

> "12. Jointly with the execution of this contract, the CONTRACTOR SHALL file a bond in the amount of TEN THOUSAND (₱10,000.00) PESOS to guarantee his faithful compliance with the terms and conditions herein; Provided, that this contract shall not be considered to have been executed notwithstanding the signing hereof by the parties until said bond shall have been properly filed."

Malabanan filed a bond dated June 10, 1952, effective for one (1) year, or up to June 10, 1953. The principal contract, executed on June 14, 1952, was first extended to November 30, 1953, and finally, to August 31, 1954. As can be seen, there was no longer any bond from June 11, 1953 to August 31, 1954.

The lapse of the bond did not extinguish the contract between Malabanan and the Board. The requirement that a bond be posted was already complied with when Malabanan filed the bond dated June 10, 1952. A bond merely stands as guaranty for a principal obligation which may exist independently of said bond, the latter being merely an accessory contract (Valencia v. RFC & C.A., L-10749, April 25, 1958). Significantly, its purpose, as per the terms of the contract, was "to guarantee his (Malabanan's) faithful compliance with the terms and conditions herein"; and, for violation of the contract, the Board may declare "the bond forfeited" (par. 13). Being for its benefit, the Board could legally waive the bond requirement (Valencia v. RFC, et al., supra), and it did so when, the bond already having expired, it extended the contract not only once, but twice. In none of the resolutions extending the contract (Annexes "C" & "E", pp. 108-112; Record on Appeal) was there a requirement that the bond be renewed, in the face of the first indorsement by the Executive Officer of the Board (Annex "F", pp. 112-113, Record on Appeal) recommending that Malabanan's request for a second extension be granted 'provided the bond he originally posted should continue."

There is no merit to the suggestion that there being a novation, Article 1299 of the Civil Code should govern. Novation is never presumed, it being required that the intent to novate be expressed clearly and unequivocally, or that the terms of the new agreement be incompatible with the old contract (Article 1292, N.C.C.; Martinez v. Cavives, 25 Phil. 581; Tiu Siuce v. Habana, 45 Phil. 707; Pablo v. Sapungan, 71 Phil. 145; Young v. Villa, L-5331, May 13, 1953). Here there was neither express novation nor incompatibility from which it could be implied. Moreover, a mere extension of the term (period) for payment or performance is not novation (Inchausti v. Yulo, 34 Phil. 978; Zapanta v. De Rotaeche, 21 Phil. 154; Pablo v. Sapungan, supra); and, while the extension covered only some of the areas originally agreed upon, this change did not alter the essence of the contract (cf. Romas v. Gibbon, 67 Phil. 371; Bank of P.I. v. Herridge, 47 Phil. 57).

It is next contended that the sale by Floro to Legaspi on August 4, 1954 (within 30 days prior to petition for insolvency) was void as a fraudulent transfer under Section 70 of the Insolvency Law. The court below held that the sale to Legaspi was valid and not violative of Section 70; but there having been no proceedings to determine whether the sale was fraudulent, we think it was premature for the court below to decide the point, especially because under section 36, No. 8, of the Insolvency Act, all proceedings to set aside fraudulent transfers should be brought and prosecuted by the assignee, who can legally represent all the creditors of the insolvent (Maceda, et al, v. Hernandez, et al., 70 Phil. 261). To allow a single creditor to bring such a proceeding would invite a multiplicity of suits, since the resolution of his case would not bind the other creditors, who may refile the same claim independently, with diverse proofs, and possibly give rise to contradictory rulings by the courts.

The order appealed from is hereby affirmed in so far as it declares the disputed goods to be the property of the insolvent; but without prejudice to the right of the assignee in insolvency to take whatever action may be proper to attack the alleged fraudulent transfer of the steel matting to Eulalio Legaspi, and to make the proper parties account for the difference between the number of pieces of steel matting stated in the insolvent's recovery report, Annex "B" (13,107), and that stated in his inventory (11,167). Costs against appellant.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concurred.

Padilla, J., took no part.

XIII

Lao Lian Su alias Lorenzo Ting, Petitioner-appellant, vs. Republic of the Philippines, Oppositor-appellee, G.R. No. L-15543, September 29, 1961, Reyes, J.B.L., J.

NATURALIZATION; EVASION IN PAYMENT OF TAXES AS GROUND FOR DENIAL OF APPLICATION.— In the case at bar, it appears that in the verified income tax returns filed by petitioner and that of his wife for the years from 1951 to 1957, the contents of which he ratified under oath while on the witness stand, the spouses appear to have claim exemption for a *fourth* child by the name of Ting Kock King, supposedly born on 10 October 1948. Of the inconsistency between the sworn statements, petitioner proferred no explanation whatsoever, although counsel for appellant insinuates in the brief that Ting Kock King could be an adopted child of the spouses; but the insinuation is totally devoid of proof, which the applicant was duty bound to submit to the Court. *Held*: The contradictory statements under oath can only lead to the conclusion either that petitioner tried to evade lawful taxes due from him or that he has concealed the truth in his application. Either alternative would be sufficient to disqualify him for admission to Philippine citizenship.

D E C I S I O N

Appeal from a decree of the Court of First Instance of Rizal, denying the application of petitioner-appellant Lao Lian Su *alias* Lorenzo Ting for admission to Philippine citizenship, because of applicant's failure to observe irreproachable conduct in his relations with constituted authorities during the entire period of his residence in the Philippines.

We see no merit in the appeal. In his sworn petition for naturalization as well as in his testimony, petitioner stated that he has only three children with his wife Chua Kim Tia, namely:

Besie Ting, born 11/25/39
Esteban Ting, born 4/11/46
Betty Ting, born .... 8/16/51.

Yet in the verified income tax returns filed in his name and that of his wife for the years from 1951 to 1957, the contents of which he ratified under oath while on the witness stand, the spouses appear to have claim exemption for a *fourth* child by the name of Ting Kock King, supposedly born on 10 October 1948. Of the inconsistency between the sworn statements, petitioner proferred no explanation whatsoever, although counsel for appellant insinuates in the brief that Ting Kock King could be an adopted child of the spouses; but the insinuation is totally devoid of proof, which the applicant was duty bound to submit to the Court. As the record now stands, the contradictory statements under oath can only lead to the conclusion either that the petitioner tried to evade lawful taxes due from him or that he has concealed the truth in his application. Either alternative would be sufficient to disqualify him for admission to Philippine citizenship.

For all the foregoing considerations, the decision appealed from is affirmed, with costs against the appellant.

Bengzon, C.J., Padilla, Labrador, Concepcion, Paredes and De Leon, JJ., concurred.

Bautista Angelo, J., took no part.