

lation of legal duty. The interpretation adopted by the court below results in depriving a victim of any redress because of the very acts that injured her. The protection of vested rights is but a consequence of the constitutional guaranty against deprivation of property without due process, and a violation of law by another can in no way constitute such due process.<sup>5</sup>

It follows that Art. 2254 cannot militate against the right of the plaintiff herein to secure an absolute divorce as a result of the concubinage of her husband. (*Raymundo v. Peñas, G. R. No. L-6705, Dec. 23, 1954.*)

#### COMMERCIAL LAW

CARRIAGE OF GOODS BY SEA ACT: A PROVISION IN A BILL OF LADING REQUIRING THE SHIPPER TO SERVE NOTICE OF HIS CLAIM FOR LOSS OR DAMAGE UPON THE CARRIER WITHIN THIRTY DAYS AFTER RECEIPT OF NOTICE OF SUCH LOSS OR DAMAGE DOES NOT BAR THE FILING OF A SUIT BY THE FORMER AGAINST THE LATTER WITHIN ONE YEAR AFTER THE DELIVERY OF THE GOODS OR THE DATE WHEN SUCH GOODS SHOULD HAVE BEEN DELIVERED TO THE SHIPPER FOR THE RECOVERY OF THE LOSS OR DAMAGE, WHEN SUCH NOTICE OF THE SHIPPER'S CLAIM FOR LOSS OR DAMAGE WAS NOT GIVEN.

In the month of December, 1945, the goods specified in a bill of lading were shipped on the "S.S. Sea Hydra" of Isthmian Steamship Co., from New York to Manila, and were received by the consignee Udham Bazar & Co., except one case of vanishing cream valued at ₱159.78. The goods were insured against loss or damage by the Atlantic Mutual Insurance Co. Udham Bazar & Co. claimed indemnity for the

5. The view that the acts referred to in Art. 2254 are those of the offender and not those of the offended party is supported by the *Report of the Code Commission* (p. 167) submitted to the Legislature in explanation of the motives behind the innovations of the New Civil Code: "It is evident that no one can validly claim any vested or acquired right if the same is founded upon his having violated the law or invaded the rights of others."

loss from the insurer and was paid by the latter's agent, E.E. Elser Inc., the amount involved, i.e., ₱159.78.

Now E. E. Elser Inc. and the Atlantic Mutual Insurance Co. are claiming the amount of the loss from the Isthmian Steamship Co. and its agent, the International Harvester Co. of the Philippines. The Court of First Instance and Court of Appeals (when the case was appealed to the latter) held that E. E. Elser Inc. and Atlantic Mutual Insurance Co. had already lost their right to press their claim against the Isthmian Steamship Co. and the International Harvester Co. of the Philippines because of their failure to serve notice thereof upon the carrier within thirty days after receipt of the notice of loss or damage as required by clause 18 of the bill of lading which was issued concerning the shipment of the merchandise which had disappeared. On the other hand, E. E. Elser Inc. and the Atlantic Mutual Insurance Co. contend that the finding of the Court of Appeals is erroneous in the light of the provisions of the Carriage of Goods by Sea Act of 1936, which apply to this case, the same having been made an integral part of the covenants agreed upon in the bill of lading.

The question now is: Which should prevail—the provision in the bill of lading, or the provision of the Carriage of Goods by Sea Act?<sup>6</sup>

HELD: Clause 18 of the bill of lading must of necessity yield to the provisions of the Carriage of Goods by Sea Act in view of the proviso contained in the same Act which says: "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, . . . or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect."<sup>7</sup> This means that a carrier cannot limit its liability in a manner contrary to what is provided for in said Act, and so clause 18 of the bill of lading must of necessity

<sup>6</sup> "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given . . . *that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.*" Par. 4, Subdiv. 6, Sec. 3, Carriage of Goods by Sea Act. Italics supplied.

<sup>7</sup> Subdiv. 8, Sec. 3, Carriage of Goods by Sea Act.

be null and void. This interpretation finds support in a number of cases recently decided by the American courts.<sup>8</sup> (*E. E. Elser, Inc. and Atlantic Mutual Insurance Co. v. Court of Appeals, International Harvester Co. of the Philippines and Isthmian Steamship Co., G. R. No. L-6517, Nov. 29, 1954.*)

### CRIMINAL LAW

**SEDITION: IF THE OBJECT OF THE RAID WAS TO OBTAIN BY MEANS OF FORCE, INTIMIDATION OR OTHER MEANS OUTSIDE OF LEGAL METHODS, ONE OBJECT, TO WIT, TO INFLICT AN ACT OF HATE OR REVENGE UPON THE PERSON OR PROPERTY OF A PUBLIC OFFICIAL, THEN THE CRIME COMMITTED IS SEDITION AND NOT THE COMPLEX CRIME OF REBELLION WITH MULTIPLE MURDER, FRUSTRATED MURDER, ARSON AND ROBBERY.**

<sup>8</sup> Thus, in *Balfour, Guthrie & Co., Ltd., et al., v. American-West African Line, Inc. and American-West African Line, Inc. v. Balfour, Guthrie & Co., Ltd., et al.*, 136 F. 2d. 320, wherein the bill of lading provided that the owner should not be liable for loss of cargo unless written notice thereof was given within 30 days after the goods should have been delivered and unless written claim therefor was given within six months after giving such written notice, the United States Circuit Court of Appeals, Second Circuit, in a decision promulgated on August 2, 1943, made the following ruling:

"But the Act, Sec. 3 (6), 46 U.S.C.A. Sec. 1303 (6) provides that failure to give 'notice of loss or damage' shall not prejudice the right of the shipper to bring suit within one year after the date when the goods should have been delivered. To enforce a bill of lading provision conditioning a shipowner's liability upon the filing of written claim of loss, which, in turn, requires and depends upon the filing of a prior notice of loss, certainly would do violence to Sec. 3 (6). But further, as a like provision was apparently quite customary in bills of lading prior to the act, the reasonable implication of Sec. 3 (6) is that failure to file written claim of loss in no event may prejudice right of suit within a year of the scheduled date for cargo delivery. This is also to be concluded from Sec. 3 (8) 46 U.S.C.A. Sec. 1303 (8), that any clause in a bill of lading lessening the liability of the carrier otherwise than as provided in the Act shall be null and void. A similar provision in the British Carriage of Goods by Sea Act, 14 & 15 Geo. V. c. 22, has been interpreted to nullify any requirement of written claim as a condition to suit at any time. Cf. *Australasian United Steam Navigation Co., Ltd. v. Hunt*, (1921) 2 A. C. 351; *Coventry Sheppard & Co. v. Larrinaga S. S. Co.*, 73 Ll. L. Rep. 256."

This ruling was reiterated in *Mackay, et al. v. United States, et al.*, 83 F. Supp. 14, Oct. 29, 1948, and *Givaudan Delawanna v. The Blijden-dijk*, 91 F. Supp. 663, June 8, 1950.

It was sufficiently established that Narciso Umali was the one who contacted the Huks, induced them to attack Tiaong, Quezon on Nov. 15, 1951, kill Mayor Punzalan and burn his house; and in so doing two other houses were burned, three persons killed, several seriously wounded and some robbed. This was done with the help and aid of Epifanio Pasumbal and Isidro Capino, his co-accused.

Hence, the accused were charged with and convicted of the complex crime of rebellion with multiple murder, frustrated murder, arson and robbery in the Court of First Instance of Quezon. One of the questions raised in this appeal is whether the defendants were rightly convicted of the said complex crime.

**HELD:** The crime committed here was not rebellion but sedition. The purpose of the raid and the act of the raiders in rising publicly and taking up arms were not exactly against the government and for the purpose of doing the things defined in article 134 of the Revised Penal Code.<sup>9</sup> The raiders did not attack the *Presidencia*, the seat of the local government. Rather, the object was to attain by means of force and intimidation one object only, to wit, to inflict an act of hate or revenge upon the person or property of a public official, Punzalan, who was then the mayor of Tiaong, Quezon. Under Article 139<sup>10</sup> of the same code this was sufficient to constitute sedition. (*People v. Umali, et al., G. R. No. L-5803, Nov. 29, 1954.*)

### IN ORDER TO OBTAIN CONVICTION UNDER THE PROVISIONS OF ARTICLE 312,<sup>11</sup> REVISED PENAL CODE, THE USE OF VIO-

<sup>9</sup> "The crime of rebellion or insurrection is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said government or its laws, the territory of the Philippine Islands or any part thereof, or any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislative, wholly or partially, of any of their powers or prerogatives."

<sup>10</sup> "The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation or other means outside of legal methods, any of the following objects. x x x  
"3. To inflict any act of hate or revenge upon the person or property of any public officer or employee."

<sup>11</sup> "Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be