be null and void. This interpretation finds support in a number of cases recently decided by the American courts.[8] (*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.

[8] 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 Blijdendijk*, 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.[9] 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 [10] 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,[11] REVISED PENAL CODE, THE USE OF VIO-

[9] "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."

[10] "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."

[11] "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

LENCE AND INTIMIDATION MUST HAVE BEEN THE MEANS BY WHICH THE POSSESSION OF REAL PROPERTY WAS TAKEN, AND MUST NOT HAVE BEEN EMPLOYED SUBSEQUENT TO THE TAKING OF SUCH POSSESSION.

Elpidia Palileo, the complainant in this case, filed á homestead application for a parcel of land described in the application, which application was subsequently approved. She then designated Juan Celeste as administrator of the property. When the latter and Jose Panoso visited the property, they found the accused in this case and others in possession of the land and cultivating the same. When questioned by Celeste whether they had permission to take possession of and work on the land, the accused and their companions replied that they did not need any such permission from anyone because the land they were working on was of the public domain. When Celeste informed the accused and their companions that the property belonged to his principal, Elpidia Palileo, the accused not only told him that they would kill anyone who tried to drive them away but also threatened Celeste and Panoso with their bolos and chased them away.

Thus, the accused were prosecuted and charged with having criminally entered into, occupied, worked on and cultivated a parcel of land belonging to another "with intimidation upon person", in violation of the provisions of Article 312[12] of the Revised Penal Code.

HELD: One of the essential elements of the offense punished by the legal provision abovementioned is that violence or intimidation upon persons was used in order to take possession of real property from the hands of the owner or actual occupant thereof.

Upon the facts stated above it seems obvious that the prosecution failed to prove this essential element of the crime. When Celeste and Panoso went to the property in question they already found the accused and their companions in possession. There is absolutely no evidence to show that, *to obtain such possession*, they used either violence or intimidation upon any person in particular. Whatever threat or intimidation was resorted to by them—according to the prosecution itself—took place *subsequent* to their entry into the property. The only possible conclusion justified by the evidence, therefore, is that the accused secured possession of the land through other means, such as strategy or stealth,[13] during the absence of the owner and of the person she had left in charge of the property. (*People v. Dimacutak and Dimacutak, C. A.-G. R. No.*-1107-*R*, Sept. 6, 1954.)

punished by a fine of from 50 to 100 per centum of the gain which he shall have obtained, but not less than 75 pesos.

"If the value of the gain cannot be ascertained, a fine of from 200 to 500 pesos shall be imposed."

[12] *Id.*

LIBEL: INDIVISIBILITY; THE CRIME OF LIBEL COMMITTED BY A SINGLE PUBLICATION MAY NOT BE DIVIDED INTO AS MANY SEPARATE OFFENSES AS THERE MAY BE PERSONS OFFENDED THEREBY.

This is a prosecution for libel in three separate criminal cases filed by the same complainants against the same defendant.

Defendant, Dr. Jose B. Atencio, was the senior resident physician of the Camarines Norte Provincial Hospital. Complainant Wilfrido P. Panotes was the Governor of the same province. Complainant Concepcion F. Abaño is the wife of Dr. Abaño, another physician in the same locality. The Atencios were the owners of the "New Ideal Drug Store" while the Abaños were the owners of the neighboring "Farmacia Milagrosa," both located in Daet.

Sometime in July, 1950, Governor Panotes called the attention of the Director of the Camarines Norte Provincial Hospital to certain complaints he alleged to have received from the public concerning the actuations of Dr. Atencio as a hospital physician. Among these complaints was that he was requiring hospital patients to buy the medicines prescribed for

[13] This gives rise only to a civil action under sec. 1, Rule 72, Rules of Court: . . . a person deprived of the possession of any land . . . by force, intimidation, threat, strategy, or stealth, . . . may, at any time within one year after such unlawful deprivation . . . bring an action in the proper inferior court against the person or persons unlawfully . . . depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. . . ."

them from his own drugstore. On July 20, 1950 formal administrative charges were preferred against him by the Governor.

As a result, Dr. Atencio wrote a letter to the Governor and attached an indorsement to his answer to the administrative charges against him, both of which contained imputations against the character of the Governor and his relations with Mrs. Abaño, thus prompting the governor to file the present cases for libel against Dr. Atencio—one based upon the letter to the governor, another based upon the indorsement to the answer to the administrative charges and a third filed by the governor and Mrs. Abaño jointly.

The three criminal cases were heard jointly by the Court of First Instance of Camarines Norte, which found the defendant guilty and imposed three separate penalties upon him.

The question to be decided in this case is whether the crime of libel committed by a single publication may be divided into as many separate offenses as there may be persons offended thereby.[14]

HELD: The theory of indivisibility of the crime of libel committed by a single publication, so that there may not be as many separate offenses as there may be persons offended

[14] If a crime of libel committed by a single publication may be divided into as many separate offenses as there may be persons offended thereby, so that there would also be as many complaints or informations filed, the result would be that there will be as many penalties imposed upon the same defendant.

However, in the case at bar, the principal questions decided by the court were whether or not there was sufficient publication and whether or not the letter written by Dr. Atencio to the Governor and the indorsement contained in his answer to the administrative charges against him constituted privileged communication. The court held that there was no sufficient publication and that the communication was privileged. Hence, the accused was acquitted, because sufficiency of publication is an essential element of libel and the fact that the communication was privileged is a good defense thereto.

The accused having been acquitted, there was, therefore, no necessity for the court to decide the question of whether or not a single act charged to be libelous may be made the basis of separate complaints by as many persons claiming to have been offended thereby, since the danger of being punished by three separate penalties as a result of the three separate informations against the accused was abated.

Nevertheless, the writer of the decision thought it wise to decide that precise question, in order to forestall the evil that might fall upon other persons similarly situated as the accused in the case at bar.

thereby, still prevails in American jurisprudence,[15] and that the reasons therefor may be thus epitomized, i. e., that the gist of the crime of libel is that it tends to affect injuriously the peace and good order of society rather than the injury to the several individuals libeled; that a man shall not be twice vexed for one and the same cause,[16] that a defendant could not be convicted and punished for two distinct felonies growing out of one single act,[17] and that the State cannot split up one crime and prosecute it in part. If these principles were sound, as we deem they are, the most that could be done in the three cases at bar was to merge the charges therein made and proceed to punish the defendant for only one crime of libel; and even if we were of the opinion that the number of crimes

[15] "A single publication involves only a single offense, even though the libel therein contained may reflect upon several different persons." (33 Am. Jur. 294).

"A libel on two or more persons contained in one writing and published by a single act constitutes but one offense so as to warrant a single indictment therefor. A court charging defendant with publishing two or more libels, or with making two publications of the same libel, is bad for duplicity." (37 C. J. 147).

"Libel on two or more persons though not associated, charging them with offenses different in character but contained in a single writing and published by a single act, constitute but one offense, since the gist of the crime of libel is that it tends to affect injuriously the peace and good order of society rather than injury to the several individuals libeled." (State v. Poulson, 141 Atlantic Reporter, 165).

"Indictment for libel, charging publication of single article accusing three judges with offenses, held to allege but one libel and but one crime on defendant's part, even though it be considered that publication set out different unrelated offenses and that they were committed by different officials." (*Id.*)

[16] Sec. 1, par. 20, Art. III, Constitution of the Philippines, provides that "no person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." And one of the grounds for a motion to quash the complaint or information in criminal cases is "that the defendant has been previously convicted or in jeopardy of being convicted . . . of the same charge." (Sec. 2, par. h, Rule 113, Rules of Court).

[17] If, for example, a man fires his gun only once and the bullet discharged kills two individuals, the law makes the case come within the scope of the provisions of Art. 48 of the Revised Penal Code, and requires the filing of only one and not two or more informations against the offender; the same thing can be said of libel that harms two persons by a single act of publication. See People v. De Leon, 49 Phil. 437; U. S. v. Gustilo, 19 Phil. 208.

The act of taking two roosters in the same place and on the same occasion cannot give rise to two crimes having an independent existence of their own, because there are not two distinct appropriations nor two intentions that characterized two separate crimes. (Decision of the Supreme Court of Spain of June 30, 1894).

of libel committed by the single publication of an article depended on the number of persons libeled thereby, such crimes should be merged to constitute a complex crime under the provisions of Article 48[18] of the Revised Penal Code. (*People v. Atencio, C. A.-G. R. No.* 11351-*R*, 11352-*R*, 11353-R, Dec. 14, 1954.)

INTERNATIONAL LAW

THE RULES OF CIVIL LAW CONCERNING INDUSTRIAL ACCESSION ARE NOT INTENDED TO REGULATE ACCESSIONS BETWEEN PRIVATE PERSONS AND A SOVEREIGN BELLIGERENT, NOR TO APPLY TO CONSTRUCTIONS MADE EXCLUSIVELY FOR PROSECUTING A WAR, WHEN MILITARY NECESSITY IS TEMPORARILY PARAMOUNT.

The Republic of the Philippines as well as defendants are appealing from the decision of the Court of First Instance of Batangas in an expropriation proceeding filed by the Republic for the expropriation of a large area of land located in Lipa City, upon which the Armed Forces of the Philippines constructed and now operates and maintains the Fernando Air Base.

The land in question was, during the later part (1943) of the Japanese occupation, occupied by enemy forces and converted into a campsite and airfield. The houses along the National Highway and the provincial roads were destroyed, and the fruit trees, orchards, and sugar crops cut down; in place thereof, the Japanese forces built concrete airstrips, concrete taxi-ways, dugouts, canals, concrete ramps, ditches, gravel roads, and air-raid shelters.

The battle for liberation added to the devastation of the area in question. Upon liberation, the United States Army took possession of the airfield; and on July 4, 1946, the air base was handed over by the U.S. Government to the Armed

[18] "When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Forces of the Philippines. The Philippine Army then took steps to negotiate the purchase of the area for the purpose of constructing thereat a permanent air base. The extrajudicial negotiations, however, were unsuccessful, for the great majority of the landowners did not want to accept the price offered by the government. Hence, the government decided to expropriate the land and accordingly filed the complaint for expropriation.

None of the defendants questioned the purpose of the expropriation in their respective answers. The question to be decided boils down to the resolution of whether the improvements made on the land by the Japanese during the enemy occupation should be included in the determination of the just compensation to be paid to the landowners. Defendants insist that a belligerent occupant could not take private property without just compensation; that the Japanese forces were possessors of their lands in bad faith; and that therefore, the improvements constructed thereon by them should, under our civil law, belong to the owners of the lands to which they are attached.[19]

HELD: The defendants' argument is untenable. The rules of the Civil Code[20] concerning industrial accession were not designed to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount. While "private property may not be confiscated,"[21] confiscation differs from the temporary use by the enemy occupant of private land and buildings for all kinds of purposes demanded by the necessities of war.[22]

[19] "He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity." Art. 449, New Civil Code.

[20] Arts. 445 to 456, New Civil Code.

[21] Art. 46 of The Hague Regulations.

[22] II Oppenheim, *International Law*, Lauterpacht Edition, sec. 140. Thus, the U.S. War Department Rules of Land Warfare of 1940 provide that "the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real estate may be utilized for marches, camp sites, construction of trenches, *etc.* Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnaissance, cover defense, *etc.* Fences, woods, crops, buildings, *etc.* may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army." (Quoted in Hyde, *International Law*, Vol. II, p. 1894).