CASES NOTED

WHERE A CRIMINAL CASE WAS DISMISSED UPON A MOTION TO QUASH ON THE GROUND OF DOUBLE JEOPARDY, WHEN, IN FACT, THERE WAS NO DOUBLE JEOPARDY, BUT THE ORDER OF DISMISSAL HAS BECOME FINAL AND EXECUTORY, SAID ORDER HAS THE EFFECT OF *RES JUDICATA* UPON THE GOVERNMENT, AND THE LATTER CANNOT MAINTAIN A NEW ACTION FOR THE SAME CRIME.

FACTS: An information charging Petilla with the crime of slight physical injuries was filed in the JP Court. During the hearing, the JP found that the injuries suffered by the offended party would require more than thirty (30) days to heal and so, believing that the case was beyond his jurisdiction, he forwarded said case to the CFI for further proceedings. Consequently, the fiscal amended the information charging the accused with serious physical injuries and the case was sent to the JP for the corresponding preliminary investigation. The accused Petilla having waived his right to preliminary investigation, the case was returned to the CFI where the accused filed a motion to quash on the ground that the amended information constituted double jeopardy. By an order dated Feb. 28, 1950, the court granted the motion to quash and dismissed the case.

Instead of appealing, the fiscal asked for the return of the case to the JP Court for trial on the merits under the original information. His motion was favorably acted upon and the record of the case was sent back to the JP. On June 17, 1950, however, the fiscal asked for the provisional dismissal of the case alleging that on the same date he was filing in the CFI an information for serious

physical injuries, and accordingly the JP dimissed the case provisionally.

On June 17, 1950, as above stated, a *new* case was initiated in the CFI with the filing of a *new* information for serious physical injuries. The accused moved to quash the new information on the ground that the order of Feb. 28, 1950 above mentioned having become final and executory cannot now be set aside and disregarded by the Court. The Court sustained the motion. The People appealed.

HELD: The CFI erred when, on Feb. 28, 1950, it dismissed the case on the ground that the filing of the amended information charging the accused with serious physical injuries constituted double jeopardy. "The charge contained in the original information was for slight physical injuries because at that time the fiscal believed that the wound suffered by the offended party would require medical attendance only for a period of eight days, but when the JP found that the wound would not heal until after a period of thirty days, he forwarded the case to the CFI for further action. It, therefore, appears that the act which converted the crime into a more serious one had supervened after the filing of the original information. And this supervening event can still be the subject of amendment or of a new charge without necessarily placing the accused in double jeopardy x x x."

While the said order of Feb. 28, 1950 was erroneously entered, by the failure of the fiscal to appeal from the order, it became final and executory. "Whether rightly or wrongly, said order stands and cannot now be set aside or rendered ineffective. That order is binding upon the parties. That order has the effect of *res judicata* upon the Government." Order appealed from affirmed. (*The People of the Philippines vs. Pedro Petilla, G.R. No. L*-5070, *Dec.* 29, 1952.)

WHERE ALL THE REQUISITES FOR A VALID CONSIGNATION HAVE BEEN COMPLIED WITH, AND THERE CAN BE NO REASON FOR DISAPPROVING SAID CONSIGNATION, THE LOSS OF THE THING OR AMOUNT CONSIGNED WITHOUT THE FAULT OF THE DEBTOR BEFORE ACCEPTANCE OF THE CONSIGNATION BY THE CREDITOR OR ITS APPROVAL BY THE COURT, SHOULD BE FOR THE ACCOUNT OF THE CREDITOR.

FACTS: On May 22, 1940, respondent Valencia executed in favor of petitioner Sia, a promissory for the sum of ₱753.63 payable "al plazo de cinco años contados desde esta fecha". The debt was secured by a mortgage on real property.

On September 4, 1944, Atty. E. Valencia, son of respondent, offered to pay to the petitioner the morgage debt of ₱753.63 in Japanese military notes, which the petitioner refused to receive, alleging that the currency had no value and that he wanted to be paid in Philippine currency. In view whereof, Atty. Valencia, on behalf of his father, informed the petitioner that he would consign the amount in the Court of First Instance. Accordingly, Atty. Valencia deposited with the Clerk of Court the sum of ₱753.63 in Japanese military notes, and filed a sworn pleading for consignation, in which it was made to appear that the debt was being paid to the petitioner who refused to accept the payment, and that the latter was notified of the consignation. The Clerk of Court receipted for the amount thus deposited by Atty. Valencia who thereupon prepared a notice to the petitioner of the deposit of the sum of ₱753.63 in Japanese military notes, which notice Atty. Valencia personally delivered in the office of the petitioner. The Clerk of Court in turn sent a notice of consignation by registered mail to the petitioner. The latter, however, never withdrew the money thus consigned.

As a result of the bombing by American planes about the end of 1944, the sum deposited by respondent was lost or destroyed.

After the promissory note had matured on May 2, 1945, the petitioner demanded from the respondent the payment of the mortgage debt in the sum of ₱753.63. The respondent refused, alleging that the debt had already been paid. Whereupon, the petitioner filed the present action in the Court of First Instance. The lower court and, later, the Court of Appeals held that the debt in question had already been paid in virtue of the consignation. Petitioner appealed to the Supreme Court. The petitioner contends that: (1) he was justified in refusing to accept the tendered payment because (a) the Japanese military notes were almost valueless and (b) the debt was not then due and payable; (2) there was no valid consignation; (3) the loss of the amount deposited should not be suffered by the petitioner; and (4) at any rate, the Japanese mlitary notes deposited in September, 1944, should not be valued at par with the Philippine peso.

HELD: (1) The petitioner was not justified in refusing to accept payment because:

(a) "It is already settled that the Japanese war notes were legal tender during the enemy occupation."

(b) "The promissory note executed on May 22, 1940, recited that the sum of ₱753.63 was payable 'al plazo de cinco años contados desde esta fecha'. The Court of Appeals held, and correctly, that the expression may mean as well that payment could be made at the end of five years from May 22, 1940, or May 22, 1945, as that the debt could be settled at any time within five years from May 22, 1940. The conclusion of the Court of Appeals is well founded, especially because the refusal of the petitioner to accept the tendered payment was premised on the allegation that the Japanese military notes were valueless, and not upon the allegation that the debt had not yet matured."

(2) "We cannot, x x x depart from the finding of the Court of Appeals that all the steps for a valid consignation had been taken by respondent Valencia."

(3) "While under the earlier case of Haw Pia vs. San Jose, 44 O.G. 2704, we held that the loss of the thing consigned, without the fault of the debtor, is to be for the account of the creditor, under the ruling in China Insurance & Surety Co. Inc. vs. Berkenkotter, R-CA-G,R. No. 322, and Padua vs. Rizal Surety & Insurance Co., 47 O.G. Sup. No. 12, p. 308, in order that the debtor may be released from the obligation, there must first be approval of the consignation by the court. Although there is an apparent conflict, we may reconcile the decisions by stating that, where all the requisites for a valid consignation have been complied with, and there can be no reason for disapproving said consignation, the loss of the thing or amount consigned occuring without the fault of the debtor before the acceptance of the consignation by the creditor or its approval by the court, should be for the account of the creditor. x x x. In the last analysis, the decisive consideration is that there be a valid consignation which may not be disapproved by the court."

In the case before us, if the matter of the approval of the consignation was presented to the court prior to the loss of the thing consigned, there can be no doubt about its approval.

"It is true that, under Article 1180 of the Civil Code, at any time before the creditor has *accepted* the consignation or the court has *declared that it was properly made,* the debtor may withdraw the thing or sum of money consigned, leaving the obligation in force; but it cannot be denied also, that until the thing or amount consigned shall have been withdrawn by the debtor, the creditor may accept the same, with the result that in the meantime the consignation is at the disposal both of the debtor and the creditor. The risk of loss before acceptance by the creditor or approval by the court is likewise mutual, because if it be determined that there was no valid consignation, the loss must be suffered by the debtor; otherwise, by the creditor."

(4) "Having come to the conclusion that the obligation was payable during the enemy occupation, and that the Japanese war notes were then legal tender at par with the Philippine peso, we are constrained to disagree with the petitioner," that the Japanese military notes deposited in September, 1944, should not be valued at par with the Philippine peso.

Decision affirmed. (*Laureano Sia vs. Court of Appeals and Numeriano Valencia, G.R. No. L-3742, Dec.* 23, 1952.)

[1] Two Justices, dissenting from this opinion, held that a debt payable al plazo de cinco años is not payable before the end of five years.

STATUTE OF FRAUDS; AGREEMENTS MADE IN CONSIDERATION OF MARRIAGE OTHER THAN A MUTUAL PROMISE TO MARRY.[1]

FACTS: In the JP Court, Felipe Cabague and his son Gerohimo sued the defendant Matias Auxilio and his daughter Socorro to recover damages resulting from defendants' refusal to carry out the previously agreed marriage between Socorro and Gerohimo.

The complaint alleged, in short: (a) that defendant promised such marriage to plaintiffs, provided the latter would improve the defendant's house and spend for the wedding feast and the needs of the bride, (b) that relying upon such promises plaintiffs made the improvement and spent ₱700; and (c) that without cause defendants refused to honor their pledged word.

The defendants moved to dismiss, arguing that the contract was oral, unenforceable under the Rules of Court. The JP Court dismissed the case. On appeal to the CFI, the plaintiffs reproduced their complaint and defendants reiterated their motion to dismiss. From an order of dismissal, plaintiffs appealed to the Supreme Court.

HELD: While, under the former rules of procedure, when the

[1] This case illustrates both the general rule and the exception with respect to agreements made in consideration of marriage other than a mutual promise to marry.

complaint did not state whether the contract sued on was in writing or not, the statute of frauds could be no ground for demurrer, under the new Rules "defendant may now present a motion to dismiss on the ground that the contract was not in writing even if such fact is not apparent on the face of the complaint. The fact may be proved by him," (citing Moran, Rules of Court, 2d Ed. p. 139, Vol. I)

"The understanding between the plaintiffs on one side and the defendants on the other, really involves two kinds of agreement. One, the agreement between Felipe Cabague and the defendants *in consideration of the marriage of Socorro and Geronimo.* Another, the agreement between the two lovers, as *'a mutual promise to marry'*. For breach of that mutual promise to marry, Geronimo may sue Socorro for damages. This is such action, and evidence of such mutual promise is admissible.[2] However, Felipe Cabague's action may not prosper, because it is to enforce an agreement in consideration. Evidently as to Felipe Cabague and Matias Auxilio this action could not be maintained on the theory of 'mutual promise to marry'. Neither may it be regarded as action by Felipe against Socorro 'on a mutual promise to marry'."

"Consequently, x x x Geronimo may continue his action against Socorro for such damages as may have resulted from her failure to carry out their matrimonial promises." (*Felipe Cabague & Geronimo Cabague vs. Matias Auxilio & Socorro Auxilio, G.R. No. L-5028, Nov.* 26, 1952)

THE PRINCIPLE OF STATE IMMUNITY FROM SUIT DOES NOT APPLY IN A SUIT BY A PARTY OR PARTIES AGAINST THE CIVIL AERONAUTICS ADMINISTRATION WHEN THE PURPOSE OF THE SUIT IS TO ENFORCE THE PROPRIETARY RIGHTS OF THE PLAINTIFF.

FACTS: Action for partition and accounting of rentals received by defendant Santos for the use and occupation of a parcel of land allegedly owned in common by the plaintiffs and defendant Santos. The plaintiffs complain that they made a demand upon

[2] By way of footnote, the Supreme Court said that "this is different from the situation in Atienza vs. Castillo (40 O.G. p. 2048) wherein the groom litigated against his bride and her parents for breach of matrimonial promise. We held in that case that the promise could not be proved orally because the bridegroom was suing to enforce a contract 'between his parents and those of the bride'."

Santos to have the said lot partitioned among them but the latter refused to do so, he having sold the lot to the Administrator of the CAA, who is now in possession thereof; and that the sale of the lot insofar as their shares are concerned is null and void. Hence, plaintiffs pray, among other things, that the purported sale by Santos to the National Airports Corporation, the predecessor of the CAA, insofar as their shares are concerned be declared null and void; that the said Administrator be directed to vacate the portions of the lot belonging to them, to pay them a reasonable rental until after possession of their shares in the lot shall have been restored to them and to pay damages and costs.

Upon motion of the Administrator of the CAA, the trial court dismissed the complaint against him on the ground that the CAA not being a juridical person has no capacity to sue and be sued.[1] Plaintiffs appealed.

HELD: "When the state or its government enters into a contract, through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual or reciprocal benefits accrue and rights and obligations arise therefrom, and if the law granting the authority to enter into such contract does not provide for or name the officer against whom action may be brought in the event of a breach thereof, the state itself may be sued without its consent, because by entering into a contract the sovereign state has descended to the level of the citizen and its consent to be sued is implied from the very act of entering into such contract."

"The CAA, even if it is not a juridical entity, cannot legally prevent a party or parties from enforcing their proprietary rights under the cloak or shield of lack of juridical personality, because it took over all the powers and assumed all the obligations of the defunct National Airports Corporation which had entered into the contract in question."

If the right of the plaintiffs to such shares of the land sold as claimed by them be established, "the plaintiffs should not and cannot be deprived of their proprietary rights in the parcel of land sold by their co-owner without their knowledge and consent." The order appealed from is reversed. (*Teodoro Santos, et als. vs. Leoncio Santos, the Administrator of the Civil Aeronautics Administration, and National Airports Corporation, G.R. No. L-4699, Nov.* 26, 1952.)

[1] Cf. Metran vs. Paredes, 45 O.G. 2835.

THE NATURAL GUARDIAN (MOTHER) OF A MINOR CANNOT ENCUMBER THE LATTER'S PROPERTY TO GUARANTY A LOAN SECURED FOR THE SUPPORT OF THE MINOR.

FACTS: In a proceeding for the guardianship of the Bautista minors, the court appointed the People's Bank and Trust Co. guardian of their properties, and F. Pañgilinan Vda. de Bautista, the mother of the minors, guardian of their persons. Subsequently, the minors' mother signed a document entitled "Deed of Loan", wherein she declares having borrowed and received from A. Bustos, for the support of her minor children, rice, clothing, and money from May 3, 1945, to January 1, 1949, by way of loan, with a total value of ₱6,525.00, which "will be paid in full in favor of Miss Bustos x x x as soon as the claim for pension in favor of the above-named six children shall have been approved and received." A little over a year after that, Bustos filed a claim in the guardianship proceedings for the said amount on the basis of the above-described "Deed of Loan." The U.S. Veterans Administration opposed the claim. Without any evidence having been offered or submitted, the court disallowed the claim. Claimant Bustos appealed contending that the minors' mother was the de facto guardian of the minors' properties, and may, therefore, validly encumber the same for "necessaries" furnished said minors for their support.

HELD: "The minors' mother was their natural guardian, entitled to their custody and care and responsible for their education, but such guardianship did not extend to their properties. She was not a *de facto* guardian; her acts were made as mother of the children, not as a *de facto* guardian." The claim is predicated exclusively on the "Deed of Loan," which was executed after the judicial guardian of the minors' properties had already been appointed, for supposed expenses prior to the institution of the guardianship proceedings. No evidence was offered to prove that the necessaries mentioned in the deed of loan were actually used or spent for the minors. The deed of loan itself is not sufficient to prove the above facts or competent as against the minors.

"Assuming, *arguendo*, that the mother and her natural children secured loans from claimant-appellant with which to purchase the food, clothing, and necessaries of her minor wards or to provide them with education, she certainly has no power nor authority to encumber the property of the wards to guaranty the loan thus secured, or to bind for the payment of the loan the pensions that

the minors may be entitled to receive thereafter. Only a judicial guardian of the ward's property may validly do so, and even then only with the court's prior approval secured in accordance with the rules."

Assuming that the minors should be made to pay and that justice supports claimant's demand, the appropriate remedy to enforce their liability is not through the written promise that their natural guardian made. Appeal dismissed. (*In Re Guardianship of Fernando, Francisca, Rafael, and Maria Candelaria, all surnamed Bautista, Minors. U.S.V.A. vs. Adela Bustos, G.R. No. L-4155, Dec.* 17, 1952.)

Note: Under the new Civil Code, "the father, or in his absence the mother, is not the *legal administrator* of the property pertaining to the child under parental authority". Consequently, under the new Civil Code, neither the father nor the mother need be judicially appointed in order to administer the property of his or her child under parental authority (II, Moran, p. 516, 1952 ed.)

But when the property of the child is worth more than two thousand pesos, the father or mother shall give a bond and shall be considered a *guardian of the child's property,* subject to the duties and obligations of guardians under the Rules of Court (Cf. arts. 320 and 326).

FAILURE ON THE PART OF THE JUSTICE OF THE PEACE TO CONDUCT A PRELIMINARY EXAMINATION AND TO ISSUE A WARRANT OF ARREST BEFORE TRIAL ON THE MERITS OF A CRIMINAL CASE BY THE COURT OF FIRST INSTANCE DOES NOT DEPRIVE THE LATTER OF ITS JURISDICTION.

FACTS: On October 5, 1948, a complaint was filed in the JP Court against the accused for theft of large cattle. The accused was already under custody before any warrant of arrest could be issued. On the same date the bail bond was fixed at ₱2,500.00, although later it was increased. On November 18, 1948, the complaint was read to the accused who entered a plea of not guilty, and the court conducted a preliminary investigation. On November 24, 1948, a warrant of arrest was issued by the JP and served on the accused on the same date. It also appears that the accused filed the necessary bail bond. On December 15, 1948, the JP issued an order finding that there was a *prima facie* case against the accused