ministratrix. In the inventory she filed, the 30 parcels of land were not included. In the project of partition, there appeared the statement that in order to shorten the proceedings and in order to have an equitable division among the heirs and widow, Donata Montemayor renounced her right to the conjugal property during the marriage in favor of their children and the children by the first marriage, and in the same manner the latter renounced their right to the capital property of their father in favor of the widow, as a result of which both properties,—whether capital property or conjugal property—formed the liquidated property to be divided among twelve heirs, including the widow.

After the hearing on the project of partition, the lower court rendered decision approving the project of partition submitted and closing the administration proceedings.

Not satisfied with the project of partition, the plaintiff Florencia Vitug brought action, claiming 1/12 of the 30 parcels of land not included in the project of partition, and in an amended decision, the lower court held that although the said 30 parcels were purchased with funds belonging to the conjugal partnership, from the conduct of Clodualdo Vitug and Donata Montemayor during their marital life, the inference was that Clodualdo Vitug had the unequivocal intention of transmitting the full ownership of the thirty (30) parcels of land so bought to his wife, Donata, thus considering the one-half of the funds of the conjugal partnership so advanced for the purchase of said parcels as reimbursable to the estate of Clodualdo Vitug on his death. Consequently, the 1/12 share of Florencia Vitug was only one-twelfth of the one-half of the ₱95,000 or ₱4,081.02, which the court awarded to Florencia Vitug.

Not satisfied with the decision, the plaintiff appealed, assigning as errors: (a) the holding that the conduct of Clodualdo Vitug in his life time was that he had the unequivocal intention of transferring the 30 parcels of land to Donata Montemayor, (b) the declaration that the said 30 parcels of land were not conjugal property and should not have been divided in accordance with the project of partition; (c) the declaration that the plaintiff was only entitled to 1/12 of ½ of the purchase price of the said 30 parcels of land, and (d) in not declaring that the plaintiff was entitled to 1/12 of the products of the lands from May 20, 1929, the date of death of Clodualdo Vitug.

HELD: The transmission and acceptance of an immovable property by gratuitous title cannot be presumed. It can only be brought about by a formal public document, and even if Clodualdo Vitug had expressly donated same to his wife, with all the formalities of the law, the donation would be considered inexistent before the eyes of the law, null and void by express prohibition of law (Art. 1334, old Civil Code; *Bough & Bough vs. Cantiveros & Hanopol*, 40 *Jur. Fil.* 452). Hence, Donata Montemayor did not become the owner of all the 30 parcels of land.

In the absence of concrete proof that the conversion of the nipa and mangrove lands into fishponds was only at the expense of Donata, the presumption is that the same was at the cost of the partnership (9 Manresa, 3rd ed., 634) and inasmuch as the conversion was due to the joint efforts of the spouses, the same shall be considered conjugal property. The said 30 parcels of land are also conjugal property for having been acquired during the marital life of the spouses, no matter in whose name the same was registered in the deed of sale or certificate of transfer of title. Likewise, the contention of the appellant that the said 30 parcels of land ought to have been divided in accordance with the project of partition is unfounded because the same, as well as the order approving it, referred only to the properties mentioned in the inventory.

Inasmuch as the 30 parcels of land were conjugal, ½ thereof belong to Donata, and the other half belongs to the heirs, of which the plaintiff is entitled to 1/11 thereof. Likewise, the plaintiff is entitled to receive 1/11 of ½ of the products of the said 30 parcels of land since May 20, 1929, the date of death of Clodualdo Vitug. (*Florencia Vitug vs. Donata Montemayor et al., G. R. No. L*-5297, prom. Oct. 20, 1953.)

LEGAL REDEMPTION; TENDER OF REDEMPTION MONEY NOT CONDITION *SINE QUA NON* TO VALID EXERCISE OF THE RIGHT OF REDEMPTION.

FACTS: Plaintiff Laureana Torio and Julian Raymundo, her husband, were co-owners *pro-indiviso* of a parcel of land, which co-ownership came about when Julian Raymundo transferred to

his prospective wife Laureana, one-half of said property by virtue of a donation *propter nuptias* executed on April 14, 1937. On May 4, 1944, Julian Raymundo sold his undivided one-half interest to Nicanor Rosario, the deed of sale having been registered in the Office of the Register of Deeds on the same date. The vendee has been in possession of the portion purchased by him from the date of transfer up to the present time. On May 12, 1944, Laureana Torio filed the present action for legal redemption, and on August 17, 1949, she deposited the amount of ₱40 as redemption price.

From the foregoing facts, the lower court held that plaintiff has lost her right to redeem the property due to her failure to offer to repurchase the property before she instituted the present action which is a *sine qua non* requirement before she could exercise the right of legal redemption, and dismissed the complaint. Not agreeable to the decision, the plaintiff appealed.

HELD: As held by the Supreme Court in a similar case (*De la Cruz vs. Marcelino,* 42 *O. G.* 1761), although Art. 1525 makes applicable to legal redemption the provisions of Arts. 1511 and 1518 (old Civil Code), these articles merely enumerate the amounts to be paid by the co-owner who wishes to redeem. They do not postulate any previous notice to the new owner nor a meeting between him and the redemptioner, much less a previous formal tender, before any action is begun in court to enforce the right. A sensible and prudent man would naturally endeavor to present the offer privately, to avoid the inconvenience of court proceedings. But it is not always just to graft into the statute such rules of common sense as may be deemed appropriate. And, considering that the co-owner has nine days only (Art. 1524, old Civil Code), the "previous tender" requisite might in some instances frustrate the assertion of the co-owner's prerogative. The new owner might even conceal himself to prevent redemption. It is imperative that such offer or tender is not an essential condition precedent to the co-owner's right to redeem. The important thing is to assert it in time and in proper form. The action and the consequent consignation must be held proper and the plaintiff's right to redeem must be upheld.

It appearing that the action for legal redemption was instituted by the plaintiff before the expiration of the period of nine (9) days from the date the deed of sale of the property in question was recorded in the office of the Register of Deeds, which step has the

effect of an offer or tender to redeem contemplated by the law, the plaintiff has not lost her right to exercise such legal redemption.

The decision appealed from is reversed and the defendant is ordered to execute a deed of reconveyance in favor of the plaintiff for the sum of ₱150 over one-half portion of the property in litigation, upon payment by plaintiff to defendant of said amount. (*Laureana Torio vs. Nicanor Rosario, G. R. No. L*-5536, prom. Sept. 25, 1953.)

POLITICAL LAW

CONSTITUTIONAL LAW; LEGISLATURE CAN ENACT LAWS BUT NOT INTERPRET THEM AS CONSTITUTIONAL WHEN IN FACT VIOLATIVE OF CONSTITUTIONAL PROVISIONS.

FACTS: Justices Pastor M. Endencia of the Court of Appeals and Fernando Jugo of the Supreme Court were correspondingly taxed income tax for their salaries as Members of the Judiciary. Accordingly they paid their tax liabilities, but asked for their refund in accordance with the provisions of Sec. 306 of the National Internal Revenue Code. As the Collector of Internal Revenue refused to pay the refund, said judicial officers filed the action before the Court of First Instance which, after hearing, rendered decision ordering the Collector to refund the income tax paid by said Justices, pursuant to the ruling in the Perfecto case on the same matter.

The Collector of Internal Revenue appealed, contending that inasmuch as the Congress did not favor the court interpretation of the provision of Sec. 9, Art. VIII of the Constitution which exempts judicial officers from the payment of income tax as the same is a dimunition of their salaries, said body enacted Republic Act 590, to counteract the ruling in the Perfecto case, particularly section 13 thereof which provided that no salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is thereby declared not to be a diminution of his compensation fixed by the Constitution or by law.