as "the tender of payment was made in check, and not his own at that, the plaintiff acted rightly in refusing it."

Second. A tender of payment, to be valid, must be unconditional. The tender of payment by the defendant was conditional. In offering the check, the defendant debtor, practically told the Bank, "Here is ₱600 but you must pay the remainder of the check, (₱4,400) to B. Vda. de Rullas". That condition the Bank's agency was unwilling to accept. And without in any manner implying that the creditor's refusal to accept the condition should be justified, we may state that the Bank in this case had some reasons to reject the condition.

The appellant labors under the impression that *it was the duty* of the Bank to honor and cash the check when and if the payee Vda. de Rullas presented it. Assuming that the check was in fact genuine, that it was negotiable, that it was drawn upon the Philippine National Bank, that the person presenting the check was in reality the payee B. Vda. de Rullas, and that the drawer had enough funds in the hands of the plaintiff bank, B. Vda. de Rullas could not compel nor sue the Bank to obtain payment of the check, because it does not appear that it had been accepted. (Sec. 189, Neg. Inst. Las.). The rule is that "the payee of a check unaccepted cannot maintain an action on it against the bank on which it is drawn". (Gen. Am. Life Ins. v. Stadium, N.C. 1943, 25 S.E. 2d 202) The reason being that "there is no privity between the holder and the bank until by certification of the check or the acceptance thereof, express or implied, or by any other act or conduct, it has made itself directly liable to the holder". (Standard Trust Co. v. Com. Nat. Bank, 1914, 81 S.E. 1074, 166 N.C. 112)

If the Bank was not the drawee, appellant's case would be less meritorious.

Third. Tender of payment, even if valid, does not by itself produce legal payment, unless it is completed by consignation.

Judgment affirmed. (Philippine National Bank v. Pedro C. Relativo, et al., G.R. No. L-5298, Promulgated Oct. 29, 1952)

FOREIGN INSURER MAY NOT WITHDRAW ITS CERTIFICATE OF AUTHORITY PENDING DETERMINATION OF A CLAIM AGAINST IT.

FACTS: This is a Resolution of the Supreme Court on the Motion for Reconsideration filed by the herein petitioners. Briefly,

the facts of the case as far as this motion for reconsideration concerned are:

The petitioners are foreign insurance companies allowed to do business in the Philippines. It appears that said companies issued fire insurance policies in favor of the respondent Yu Hun & Co. and that while the policies were in full force and effect, the properties insured were destroyed by fire. Yu Hun & Co. demanded payment of the policies but the insurers denied liability. Hence, Yu Hun & Co. sued to recover on the fire insurance policies issued in its favor. Pending the court's decision, the insurers applied for permission to withdraw their certificates of authority under the terms of Sections 202-A to 202-E of the Insurance Act as amended by Republic Act No. 447. The basis of their application to withdraw is that while they admit that Yu Hun & Co. has pending claims against them, their "liabilites" to said Yu Hun & Co. have been "reinsured" and therefore their withdrawal may properly be granted, which is in accord with the Insurance Commissioner's opinion.

ISSUE: The issue hinges on the interpretation of Section 202-C of the Insurance Act as amended by Republic Act No. 447 which provides as follows:

> SEC. 202-C. Every foreign Insurance Company which withdraws from the Philippines shall, prior to such withdrawal, discharge its liabilities to policyholders and creditors in this country. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities."

The Insurance Commissioner argues that, inasmuch as the "liabilities" of petitioners to Yu Hun & Co. have been "reinsured", the withdrawal may be permitted.

HELD: A careful analysis of Section 202-C of the Insurance Act as amended by Republic Act No. 447 reveals that the section consist of three parts. The first speaks of liabilities of the foreign insurer to policyholders and creditors. The second and third

obviously refer to its outstanding policies, i.e. policies on which no claim has as yet arisen, because the risk insured against has not yet happened. In other words, the first refers to accrued liabilities (outstanding claims) to be discharged; the second and third to contingent liabilities (outstanding risks) to be re-insured.

This case is governed by the first part—not by the second nor the third, that expressly relate to "policies insuring residents". The third, permitting "cancellation" obviously contemplates outstanding policies on which the risk has not yet happened, because evidently the insurer may not cancel a policy on which a claim has already accrued by the occurence of the risk. Wherefore, the inference becomes unavoidable that "policies insuring residents" in the second and third parts imply policies as to which the risk insured against has not yet happened. And the requirement that the foreign insurer "reinsure", backs this interpretation because, usually the subject-matter of the original insurance "must be *in existence* at the time the contract of reinsurance is made" (32 C.J. 46)

The Commissioner claims that the petitioners' liabilities to Yu Hun & Co. may be considered as "primary liabilities" in the second part of Sec. 202-C, which provides in part as follows:

> "x x x In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. x x x"

The quoted provision requires the foreign insurer to "reinsure". Our insurance act defines reinsurance as "one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance" (Sec. 88). This kind of reinsurance is not what Sec. 202-C contemplates, because the foreign insurer is not thereby relieved of local responsibility. The term reinsurance is also "applied to a contract between two insurers by which the one assumes the risks of the other and becomes substituted to its contracts, so that *on the assent* of the original policyholders, the liability of the first insurer ceases, and the liability of the second is substituted" (46 CJS 196). This is the "reinsurance" contemplated in the second part of section 202-C. The original insurer will be released only when the insured agrees with the insurer and reinsurer that he will accept the reinsurer. Yu Hun & Co. has not agreed. It is therefore improper to permit the foreign insurer, without the consent of the insured, to transfer to another insurer his accrued liabilities under a policy, because it is fundamental in our civil laws (Art. 1293, New Civil Code) that the debtor (insurer) may not have himself substituted by another without the consent of the creditor (policyholder).

The motion for reconsideration was denied. (*Scottish Union & Scottish Assurance Corporation, Ltd.; and St. Paul Fire & Marine Insurance Company, Petitioners vs. The Hon. Higino Macadaog, Judge of the Court of First Instance of Manila and Yu Hun & Company, Respondents. G.R. Nos. L-5717, L-5751 and L-5756, Promulgated Nov.* 19, 1952.)

UNJUSTIFIABLE REFUSAL TO ACCEPT PAYMENT OF PREMIUM IS FATAL TO DEFENSE OF NON-PAYMENT IN AN ACTION ON AN INSURANCE POLICY.

FACTS: On April 15, 1940, the defendant American corporation issued an endowment policy insuring the life of Celso R. Gonzales and designating the plaintiff as beneficiary. The premium was payable annually on or before April 15. The premiums for the first two years were duly paid. The premium accruing April 15, 1942 was not actually paid. The lower court however found as a fact that "On or before April 15, 1942 the premium for the third policy year was tendered to the branch office of the company in Iloilo City, but was not accepted because at the time it was tendered the office was closing for the day on account of the threat of bombing by Japanese planes." On September 22, 1942, Celso R. Gonzales died. Under the terms of the policy, non-payment of premiums on time would cause the lapse thereof.

The lower court rendered judgment in favor of the plaintiff on the following grounds: (1) That the premium for April 15, 1942 had been tendered on or before that date but was refused, and (2) because non-payment of that premium was excused by the occurrence of the war, the American Insurance company having closed its Iloilo office on and before April 16, 1942.

ISSUE: Whether or not, under the foregoing facts, the defendant-appellant is entitled to a reversal of the lower court's decision on the ground that the policy lapsed by reason of non-payment of premiums, as held in Constantino vs. Asia Life Insurance Company, 47 OGS 428 that "When the life insurance policy provides that non-payment