To dismiss a criminal complaint, which the accused is alleged to have agreed to do in the present case, does not necessarily constitute a criminal act, for the dismissal may be proper, there being no allegation to the contrary. It is possible, under the allegation of the information, to regard the crime charged as falling within the second paragraph of said article 210. However, this paragraph contemplates two cases: one in which the act agreed to be performed has been executed and one in which the said act has not been accomplished. There is no telling whether the information in the present case is for one or the other. Hence, the information is defective.

But while the information is insufficient to hold the accused for trial for direct bribery under the first or second paragraph of article 210, it is sufficient indictment for indirect bribery under article 211. And since it is the allegations of fact rather than the denomination of the offense by the provincial fiscal which determines the crime charged, the information in the present case may be sustained as one for indirect bribery under the said article 211 of the Revised Penal Code. The information in question should not have been dismissed.

The order appealed from is revoked and the case remanded to the court of origin for further proceedings. (*People vs. Eduardo Abesamis, G. R. No. L-5284*, prom. Sept. 11, 1953.)

ILLEGAL POSSESSION OF FIREARMS; "POSSESSES", MEANING OF; CRUEL AND UNUSUAL PUNISHMENT; WHAT CONSTITUTES REASONABLE PUNISHMENT.

FACTS: Prosecuted in the Court of First Instance of Lanao for homicide thru reckless imprudence and illegal possession of firearm under one information, the accused was acquitted of the first offense and found guilty of the second, for which he was sentenced to one year imprisonment. The accused appealed, raising factual, legal and constitutional questions, the latter having to do with the penalty of from 5 to 10 years imprisonment provided by Rep. Act No. 4, which the appellant considers cruel and unusual.

The firearm with which the appellant was charged with having in his possession was a rifle belonging to his father. Father and son lived in the same house, a little distance from a 27-hectare estate belonging to the family which was partly covered with cogon grass, tall weeds and second growth trees. From a spot in the plantation 100 to 120 meters from the house, the defendant took a shot at a wild rooster and hit Diragon Dima, a laborer of the family, who was setting a trap for wild chickens and whose presence was not perceived by the accused.

The evidence is somewhat conflicting on whether the owner of the rifle was with the accused at the time of the accidental killing, but it has been established that the defendant was alone when he walked to the plantation with his father's gun.

In his plea for the acquittal of the accused, counsel for appellant cited the case of United States *vs.* Samson (10 Phil. 323) wherein it was held that carrying a gun by order of the owner does not constitute illegal possession of firearm. The facts in that case were that a shotgun and nine cartridges belonging to Pablo Padilla who had a proper permit to possess them, were seized by the police from Samson while walking in the town of Santa Rosa, Nueva Ecija. Padilla was to use the shotgun in hunting that day and as he was coming along on horseback, sent Samson on ahead with the shotgun and cartridges.

HELD: Republic Act No. 4, amending Sec. 2692 of the Rev. Adm. Code, in its pertinent provision is directed against any person who *possesses* any firearm, ammunition therefor, etc. The word *possesses* was employed in its broad sense so as to include "carries" and "holds". This had to be so if the manifest intent of the Act is to be effective. The same evils, the same perils to public security, which the Act penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. Ownership of the weapon is necessary only insofar as the ownership may tend to establish the guilt or intention of the accused.

The term "control" and "dominion" themselves are relative terms not susceptible of exact definition, and opinions on the degree and character of control or dominion sufficient to constitute a violation, vary. The rule laid down by United States Courts—rule which we here adopt—is that temporary, incidental, casual, or harmless possession or control of a firearm is not a violation of a statute prohibiting the possessing or carrying of this kind of weapon. A typical example of such possession is where "a person picks up a

weapon or hands it to another to examine or hold for a moment, or to shoot at some object." (*Sanderson vs. State,* 5 *S. W.* 138; 68 *C. J.* 22.)

In the light of these considerations, it is a mistake to point to the case of United States *vs.* Samson, *supra.* His holding or carrying of his father's gun was not incidental, casual, temporary or harmless. Away from his father's sight and control, he carried the gun for the only purpose of using it, as in fact he did with fatal consequences.

The Samson case and the case at bar differ fundamentally in that in the former, although Samson had physical control of his employer's shotgun and cartridges, his possession thereof was undoubtedly harmless and innocent as evidenced by the fact that apparently he bore them in full view of the people he met and the authorities, unlike in the latter wherein the accused carried same for the purpose of using it.

The penalty of five to ten years' imprisonment for possessing or carrying firearms is not cruel or unusual, having due regard to the prevalent conditions which the law proposes to suppress or curb. The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify the imprisonment which in normal circumstances might appear excessive. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases, and the law is not to be declared unconstitutional just because of certain circumstances.

Judgment modified accordingly so as to impose the penalty of five years, with the recommendation, however, that the imprisonment be reduced to six months so as not to make the punishment too harsh. (*People vs. Alberto Estoista, G. R. No. L*-5793, prom. Aug. 27, 1953.)

COMMERCIAL LAW

SALES; ENDORSEMENT OF QUEDANS TO CREDITOR TO SECURE INDEBTEDNESS DOES NOT MAKE CREDITOR OWNER OF GOODS COVERED THEREBY; LOSS OF GOODS COVERED BY QUEDANS INDORSED IS BORNE BY INDORSER AND NOT BY INDORSEE.

FACTS: As of February, 1952, the estate of Pedro Rodriguez was indebted to the Philippine National Bank in the amount of ₱22,128.44

representing the balance of the crop loan of the estate for the 1941-1942 sugar cane crop. In said month the administratrix of the estate, upon the request of said Bank through its Cebu branch, delivered and endorsed to the latter two quedans covering 2,198.11 piculs of sugar issued by the Bogo-Medellin Milling Co., although according to the Bank only one quedan covering 1,071.04 piculs was delivered. The sugar covered by said quedans was lost sometime in 1943, due to the last war. In 1948 the above indebtedness was paid to the Bank upon insistence and pressure by said Bank, according to the appellant.

Under the theory that if the Bank did not refuse to release the sugar when the plaintiff asked for it it could have been sold at ₱25.00 per picul or for a total amount of ₱54,952.75, the plaintiff brought this action for the recovery of said sum. After trial, the Court of First Instance of Manila dismissed the complaint on the ground that the transfer of the quedans to the Bank did not transfer the ownership of the sugar, and consequently the loss thereof should be borne by the plaintiff. From said decision the administrator appeals.

The plaintiff contends that (a) the delivery and indorsement of the quedans to the Bank transferred the ownership of the sugar to the latter (Sec. 41, Warehouse Receipts Law) so that the Bank should suffer its loss, on the principle that "a thing perishes for its owner", (b) had the Bank released the sugar in February, 1942, plaintiff could have sold it for ₱54,952.75, from which the loan could have been deducted, the balance to have been retained by plaintiff, and that since the loan was liquidated in 1948, then the whole expected sales price of ₱54,952.75 should now be paid by the Bank to the plaintiff, and (c) that the defendant failed to exercise due care for the preservation of the sugar so that the loss was due to its negligence as a result of which said defendant should bear the loss.

HELD: Where the transaction involved in the transfer of a warehouse receipt or quedan is not a sale but pledge or security, the transferee or indorsee does not become the owner of the goods but he may only have the property sold and then satisfy the obligation from the proceeds of the sale. It is clear, therefore, that at the time the sugar was lost sometime during the war, the estate of Pedro Rodriguez was still the owner thereof, so that said goods are to be regarded as lost on account of the real owner, mortgagor or pledgor.