(Secs. 1370 and 1371, Rev. Adm. Code). If dissatisfied he pays the amount just the same and then files a protest (Sec. 1372, Idem) and the Collector re-examines the matter thus presented (Sec. 1379, Idem). However, when the property imported is subject to forfeiture under the customs laws (Sec. 1363, Idem) the goods are seized, a warrant for their detention is issued, the owner or his agent is notified in writing and after giving a hearing with reference to the offense or delinquency which gave rise to the seizure, the Collector in writing makes a declaration of forfeiture or fixes the amount of the fine to be imposed or takes such other appropriate steps he may deem proper (Secs. 1374, 1375, 1379[2], Idem). Both under protest and seizure cases the person aggrieved by the decision of the Collector may appeal to the Commissioner within fifteen (15) days (Sec. 1380, Idem), which officer shall approve, modify, or reverse the action of his subordinate and shall take such steps and make such order or orders as may be necessary to give effect to his decision.

In connection with the Memorandum Order of August 18, 1947, Sec. 551 of the Rev. Adm. Code provides that every chief of bureau shall prescribe forms and make regulations or general orders *not inconsistent with law* to carry into full effect the laws relating to matters within the Bureau's jurisdiction. But to become effective said forms and regulations must be approved by the Department Head and published in the Official Gazette or otherwise publicly promulgated. Because of this failure of approval by the Department Head and of publication, said memorandum has, therefore, no legal effect. Hence, if the law does not give the Commissioner the power to review and revise unappealed decisions of the Collector of Customs in seizure cases, then the memorandum order even if duly approved and published in the Official Gazette, would equally have no effect for being inconsistent with law. While Sec. 1393 of the Rev. Adm. Code deals with supervisory authority of Commissioner and of Department Head in certain cases, there is no similar legal provision in seizure cases. It could be inferred then that the law-makers did not deem it necessary or advisable to provide for this supervisory authority or power of revision by the Commissioner and the Department Head on unappealed seizure cases.

HELD: Under the present law governing the Bureau of Customs, the decision of the Collector of Customs in a seizure case if not protested and appealed by the importer to the Commissioner of

Customs on time, becomes final not only as to him but against the Government as well, and neither the Commissioner nor the Department Head has the power to review, revise or modify such unappealed decision. The Memorandum Order of the Insular Customs of August 18, 1947, is void and of no effect, not only because it has not been duly approved by the Department Head and duly published as required by Section 551 of the Rev. Adm. Code, but also because it is inconsistent with law.

The decision appealed from is affirmed. (*Sy Man, Etc. vs. Alfredo Jacinto, Etc., et al., G. R. No. L-5612*, prom. Oct. 31, 1953.)

CRIMINAL LAW

DIRECT BRIBERY AND INDIRECT BRIBERY; AN INFORMATION FOR BRIBERY, ALLEGING FACTS INSUFFICIENT TO CONSTITUTE DIRECT BRIBERY, SHOULD NOT BE DISMISSED IF SAID FACTS ARE SUFFICIENT TO CONSTITUTE INDIRECT BRIBERY.

FACTS: On April 1, 1950, the Provincial Fiscal of Isabela filed an information before the Court of First Instance of that province, charging Eduardo A. Abesamis of Direct Bribery, penalized under Art. 210 of the Revised Penal Code, alleging that the accused being then the Justice of the Peace of Echague and Angadanan, Isabela, and as such a public officer, did then and there willfully, unlawfully and feloniously demand and receive from Marciana Sauri the amount of ₱1,100.00, with the agreement that he would dismiss the case for Robbery in Band with Rape against Emiliano Castillo, son of said Marciana Sauri, which case was then pending in court.

On a motion to quash, the case was dismissed, on the ground that the facts alleged in the information do not sufficiently charge the crime of direct bribery. The Solicitor General appealed the case.

HELD: The crime charged does not come under the first paragraph of Art. 210 of the Revised Penal Code, for to be liable, the act which the public officer has agreed to perform must be criminal.

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