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FIRST DIVISION

[G.R. No. L-32320. July 16, 1979]

NATIONAL RICE & CORN CORPORATION (NOW RICE & CORN ADMINISTRATION), *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, DAVAO MERCHANDISING CORPORATION, FIELDMEN'S INSURANCE COMPANY INC., CESAR B. CEBALLOS, JESUS C. MARQUEZ and BARTOLOME CABANGBANG,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; LACK OF CAUSE OF ACTION; CASE AT BAR.— The Court of Appeals did not err in holding that the NARIC (now RCA) has no cause of action until it has secured the necessary import permit and it brings in the remaining collateral goods worth about US$480,000.00.

D E C I S I O N

FERNANDEZ, *J.*:

This is a petition for review by *certiorari* of the resolution of the Court of Appeals promulgated on January 23, 1970 in CA-G.R. No. 33127-R entitled "*National Rice & Corn Corporation, Plaintiff-Appellee, versus, Davao Merchandising Corporation, et al., Defendants-Appellants; Fieldmen's Insurance Co., Inc., Third-Party Plaintiff-Appellant, versus, Cesar Ceballos, et al., Third-Party Defendants-Appellees*" which reconsidered said court's decision promulgated on August 27, 1969[1] by reversing the judgment of the trial court and "dismissing the complaint as premature

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[1] Written by Justice Eulogio S. Serrano and concurred in by Presiding Justice Julio Villamor and Justice Juan P. Enriquez. Annex "A", *Rollo*, pp. 41-54.

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and for lack of cause of action, without pronouncement as to costs."[2]

The National Rice and Corn Corporation (NARIC) instituted in the Court of First Instance of Manila on February 9, 1962 against the Davao Merchandising Corporation (DAMERCO) and Fieldmen's Insurance Co. Inc. an action for recovery of a sum of money representing the balance of the value of corn and rice exported by the defendant Davao Merchandising Corporation, for and in behalf of the NARIC, on a no-dollar remittance or barter basis, pursuant to a contract whereby the defendant Davao Merchandising Corporation agreed to act as an agent of the plaintiff in so exporting such corn and rice and in importing collateral goods in exchange therefor, and to buy from the plaintiff the said collateral goods.

The defendant Fieldmen's Insurance Co. Inc., filed an answer with a cross-claim against the Davao Merchandising Corporation.

With leave of court, the Fieldmen's Insurance Co. Inc. filed a third-party complaint against Cesar Ceballos, Jesus C. Marquez and Bartolome Cabangbang based on the Indemnity Agreements.

The defendant, Davao Merchandising Corporation, filed an answer with counterclaims for damages caused to its business standing and commercial credit allegedly by plaintiff's false allegations and unjustified request for a writ of preliminary attachment. In the same answer, this said defendant alleged as special defenses that its juridical relationship with the plaintiff is governed by a contract, Exhibit "A", wherein it was agreed that this defendant would "act as agent" of the plaintiff "in exporting the quantity and kind of corn and rice" mentioned herein, "as well as in importing the collateral goods that will be imported thru barter on a back to back letter of credit or no-dollar remittance basis"; that answering defendant had agreed

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[2] Resolution written by Justice Juan P. Enriquez and concurred in by Presiding Justice Julio Villamor, Justice Nicasio A. Yatco and Justice Jose M. Mendoza. Justice Eulogio S. Serrano dissented. Annex "B", *Rollo*, pp. 76-95.

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"to buy the aforementioned collateral goods," not the corn grains that were exported; that, therefore, this defendant had no obligation to plaintiff until after such collateral goods had been imported; that these defendants should not be made to pay plaintiff, since the collateral goods worth more than US$480,000.00 had not been imported as a consequence of the suspension of barter transactions and non-renewal of barter permits by the new administration; and that the promissory notes sued upon by the plaintiff do not reflect the true intent and relationship of the parties and is wanting of consideration.

The writ of attachment which was issued on motion of the plaintiff was subsequently set aside.

The trial court rendered judgment in favor of the plaintiff, National Rice and Corn Corporation (NARIC), ordering the defendants, Davao Merchandising Corporation and Fieldmen's Insurance Co. Inc., to pay, jointly and severally, to the plaintiff, the sum of ₱209,995.16 with interest at 8% per annum from September 1, 1961, until said amount has been fully paid, plus the further sum of ₱10,000.00 as attorney's fees and the costs of the suit. On the cross-claim filed by defendant, Fieldmen's Insurance Co. Inc., against its co-defendant, Davao Merchandising Corporation, and on the third-party-complaint filed by Fieldmen's Insurance Co. Inc. against Cesar B. Ceballos, Jesus C. Marquez and Bartolome Cabangbang, said Davao Merchandising Corporation and said third-party-defendants were ordered to pay, jointly and severally, to Fieldmen's Insurance Co. Inc. whatever amount the latter may be obliged to pay the plaintiff under the judgment, plus 10% thereof as attorney's fees and the costs of the suit.[3]

The defendants, Davao Merchandising Corporation and Fieldmen's Insurance Co. Inc., appealed from the decision of the Court of First Instance of Manila to the Court of Appeals.

The appeal was docketed as CA-G. R. No. 33127-R. On August 27, 1969, the Court of Appeals rendered its decision

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[3] Joint Record on Appeal, pp. 226-227. *Rollo*, p. 203.

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modifying the decision appealed from in that the liability of the appellant, Davao Merchandising Corporation, was fixed at ₱199,690.97, with interest at 8% per annum from July 17, 1962, and the award of attorney's fees in favor of the appellee, National Rice and Corn Corporation, was reduced to ₱2,000.00.[4]

On motion for reconsideration filed by the defendant-appellant DAMERCO, the Court of Appeals promulgated a resolution on January 23, 1970, reversing the judgment appealed from and rendering a new judgment dismissing the complaint as premature and for lack of cause of action, without pronouncement as to costs.[5]

The National Rice and Corn Corporation (now Rice and Corn Administration) filed this petition for *certiorari* to review the resolution of the Court of Appeals promulgated on January 23, 1970.

However, said petitioner did not file a brief but submitted the following manifestation:

"COMES NOW the petitioner, through counsels and to this Honorable Court, most respectfully manifests:

1. That on August 24th instant, counsels for petitioner received a notice requiring that within thirty (30) days from receipt, to file printed brief, furnishing copies thereof to the respondents;

2. That petitioner had already forwarded and attached to the petition twelve (12) copies each of the Record on Appeal, briefs of the parties, as well as all pleadings touching on the issue(s) involved, as filed with the Court of Appeals;

3. That considering further that the principal issues are the interpretation of the contract, and/or in relation with the promissory notes issued, the bonds posted, and the other evidence on record; and the correctness of the conclusion drawn therefrom, which issues have already been extensively and exhaustively discussed in petitioner's brief and Motion for Reconsideration as filed with the Court of Appeals (Annex 'K' and 'F', petition), further invoking the

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[4] *Rollo*, p. 53.

[5] *Rollo*, p. 95.

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reasons relied upon by the learned Trial Court in its decision (pp. 219-277, RA) and the first decision of the respondent Court of Appeals (Annex 'A' petition) in support of petitioner's stand;

4. That considering finally that to make and prepare another brief, the contents of which is practically the same as those already discussed as above-stated would be repetitions.

WHEREFORE, PREMISES CONSIDERED, it is respectfully manifested before this Honorable Court that herein petitioner is submitting the case on the basis of the arguments contained in its Brief and Motion for Reconsideration as filed with the Court of Appeals as well as the reasons relied upon by the Trial Court in its decision and the first decision of the respondent Court of Appeals, in support of its stand before this Honorable Court.

Quezon City, Philippines, September 7, 1970.

Respectfully Submitted:

F. R. BAUTISTA & F.G. CORDOBA, JR.
Counsels for the Petitioner
c/o Legal Department, RCA
424 Quezon Blvd. Ext. Quezon City

By:

FRANCISCO G. CORDOBA, JR."[6]

The petition for *certiorari* alleges that the Court of Appeals erred:

"(a). In reversing its first decision, Annex 'A' hereof, and in denying petitioner's motion for reconsideration, Annex 'F' hereof, upholding in effect respondents theory in the interpretation of the contract, and/or in relation to the other evidences, mostly documentary in nature, in arriving at the conclusion that respondent Damerco acted merely as an agent in the exportation of the corn and importation of the collateral goods and to buy the goods only upon their arrival in the Philippines, and not that of a sale as contended by herein petitioner.

(b). That the conclusion drawn are premised on wrong assumptions, contrary to the evidence and the evident intention of the parties to the contract."[7]

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[6] *Rollo*, pp. 221-222.

[7] Petition, *Rollo*, pp. 20-21.

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The petitioner has not made a clear showing that the Court of Appeals erred in setting aside its original decision and rendering a new judgment dismissing the complaint as premature and for lack of cause of action.

It is not disputed that the Davao Merchandising Corporation merely acted as an agent of the National Rice and Corn Corporation (NARIC) in exporting the rice and corn in question. This fact is admitted in the counter-statement of facts of the National Rice and Corn Corporation in its appellee's brief filed with the Court of Appeals.[8] It is also a fact that because of the change of administration in the government, barter transactions were suspended. Hence, DAMERCO was not able to import the remaining collateral goods worth about US$480,000.00.

The Court of Appeals found in its resolution promulgated on January 23, 1970 that the contract in question, Exhibit "A" or "1", sustains the contention of the Davao Merchandising Corporation that the intention of the parties was for the Davao Merchandising Corporation to act (1) as agent of the NARIC (National Rice and Corn Corporation) in the exportation of the corn and rice, and (2) as the purchaser of the collateral goods to be imported from the proceeds of the sale of the corn and rice because:

"Clearly from the preamble of said contract, bids were previously called for the *purchase of corn and rice* to be exported as well as of the imported commodities that will be brought in, but said biddings did not succeed in attracting good offers. That was in July and August of 1959. Subsequently, herein defendant Damerco made an offer, not a bid, which the President of the Philippines, the Cabinet and the Naric Board of Directors accepted as the most advantageous to the Naric. Now, to be sure, the contract designates the Naric as the seller and the Damerco as the buyer. These designations, however, are merely nominal, since the contract thereafter sets forth the role of the 'buyer' (Damerco)' 'as agent of the seller' in exporting the quantity and kind of corn and rice as well as in importing the collateral

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[8] Annex "K", *Rollo*, p. 205.

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goods thru barter on a back to back letter of credit or no-dollar arrangements with other government agencies as authorized by the Cabinet Directive dated October 13, 1959, and 'to pay the aforementioned collateral goods x x x.' (Exhibits 1-A and 1-B.)

The foregoing provisions of the contract plainly support the contention of the Damerco that what it committed to do was to buy the collateral goods, which will be paid from the proceeds of the corn and rice exported on a no-dollar or back to back letter of credit arrangement per the Naric Charter which authorizes it to engage in barter agreements and so import such goods tax free (RA 633). It appears that the Naric had on stock eight thousand metric tons of corn which it could not dispose of due to its poor quality. This was the prime consideration why NARIC called for bids for its exportation. Now, as the preamble of the contract Exhibit A states, the Naric called for bids for the purchase of the corn and rice. It wanted a good price therefor in order to avoid losses. But precisely because of the poor quality of the corn, a direct purchase of said corn even with the privilege of importing commodities did not attract good offers. That was where Damerco came in with its offer to act as agent in the exportation of the corn, with the agent answering for the price thereof and shouldering all expenses incidental thereto, provided it can import commodities, paying the NARIC therefor from the price it offered for the corn. In other words, the primary consideration of Damerco was not the purchase of the corn but the purchase of the commodities to be imported from the proceeds of the corn. Note that since the corn would be exported on a no-dollar or back to back letter of credit, the Damerco would actually receive NO money either in dollars or in pesos for the corn exported. This arrangement, *i.e.*, barter or no-dollar transaction had a dual purpose. First, it will facilitate exportation because otherwise no foreigner would buy the corn at the price asked by the NARIC, especially if the same were to be paid here in dollars. Secondly, the DAMERCO can easily recover its expenses of exportation and at the same time make a modest profit from the collateral goods — essential, semi-essential and none essential exported in the proportion fixed by the Central Bank. On the other hand, the NARIC gets better than the market price for its corn and at the same time avoids the risks and expenses of exportation which it would otherwise take and pay if it were to export the corn itself, not to mention the fact that it did not attract good offers under its previous invitation to bid whereby the bidder would directly purchase the corn and rice.

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This, then, is the background of the transaction between the parties. The importation and purchase of the Damerco of the collateral goods was the main consideration in its entering into the contract. For how else explain its purchase of the NARIC corn which nobody else wanted? Indeed, the mode of payment supports the theory of herein defendant DAMERCO. Damerco was (1) to open a domestic letter of credit in the amount of Seven Hundred Twenty Thousand Pesos (₱720,000.00) representing half of 8,000 metric tons of corn, which domestic letter of credit shall be available to the NARIC, drawing therefrom through sight draft without recourse — 50% of the value of the letter of credit 30 days after the issuance of the *export permit* or the effectivity of the contract, whichever is later shall be cashed; and the remaining 50% shall be cashed in the same manner 90 days after the issuance of the *export permit* or the effectivity of the contract, whichever is later; and (2) to cause the establishment of a foreign letter or letters of credit covering at least the sum of $360,000.00 representing half of the cost of 8,000 metric tons of corn in favor of the NARIC, which shall be made available to the latter on sight draft or drafts without recourse, accompanied by shipping documents, in the following proportions: 50% of the value of the letter or letters of credit shall be cashed; and 60 days after the issuance of the *export permit* or the effectivity of the contract, whichever is later, the remaining 50% of the said letter or letters of credit shall be cashed (Par. 4 [a], Exhibit 1).

Note that the availability of said letter or letters of credit to the NARIC was dependent upon the issuance of the export permit. The payment therefor depended on the importation of the collateral goods, that is after its arrival as estimated to take from 30 to 90 days. Indeed, the contract sought to be enforced under the barter negotiations has reciprocal stipulations, which must be given force and effect (Rule 130, Sec. 9, Rules of Court; *Luna vs. Linstoc*, 74 Phil. 15; *Colmenar vs. Cosca*, 76 Phil. 857). And the contract being onerous, any doubt shall be settled in favor of the greatest reciprocity of interests (Art. 1378, Civil Code; *Liong vs. Aguilar, et al.*, 48 O.G. 1041; *Perez vs. Cortez*, 15 Phil. 211; *De la Cruz, et al. vs. Tanguilat*, 47 O.G. 4300).

There is no question that almost half of the collateral goods were imported and the Damerco paid for the collateral goods as they were received. However, and it is not disputed by plaintiff, due to the inferior quality of the corn, it had to be replaced with more acceptable stock (pp. 28-30, tsn., June 17, 1963). This caused such delay that the letters of credit expired without the NARIC being able to draw

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the full amount therefrom. This is an important point to bear in mind particularly in determining the reason behind the issuance of the checks. x x x"[9]

The contract between the NARIC and the DAMERCO, Exhibit "A", is bilateral and gives rise to a reciprocal obligation. The said contract, Exhibit "A", consists of two parts: (1) the exportation by the DAMERCO as agent for the NARIC of the rice and corn; and (2) the importation of collateral goods by barter on a back to back letter of credit or no-dollar remittance basis. It is evident that the DAMERCO would not have entered into the agreement were it not for the stipulation as to the importation of the collateral goods which it could purchase. The DAMERCO expected to make a modest profit out of its purchase of the collateral goods thereby covering up whatever expenses and losses it may incur in the exportation of the rice and corn. Under paragraph 9 of the contract, Exhibit "A", all expenses incident to the exportation of the corn and rice such as taxes, levies, fees, charges, labor for haulage and losses shall be for the account of DAMERCO, as well as expenses incident to importation. The contract also provided that DAMERCO should mill the *palay* at its own expense [Par. 3(b)]. It is iniquitous to compel the DAMERCO to make a full accounting of the purchase price of the rice and corn exported without first requiring the NARIC, now succeeded by Rice and Corn Administration, to secure from the proper government agency the license to enable the DAMERCO to import the remaining collateral goods. It would be unfair, to say the least, because then the DAMERCO would suffer a loss consisting of the substantial expenses incurred in the exportation of the rice and corn without the corresponding expected profits from the remaining collateral goods worth about US$480,000.00. This was thoroughly explained by the Court of Appeals thus:

"It appears that we were also misled to believe that the Damerco was buying the corn because the contract provides that the price of the corn subject matter thereof, shall be one hundred and eighty

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[9] *Rollo*, pp. 77-83.

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(₱180.00) pesos, Philippine Currency, per ton or ₱1,440,000.00 for the 8,000 metric tons 'As Is' F.O.B. Cebu. A closer look at the pertinent provisions of the contract, however, reveals that said price was given tentatively for the purpose of fixing the price in barter. Indeed, paragraph 3(c) of the contract provides that the C & F Manila price of the imported commodities shall be equal to the total peso price offered for the corn in consideration of the high price offered by Damerco for said corn. Then it sets the value of the imported commodities not to exceed the sum of ₱2,880,000.00 equivalent to the peso value of the corn and rice product. It should likewise be stressed that the aforesaid exportation and importation was on a 'no-dollar remittance basis.' In other words, the agent, herein defendant Damerco, was not to be paid by its foreign buyer in dollars but in commodities. Damerco could not get paid unless the commodities were imported, and Damerco was not exporting and importing on its own but as agent of the plaintiff, because it is the latter alone which could export and import on barter basis according to its charter (Sec. 3, Republic Act 663). Thus, unless Damerco was made an agent of the plaintiff, the former could not export the corn and rice nor import at the same time the collateral goods. This was precisely the intention of the parties, that is, the high price offered by the Damerco was in consideration of its privilege of buying the collateral goods. The contract itself clearly provides the Damerco was to export the rice and corn, AND TO BUY THE *collateral goods*. There is nothing in the contract providing unconditionally that Damerco was buying the rice and corn. Indeed, if the main consideration was simply the purchase of the corn, there would be no necessity to execute such a complicated contract. To be more specific, if the agreement was just a sale of corn to Damerco, the contract need not specify that Damerco was to buy the collateral goods."

x x x x x x x x x

"But the fact is the Damerco was able to export all the rice and corn and had indeed paid for the collateral commodities as they were received. Having exported all the corn on a no-dollar or barter agreement at its expense, Damerco has complied with what was incumbent upon it under the contract. It had imported almost half of the commodities stipulated with about $480,000.00 worth of commodities yet to be brought into the country when barter transactions were stopped by a new succeeding administration. Of the ₱1,428,451.13, value of the corn exported, only ₱199,690.97 remains unliquidated (Exhibit M), as of July 16, 1962, as found in our decision

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sought to be reconsidered. This means that defendant as of July 16, 1962 must have paid in advance some ₱760,309.03 on the collateral goods yet to be imported. To our mind, therefore, this act of the Government left the Damerco, and the NARIC for that matter, holding so to speak the proverbial bag. Equity then is on Damerco's side. Indeed, by suspending barter transactions, the Government actually prevented the Damerco from realizing profits by the eventual sale of the collateral goods worth $480,000.00 equivalent then to more than ₱960,000.00.

We have heretofore shown that the checks issued as well as the promissory notes — now made the basis of the complaint — were issued for the purpose of securing the unpaid part of the price of the corn and as guaranty that Damerco will purchase the corresponding collateral goods. When the letters of credit lapsed due to delay imputable to NARIC and not to Damerco, the latter replaced them with postdated checks merely as a token of good faith. This had to be done because the NARIC was left without security on the 'cost of the corn.' Indeed, the very contract itself speaks clearly of the intention of the parties in such wise that Damerco's role was to be an agent of the NARIC in exporting the corn and importing the collateral goods, and the payment dovetailed with the arrival of the collateral goods. Even the subsequent set of extending the period of the promissory notes to nine months, strongly argues in favor of this intention. When said promissory notes were executed, the Government had not yet suspended barter transactions, hence the nine-month extension believed sufficient to effect the importation of the remaining collateral goods. Had not the Government suspended barter transactions, there is no doubt the Damerco would have been able to bring in those collateral goods, fully paid for except some ₱200,000.00.

Therefore, as we see it, Damerco executed the promissory notes only as a token of good faith that it will abide by its agreement to import the collateral goods in exchange for the corn exported, and to buy the same upon its arrival in the Philippines. Its only purpose was to give the NARIC some sort of security while the unimported collateral goods have not yet been actually brought into the country. The promissory notes were clearly intended to hold the Damerco to its obligation to import and buy the collateral goods. However, this obligation became unenforceable when the importation of the collateral goods became legally impossible due to the suspension of barter

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transactions and the refusal to renew the barter permit by the government of which NARIC (succeeded by the Rice and Corn Administration [NCA], Sec. 13, RA 3452), was an agency. It was not the fault of the Damerco that it failed to import the collateral goods, on which it must have paid ₱760,309.03, leaving a balance of almost ₱200,000.00 (Exhibit M). It was the duty of the NARIC, now RCA, to bring in those collateral goods and make the necessary representations therefor with the Republic of the Philippines. Until such importation, the obligation of Damerco to pay the promissory notes is unenforceable (Article 1266, Civil Code); hence the present action is premature."[10]

It is clear that if after DAMERCO had spent big sums incident to carrying out the purpose of the contract, the importation of the remaining collateral goods worth about US$480,000.00 could not be effected due to suspension by the government under a new administration of barter transactions, the NARIC (now Rice and Corn Administration) ought to make the necessary representations with the government to enable DAMERCO to import the said remaining collateral goods. The contract, Exhibit "A", has reciprocal stipulations which must be given force and effect.[11]

In *Customs Commissioner vs. Auyong Hian*[12] where the President of the Philippines acting through his Cabinet cancelled arbitrarily a license to import goods under "no-dollar remittance basis," the Supreme Court said:

"x x x In fact, if the cancellation were to prevail, the importer would stand to lose the license fee he paid amounting to ₱12,000.00, plus the value of the shipment amounting to ₱21,820.00. This is grossly inequitable. Moreover, 'it has been held in a great number of cases that a permit or license may not arbitrarily be revoked x x x where, on the faith of it, the owner has incurred material expense.'"

The Court of Appeals did not err in holding that the NARIC (now RCA) has no cause of action until it has secured the

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[10] *Rollo*, pp. 87-94.

[11] *De Luna vs. Linatoc*, 74 Phil. 15; *Colmenar vs. Cosca*, 76 Phil. 857.

[12] 105 Phil. 561, 564.

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necessary import permit and it brings in the remaining collateral goods worth about US$480,000.00.

WHEREFORE, the petition for review is denied and the resolution of the Court of Appeals promulgated on January 23, 1970, appealed from is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-46773. July 16, 1979]

ROBERT TABIL and AURORITA SIMBAJON, *petitioners, vs.* **THE HONORABLE CEFERINO T. ONG, Judge of the City Court, Branch III, Ozamiz City and ADOLFO PONCE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PRESIDENTIAL DECREE NO. 77, AS AMENDED BY PRESIDENTIAL DECREE NO. 911; APPLIES ONLY TO PRELIMINARY INVESTIGATIONS CONDUCTED BY FISCALS AND STATE PROSECUTORS.**— The very law itself — PD 77, as amended by PD 911 — states that it applies only to preliminary investigations conducted by fiscals and state prosecutors.

2. **ID.; ID.; ID.; ID.; THE LAW DOES NOT APPLY TO CASES FILED AND COGNIZABLE BY CITY AND MUNICIPAL COURTS.**— There is no doubt that the aforesaid decree does not apply to cases filed with and triable/cognizable by city and municipal courts, the law applicable thereto being Sec. 10, Rule 112 of the Revised Rules of Court.