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RECENT DECISIONS OF THE SUPREME COURT REVIEWED

RIGHT OF COURT TO RENDER ALTERNATIVE JUDGMENT.—

Sergio Capalla vs. Fernando Salas, Judge of the Court of First Instance of Iloilo, et al., G. R. No. 29105, March 3, 1928. *Facts:* Certiorari proceedings against respondent Judge. It appears that in a complaint brought by Teodoro del Rosario against Sergio Capalla for the return to the former of a certain truck which was attached by the Provincial Sheriff of Iloilo and delivered to said Capalla notwithstanding the third party claim presented by Teodoro del Rosario, a judgment was rendered by the respondent Judge ordering the return of said truck to del Rosario in the same condition when it was attached or the payment to him of the sum of P1,200.00. In accordance with this judgment, Sergio Capalla delivered the truck in question to the Sheriff of Iloilo to be in turn delivered by the latter to the plaintiff. The latter refused to receive the truck, alleging that it was not in the same condition as when it was attached. In view of the unserviceable condition of the truck, the respondent Judge ordered the Sheriff to sell the truck at public auction and in case the proceeds thereof are not enough to cover the amount of the judgment, to attach other properties of Capalla and realize from said properties the remainder of the judgment. It is against this last order that the certiorari is prayed for. Denied. *Held:* There is no question as to the jurisdiction of the Court of First Instance to render an alternative judgment, and if the Court has the right to do so, it is but natural and logical to conclude that the Court can also order the alternative execution thereof. (In Banc, per J. Villa-Real.) *Briefed by A. Sólidum.*

LOWER COURTS MAY ORDER STAY OF EXECUTION.—*Chua H. Lee vs. E. Mapa, Judge, Cornelio Cruz and his wife Ciriaca S. de Cruz*, G. R. No. 29178, March 6, 1928.—*Facts:* It appears that in a prior civil case the petitioner Chua Lee obtained a favorable decision in the lower court against the respondents Mr. and Mrs. Cruz in which the defendants were ordered to pay to plaintiff Chua the sum of P6,520.00 and that upon failure to satisfy said sum, the personal property which was pledged as security were to be sold and the proceeds to be applied to the amount of said judgment. This decision was formally affirmed on appeal. After the record was remanded to the court of origin, execution was

issued out of that court against the property of the defendants. The defendants asked for a stay of 30 days in order to raise the necessary funds in which to pay the judgment. This stay was granted. Later Mr. and Mrs. Cruz instituted a separate action in the lower court against the plaintiff for the recovery of the sum of P6,729.00 as damages for the loss of pledges given to the plaintiff. At the same time a motion was presented for a stay of execution pending final determination of the case against Lee. This motion was granted. A motion for reconsideration was denied by the respondent Judge Mapa stating that there was no ground for setting aside the order. Hence this petition for a writ of prohibition in which the petitioner complains of the order entered by the respondent Judge. The following rulings were handed by the Supreme Court:

1. Courts; Power of a Court of First Instance to Review Judgments of the Supreme Court of the Philippine Islands.— Whatever was before the appellate court and there disposed of, must be regarded as finally settled, and the inferior court cannot review or interfere with any matter decided on appeal, or give other or further relief. Lower courts cannot be permitted to assume supervisory jurisdiction to interpret or to revise the judgment of the higher court. The doctrines announced in the cases of Shioji vs. Harvey (1922) 43 Phil. 333; Cabigao v. Del Rosario (1924) 46 Phil. 41 again adhered to and expressly sanctioned.
2. *Id.; Id.*—The authorities above cited examined and found not to be applicable to the case. The case is not one where an attempt is being made to interpret or to reverse the judgment of the higher court.
3. *Id.; Id.*—Execution, Stays Of:—Circumstances may arise subsequent to the return of the case from the Supreme Court to the trial court which may justify postponement of the execution of the judgment in the case. One ground for relief from an execution refers to facts occurring subsequent to the judgment. So it has been held that a stay may be allowed on grounds which are in their nature peculiarly equitable, as for instance to give the defendant an opportunity to set off a claim against plaintiff.
4. *Id.; Id.*; Prohibition:—It is held that the orders entered and promulgated by the Third Branch of the Court of First Instance of Manila granting a stay of execution are within the jurisdiction of the court. (In Banc, per Malcolm, J.) *Briefed by E. Arévalo.*

UNAUTHORIZED CONFESSION OF JUDGMENT BY LAWYER MAY BE SET ASIDE.—*Estate of the Deceased Gregorio Natividad.*—*Casimiro Natividad vs. Alfredo Natividad*, G. R. No. 28296, March 2, 1928.—*Facts:* Following the death of Gregorio Natividad, Alfredo Natividad offered for probate the alleged will of the deceased. Opposition to the probate was filed by the attorneys for Casimiro Natividad, a son of the deceased. At the trial of the case on July 31, 1926, after the proponent closed his case,

the attorneys for the oppositor, without any authority from their client to compromise the case, withdrew opposition to the probate of the will. On the same date of the trial, the Judge entered an order in which it was directed that the document Exhibit A be admitted to probate. On December 14, 1926, a petition pursuant to the provisions of section 113 of the Code of Civil Procedure to set aside the order, was presented in the Court of First Instance on behalf of Casimiro Natividad, Gregorio Estela, Maria Estela, and Miguel Estela, the later two minors and represented by their guardian. The petition was supported by an affidavit executed by Casimiro Natividad. The petition and a subsequent motion for reconsideration were denied by the lower court. Hence this appeal. The Supreme Court handed down the following rulings:

Judgments, Opening and Vacating; Attorney and Client, Respective Powers; Section 27 in Relation With Section 113 of the Code of Civil Procedure:—Section 27 of the Code of Civil Procedure provides: "Lawyers have authority to bind their clients in any action or proceeding, by any agreement in relation to the cause, made in writing and in entering appeals, and in all matters of ordinary judicial procedure. But they can not, without special authority, compromise their client's litigation or receive anything in discharge of a client's claim but the full amount in cash." Said section was derived from the Code of the State of Georgia. A comparison of the Georgia statute with the Philippine statute discloses certain differences. The Georgia statute is silent as to lawyers, without special authority, having no right to compromise their client's litigation. Accordingly, while the decisions of the Supreme Court of Georgia should be looked for guidance, this difference in statutory authority should be considered.

Id.; Id.; Id.—The compromise of causes and the confession of judgments stand upon the same footing. Inasmuch as the compromise may not be effected by the counsel without authority, so may not an agreement to permit judgment be entered against his client be authorized except with knowledge and at the instance of the client.

Id.; Id.; Id.—The proceedings in court to enforce the remedy to bring the claim, demand, cause of action, or subject matter of the suit to hearing, trial, determination, judgment, and execution, are within the exclusive control of the attorney. The cause of action, the claim or demand sued upon, and the subject matter of the litigation are all within the exclusive control of the client; and the attorney may not impair, compromise, settle, surrender, or destroy them without his client's consent.

Id.; Id.; Id.—When Judgment has been entered by consent of an attorney without special authority, it will sometimes be set aside or reopened.

Id.; Id.; Id.—It is held that, while the oppositor was negligent, his negligence under the circumstances of the case was excusable and that the other petitioners have not been negligent. A judgment on the merits of the case is preferable. In the interests of justice the judgment appealed from is set aside. (In Banc, per Malcolm, J.)—*Briefed by E. Arévalo.*

