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Digest of RECENT DECISIONS of the Philippine Supreme Court

[In this column is presented a digest of current cases of general interest to practitioners. These decisions have not yet been published in the Official Gazette, and many of them, especially those rendered in division, will not so appear because not selected for official report.]

CIVIL PROCEDURE—PERIOD FOR PERFECTING BILL OF EXCEPTIONS.—*Eriberto Balmeo vs. Segunda Devesa, G. R. No. 42984; January 30, 1935.*—The Court of First Instance of Tayabas in a former case ordered that in conformity with article 184 of the Code of Civil Procedure the parties shall proceed to the partition of the property. The parties were not able to agree and the Court had to intervene by naming commissioners. The report as submitted was approved by the court on July 11, 1934. On the following day Segundo Devesa filed his exception. On the 24th of the same month he presented a motion for new trial and the suspension of the effects and the period fixed by law for the appeal. By order of the 24th of July, the court suspended the running of the period for appeal. On the 27th of August, 1934, the court denied the motion for new trial which was notified to Devesa's attorney on the 4th of September. The next day he excepted from the ruling and at the same time announced his intention to appeal. On the same date he

presented his bill of exceptions. It was denied on the ground that the order of the 27th of August was unappealable according to section 146 of the Code of Civil Procedure and that in relation with the order of the 11th of July, the bill of exceptions was presented out of time. This is an action of mandamus to order the judge to approve and certify the bill of exceptions. *Held:* The bill of exceptions was presented in time because the order of the 27th of August suspended the legal effects of the order of the 11th of July which *ipso facto* suspended the period fixed by law for the presentation of the bill of exceptions.

It is immaterial that the order denying the motion for new trial is not appealable, supposing it correct that the interpretation given to the motion for new trial does not contain any of the legal reasons stated by section 145 of the Code of Civil Procedure. The truth is that said motion in its paragraph 4, alleged expressly that the report of the commissioners as well as the order approving it violated the law which is sufficient for the Supreme Court to revise the questions of law raised

by the appellant. (In division of five, per Imperial J.; Malcolm, Butte, Villareal and Goddard, JJ., concurring.) *Briefed by RAFAEL P. CAÑIZA.*

TARIFF LAW—DUTY TO PRESENT IN WRITING OBJECTION TO COMBINED WEIGHT OF MERCHANDISE AND BOXES.—*Go Ho Lim vs. Insular Collector of Customs; G. R. No. 41706; Jan. 21, 1935.*—On the 24th of Dec. 1932 the plaintiff imported from Shanghai 1,040 boxes of eggs of ducks and hens. The merchandise was delivered to plaintiff after including in its weight the weight of its containers. He paid the tax on the 9th of Feb. based on its gross weight. The plaintiff did not request that the goods be weighed separately from its boxes nor was there a protest against the payment of the tax imposed until the 10th of February when the plaintiff's attorney send a letter of protest. The defendant acceded to the request of plaintiff that similar boxes should be weighed. The result was that a box weighed 7.5 kilos. In accordance with the result 1,040 boxes will weigh 7,800 kilos and the tax imposed at the rate of \$8 per 100 kilos was P1,248 which is exactly what the lower court adjudged that defendant should pay the plaintiff.

Paragraph 269 (a) of article 8 of the Tariff Law of Congress of the 5th of August 1909 is as follows:

269. Eggs, not taxed by other mode:

(a) Fresh or conserved, in its natural form, gross weight, 100 kilos, one dollar.

This was amended by article 3 of Act 4037 of the Philippine Legislature in the following form:

269. Eggs, not taxed by other mode:

(a) Fresh or conserved in its

natural form, 100 kilos, eight dollars.

It is to be noted that the original text was to be based on the gross weight, but in the amendatory law No. 4037 the words gross weight was omitted. It is therefore evident that the defendant was not empowered to impose taxes on the 1,040 boxes.

Since the plaintiff did not ask that there be a separate weight of the goods and the boxes nor did he signify that his intention was only to pay the tax on the goods, this implies a formal renunciation on his claim. It was the duty of the plaintiff or his agent to present in writing his objection to the combined weight of the goods or boxes before the goods were delivered to him. He only formulated his protest after the delivery of the merchandise to him. (In division of three, per Imperial J.; Villareal and Butte, JJ., concurring.) *Briefed by RAFAEL P. CAÑIZA.*

VIOLATION OF A CONDITIONAL PARDON—IS THE PENALTY PROVIDED BY ARTICLE 159 OF THE REVISED PENAL CODE A "CRUEL AND UNUSUAL PUNISHMENT" AND THUS PROHIBITED BY THE JONES LAW?—*P. P. I. vs. Ramon Blanco y Morales, G. R. No. 42884, January 30, 1935.*—In 1922, when Act 1524 was in force, a conditional pardon was given to and accepted by the appellant who was then serving a sentence for committing the crime of bigamy. The condition imposed by the pardon was that appellant shall not again be guilty of any crime or violate the penal laws of the Philippine Islands. In July, 1934, appellant was again convicted and committed to prison for committing the crime of estafa. After pleading guilty to an information for the violation of the conditions of a conditional

pardon, he was sentenced in accordance with Article 159 of the Revised Penal Code to suffer six months and one day of prison correccional. Said appellant contends that the trial court erred in convicting him of a violation of conditional pardon under Article 159 of the Revised Penal Code, notwithstanding the fact that the said conditional pardon was given to and accepted by him in 1922, when Act 1524 and not the Revised Penal Code was in force. He further contends that the sentence imposed upon him was so disproportionate to the offense committed as to constitute "cruel and unusual punishment" prohibited by the Jones Law. *Held*: As to the contention that the appellant should have been convicted in accordance with Act 1524 instead of Article 159 of the Revised Penal Code, it is sufficient to say that when the appellant committed the offense in question, the Revised Penal Code was already in force and Section 4 of Act 1524 had been expressly repealed by Article 367 of the Revised Penal Code. The contention that the sentence imposed is so disproportionate to the offense committed as to constitute "cruel and unusual punishment" in violation of the Jones Law is also devoid of merit. The penalty provided by Article 159 of the Revised Penal Code is prison correccional in its minimum period, unless the penalty remitted by the granting of the pardon be higher than six years, in which case the convict shall suffer the unexpired portion of his original sentence. If it be true that the appellant in this case had only thirty-eight days to serve when he was pardoned, that fact does not exempt him from punishment for a violation of the conditions of the pardon, which he voluntarily accepted. The sentence imposed by

the lower court was the minimum penalty authorized by law, and it cannot be maintained with any reason that the penalty prescribed is cruel and unusual. (Per Vickers, J.; Street and Santos, JJ., concur.) *Briefed by* LEOVIGILDO V. MONASTERIAL.

INSURANCE—UPON WHOM DOES THE BURDEN TO PROVE THE EXTENT OF THE LOSS RESTS?—WHO CAN MAINTAIN AN ACTION ON THE CONTRACT OF INSURANCE?—*Victoriano Sabillano vs. The Continental Insurance Company of New York, represented by E. E. Elser, G. R. No. 42525, January 31, 1935.*—Defendant Insurance company issued a fire policy to one Dean, as insured, covering merchandise, furniture and fixtures. Later, Dean sold and transferred said merchandise, furniture and fixtures to plaintiff and placed an indorsement on the policy of insurance which purported to transfer the same to the latter. Contrary to the provisions of the policy, defendant company was not notified of said sale or of said transfer or indorsement. After the transfer to plaintiff, the insured property was partially destroyed by fire. Dean neither gave notice to nor filed a claim in writing against defendant for loss or damage within the 15-day limit allowed by the provisions of the policy. At the trial no testimony was offered by plaintiff to prove the amount of the loss or damage. *Held*: "Unless defendant admits at the trial that the amount claimed is due, and in the absence of statute, the burden is on the plaintiff to prove the extent or amount of his loss or damage, or the value of his interest in the property destroyed; and the fact that defendant denies liability in toto does not dispense with the necessity for such proof. The burden

is on the plaintiff to prove that there was no depreciation in the value of the property between the time it was insured and the time of the fire * * * (26 Corpus Juris, 619). " * * * The contract of fire insurance is a personal one * * * It is a contract to indemnify the person named in the policy against loss upon property in which he has an insurable interest, existing both at the time of the issuance of the policy and at the time of loss. If assured parts with his insurable interest in the property, the contract is at an end. Where the policy forbids an alienation, it may be suspended or avoided in the absence of any consent, waiver or estoppel. Therefore, an absolute assignment or sale of insured property after the insurance is made divests the insurable interest of the vendor, and creates a bar to the right of action on the policy, unless by some means its existence has been preserved for the benefit of the assignee * * *. A voluntary conveyance and change of title, without assurer's consent, avoids the contract when so stipulated." (Joyce's *The Law of Insurance*, 2nd Edition, Volume 4, pages 3850-3852.) (Per Goddard, J.; Imperial and Butte, JJ., concur.) *Briefed by LEQVIGILDO V. MONASTERIAL.*

CIVIL PROCEDURE—WHEN MANDAMUS WILL LIE TO COMPEL CERTIFICATION OF BILL OF EXCEPTIONS.—*Leonor Vinto et al., petitioners vs. Geronimo Paredes, Judge of the Court of First Instance of Iloilo, et al., respondents, G. R. No. 42800, Jan. 19, 1935.*—In a civil case judgment was rendered against the plaintiffs, petitioners herein. Within the statutory period, plaintiffs-petitioners filed a motion for a new trial, together with a notice of their intention to appeal. Upon the denial of the motion for new trial,

plaintiffs-petitioners, without excepting to the order of denial, tendered their bill of exceptions for approval and certification. Respondent judge refused to certify basing his refusal on the authority of *Cacnio vs. Baens*, 6 Phil. 742, wherein it was held that "Where to the order overruling a motion for a new trial no exception is taken by the appellants * * * the appellate court has no power to review the evidence taken at the trial." *Held:* The case cited is not in point. The failure to except to the order denying a motion for a new trial is no bar to the approval and certification of a bill of exceptions, provided said bill of exceptions is filed within ten days from the time of the notice of the order of the court denying said motion, the purpose of excepting to the order of denial in a motion for a new trial is to justify the examination of the evidence in the appellate court, not as a prerequisite for the approval and certification of bills of exceptions. Writ of mandamus granted. (Second division of five, per Malcolm, J., Villa-Real, Imperial, Butte, Goddard, JJ., concurring.) *Briefed by JOSÉ O. HIZON.*

MANDAMUS — INTERPLEADER. — *Francisco Escoto, petitioner vs. Del-fin Jaranilla, Judge of Court of First Instance of Manila; and Jose Casimiro, Sheriff of the City of Manila, Respondents, G. R. No. 42990, Jan. 31, 1935.*—Jose S. Decena won a Sweepstake prize of P9,095.91 which was garnished by the respondent sheriff under ten writs of execution and/or attachment against him. Several persons thereupon filed third party claims against the sheriff for the said prize. Escoto, a judgment creditor of Decena, filed a motion with the respondent judge praying that the latter order the sheriff to apply the

garnished prize in satisfaction of Escoto's judgment. The motion was denied and the sheriff was directed to file a bill of interpleader against the various claimants. Hence, this petition for mandamus to compel respondent judge to exercise his discretion and to order the sheriff to satisfy petitioner's judgment from the Sweepstake prize. *Held*: The respondent judge in denying petitioner's motion and directing the filing of complaint in interpleader acted within his judicial discretion and the sheriff was justified in filing the action suggested by the judge. Mandamus will not lie to control or review the exercise of discretion of any court. Writ denied. (Second Division of five, per Goddard, J., Malcolm, Villa-Real, Imperial, and Butte, JJ., concurring.) *Briefed by* JOSÉ O. HIZON.

CRIMINAL LAW—HOMICIDE—ARTICLES 22 AND 54 OF THE REVISED PENAL CODE APPLIED.—*Luis Arroyo, petitioner-appellant, vs. Superintendent, San Ramon Prison and Penal Farm, respondent-appellees, G. R. No. 42384, January 18, 1935.*—Appellant was convicted of the crime of homicide for which the law prescribes the penalty of reclusión temporal. Lower court sentenced him to the minimum period of 12 years and 1 day taking into account the presence of one mitigating circumstance e. i. passion or obfuscation and no aggravating circumstance. The circumstance of voluntary confession of guilt was not taken into consideration because it was not a mitigating circumstance then. But when the Revised Penal Code took effect on Feb. 1, 1932, a plea of guilty is considered a mitigating circumstance. The only question in this case is: Should the mitigating circumstance of confession of guilt by the appellant in

this case which circumstance was not mitigating at the time of the commission of the crime but which is now so considered by the Revised Penal Code be taken into consideration so as to benefit the appellant who has already served most of his sentence? *Held*: Appellant is entitled to the benefit of such new provision of law. Revised Penal Code, Article 22. It follows that appellant is now entitled to have considered in his favor the two mitigating circumstances above-mentioned and therefore, following Article 54 rule 5 of the Revised Penal Code which provides that when there are two or more mitigating circumstances and no aggravating circumstances are present the penalty next lower in degree than that prescribed by law for the crime committed shall be imposed, appellant is entitled to be released as he has already overserved his sentence. Judgment received and writ of Habeas Corpus granted. (In division of three per Santos, J.; Avanceña, Street, JJ., concurring.) *Briefed by* JOSÉ O. HIZON.

CRIMINAL PROCEDURE—EFFECT OF FAILURE OF DEFENDANT TO TESTIFY IN HIS OWN DEFENSE.—*P. P. I. vs. Jovencio Vidal and Matias Quitain, G. R. No. 42421, Jan. 30, 1935.*—A male carabao owned by Paulino Reyes disappeared. Two days later defendants herein went to Mateo Amores and proposed that he take care of a certain carabao. When Amores asked them who the owner of the carabao was, neither would admit ownership; on the contrary both tried to impute ownership to the other. At the trial of the case the defendant Quitain failed to testify in his own defense and it is argued that this can not be held against him. *Held*: While the failure of the defendant Quitain to testify in his own defense

should not be held against him, this court in *Worcester vs. Ocampo*, 22 Phil. 42, held that when the circumstances in proof tend to fix liability on a party who has it in his power to offer evidence of all the facts as they existed and rebut the inference of said circumstances and he fails to offer such proof, the natural conclusion is that such proof, if produced, instead of rebutting would support such inferences. Affirmed. (In division of three, per Santos, J.; Street and Vickers, concurring.) *Briefed by* JOSÉ G. BAUTISTA.

CRIMINAL LAW—MURDER—LACK OF MOTIVE.—*P. P. I. vs. Alipio Rag-sac*, G. R. No. 42445, Jan. 25, 1935.—Defendant-appellant was convicted in the lower court of murder. The defendant admitted at the trial that he inflicted upon Bartolome Macaso, the deceased, the wounds that caused the latter's death, but contended that he acted in self-defense. That when he returned home from work that evening he heard his mother shouting "thief," "thief," and that when he saw her she told him that Bartolome Macaso had just carried off his trunk; that he ran after Bartolome Macaso, but could not overtake him; that soon after he passed through a gate in the fence surrounding the house of Bartolome Macaso, the latter attacked him with a bolo; that he fled towards the house of Bartolome Macaso, pursued by the latter, and that in the fight that followed he succeeded in striking the deceased several times with his bolo which caused the latter's death. The lower court considered this story of the defendant as to the circumstances under which he killed Bartolome Macaso as a mere fabrication. Defendant, however, alleged that there is no evidence to show his motive in the commission

of the crime and that this is sufficient to prove his innocence. *Held*: It is true that the evidence does not show any motive for the commission of the crime, unless it was the theft of the trunk, but lack of motive is not proof of innocence; that fact would not in any way justify the action of the defendant. Affirmed. (First division of five, per Vickers, J.; Avanceña, Street, Santos, Hull, JJ., concurring.) *Briefed by* JOSÉ G. BAUTISTA.

ELECTION PROTEST—MARKS AND DEFECTS OF BALLOTS ALLOWED BY LAW.—*Felipe Rodriguez, protestant-appellee vs. Vicente Lembrano, protestee-appellant*, G. R. No. 42447, Dec. 21, 1934.—This is an appeal from a decision of the Court of First Instance of La Union in an election case involving the results of the general election of June 5, 1934, as to the office of Municipal President of Balaoan. The trial court found that both the protestant and the protestee received 435 votes each. This appeal involves the reading of fifty-six questioned ballots. Ballots 2-X, 2-G, 3, 4, 5-D, L-10 were held invalid by the trial court for illegibility of the names of the candidates. Though holding that the spelling was poor and the penmanship was worse, but making due allowance for the well known and often connected difficulties of the voters under the existing system, the Supreme Court found written in the ballots a sufficient expression of the intention and will of the voters who cast them. The trial court rejected ballot exhibit 6-H because the voter placed the figures 1 and 2 before the names respectively of the two candidates for the offices of the members of the Provincial Board. The Supreme Court held that the inference that it was a marked ballot is not warranted. The ballot was

well written and indicated a person of more than average education. It is quite natural that such a person should make the enumeration indicated. He was voting for two members of the Provincial Board and wished to make that clear. Of the more than 300 ballots cast, no other ballot was similarly marked which might give rise to a suspicion of collusion for the purpose of identifying the ballots. Ballot Ex. F-4 was properly rejected. In this ballot the figure 2 was written opposite the name of the candidate for Representative and figure 1 was written opposite the name of the candidate for Provincial Governor. There is no rational connection between these figures and the offices voted for. Whatever the purpose of writing these figures, they plainly were improper. Ballot F-1 was rejected by the trial court because the names of the candidates were written in two different kinds of penmanship, thus rendering this ballot as marked. The principle involved here was that the style of penmanship indicated that the ballot was prepared by two different persons. But this inference was not necessarily to be drawn merely because the voter wrote part of his vote in script and part in print. The judgment appealed from is therefore reversed and Vicente Lembrano is declared the duly elected Municipal President of Balaoan. (In division of five, per Butte, J.; Malcolm, Villa-Real, Imperial, Goddard, JJ., concurring.) *Briefed by CELESTINO C. JUAN.*

CIVIL PROCEDURE — COUNTERCLAIMS UNDER SECTIONS 95 AND 96,

DISTINGUISHED.—*Paciencia Ona et al., plaintiff-appellee vs. Marta M. de Villanueva, defendant-appellant, G. R. No. 41696, Feb. 2, 1935.*

—This action was brought by the plaintiff and her several children to recover the balance of the price of a certain piece of land sold by them to the defendant.

Among her defenses the appellant set up a counterclaim against Paciencia Ona exclusively for the sum of P250, which represents the value of two pairs of gold pendants with six diamonds which was bought from the defendant by Paciencia Ona's deceased husband, the same remaining still unpaid.

Plaintiffs demurred to this counterclaim; the demurrer having been sustained by the lower court on the ground that by Sec. 96 of the C. C. P., the said counterclaim cannot be set up as it is not directed against all the plaintiffs, the defendant assigned the same as error. *Held:* According to Sec. 95, C. C. P., a defendant may interpose in his answer defenses and counterclaims at the same time. The latter may have the nature and form of the former; but when used as a counterclaim merely, section 96 requires that it must be in favor of all the defendants and against all the plaintiffs. In the case at bar, the counterclaim is not of the latter class, but partakes of the character and form of a defense as well. For this reason, section 96 does not apply and it is not necessary, to be effective, that it must be directed against all the plaintiffs. (In division, per Imperial, J.; Malcolm and Villa-Real, JJ.; concurring.) *Briefed by J. P. S.*

