RECENT DECISIONS

Digest of Current Cases

ACKNOWLEDGMENT OF NATURAL CHILDREN.—*In re intestate of the deceased, William Gitt. Mike Gitt and Violeta Gitt, Petitioners.-Appellees vs. Kathleen Grace Gitt, Opposition-Appellant, G. R. No. 45829, July 15, 1939.* William Gitt and Juana Malayto lived together as husband and wife for a period of six years without being lawfully wedded together. Out of this relation, Mike Gitt and Violeta Gitt were born in 1905 and 1907 respectively. On June 30, 1908, William Gitt married Kathleen Grace Gitt without the knowledge of Juana Malayto. He continued, however, supporting Juana Malayto, Mike and Violeta. After the death of William Gitt in the United States or in Hawaii (the right place not having been definitely ascertained), Kathleen Grace Gitt, then the widow, was appointed administratrix of the property of her deceased husband and declared sole heiress by the Court of Hawaii. Claiming to be the acknowledged natural children of the deceased William Gitt, the petitioners filed a petition to be declared the sole heirs. To this petition, Kathleen Grace Gitt presented an opposition, denying that the petitioners are the acknowledged natural children of the deceased. *Held:* The continuous possession of the status of natural child, justified by direct acts of the father, is not in itself a proof of acknowledgment of such status. Inasmuch as the deceased died during the minority of the petitioners, the latter, in accordance with article 137 of the Civil Code, should have brought an action for acknowledgment within four years after attaining majority. Having failed to do so, they are now barred from bringing such action. Consequently, they cannot be declared as sole heirs. (Per Diaz, J.; Avanceña, C. J., Villa-Real, Imperial, JJ., concurring; Moran, J., dissenting; Concepcion, J. did not take part.)—*Briefed by* JUAN E. JACINTO.

ANNULMENT OF JUDGMENT.—*Reynaldo Labayen and Teodoro, Plaintiff-Appellant vs. Talisay Silay-Milling Co., Defendant-Appellee, G. R. No. 45843, June 30, 1939.* Plaintiffs and the defendant company entered into a milling contract, by which the defendant agreed to construct a railroad line up to Hacienda Dos Hermanos, subject to the condition that the contour of the land, the curves and elevations would permit the same. The defendant was able to construct the railway only up to Hacienda Esmeralda No. 2. Wherefore, the plaintiff brought a former civil action for damages. In that action, however, the defendant company was absolved because of the testimony before the trial court that to construct the railroad up to Dos Hermanos would be highly dangerous and physically impossible, would cost around ₱80,000, and that the right of way through the Hacienda of Esteban de la Rama could not be obtained. The trial court decided in favor of the defendant. Hence this action by the plaintiff seeking the annulment of such judgment on the ground of fraud. The fraud set forth, was the perjured, testimony of the witnesses in the former case to the effect that the curves and elevations rendered the

construction a physical impossibility, which the plaintiffs claimed to be false. *Held:* An action to annul a judgment, founded on fraud, cannot prosper unless the fraud is extrinsic or collateral and the acts constituting it are not in issue nor resolved in the sentence sought to be annulled. That the testimony on which a sentence is based is false or perjured is not fundamental in order to impugn the judgment, unless the fraud refers to the jurisdiction of the court. Whenever the fraud refers directly to the jurisdiction of the Court, the acts constituting them must be extrinsic or collateral in order that the fraud may be the basis of the action for annulment, and since here they are not, therefore, the pretensions of the plaintiff-appellants are unfounded. Judgment affirmed. (Per Imperial, J.; Avanceña, Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concurring.)—*Briefed by* EUGENIO R. FILIO.

APPEAL.—*Alfredo Hidalgo Rizal, Petitioner v. Josefa Rizal Mercado et al, Respondents, G. R. No. 46100, May 26, 1939.* Petition for a writ of certiorari. Petitioner prays for the revocation of the decision of the Court of Appeals dismissing his appeal from a judgment of the trial court. On January 10, 1935, judgment was rendered against him, and he received notice of such judgment on January 14. A motion for reconsideration was presented on January 23 and was denied on January 30. Notice of the denial of said motion was received on February 6, and a motion for new trial on the ground that the judgment was contrary to law and was not supported by the weight of evidence was presented on February 8. The motion for new trial was denied on February 16, petitioner excepted and gave notice of intention to appeal on February 21, and the bill of exceptions was perfected on March 2, 1935. The appeal was dismissed by the Court of Appeals. *Held:* A motion for reconsideration on the ground that the judgment is contrary to law and the weight of evidence is equivalent to a motion for a new trial, and its presentation suspends the running of the period of 30 days within which such motion can be presented and said period commences to run again only when the movant receives notice of the judgment denying his motion. The party desiring to appeal from a judgment rendered against him may present several motions for new trial within the period of 30 days allowed him for this purpose, but each of them must be based upon different legal grounds. The presentation of the notice of intention to appeal in an ordinary civil case if made within the period authorized by law for presenting a motion for new trial, is timely, although five days have elapsed since the denial of the last motion for new trial. In the case at bar, petition was granted because the notice of intention to appeal made on February 21 was still within the period for the presentation of a motion for new trial. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Concepcion, Moran, JJ., concurring. Laurel, J. did not take part.)—*Briefed by* MARTINIANO P. VIVO.

CIVIL PROCEDURE.—*Summary Distribution of the Estate of Esteban M. Manzanero, Deceased. Fortunato Manzanero, Applicant-Appellant vs. Remedios Bongon, widow of the deceased Esteban M. Manzanero, Opposito-Appellee, G. R. No. 45506, April 27, 1939.* Fortunato Manzanero, brother of the deceased, presented an application in the Court of First Instance of Batangas, asking for summary distribution of the property of the deceased in accordance with Sec. 597 of the Code of Civil Procedure

and alleging, among other things, that the deceased was a resident of Sto. Tomas, Batangas, and was temporarily residing in Albay when he died. The application was granted by the court. Subsequently, the widow of the deceased presented a motion to annul all the proceedings of the case and to order the applicant and his co-heirs, or their sureties to redeliver or to deposit in court all the money received by them. This motion not being accompanied by any affidavit, was opposed by the applicant. Motion sustained, hence, this appeal. *Held:* That Rule 18 of the Rules of Courts of First Instance which provides that all motions except motions made in the presence of the adverse party, or those made in the course of the trial shall be accompanied with affidavits and other papers supporting the same, is not absolute nor does it deprive the court of its discretion to decide the merits of the motion in which it is alleged that the court acted without and in excess of its jurisdiction. The court did not err in sustaining the motion because the widow was able to prove that the deceased had his legal residence in Tabaco, Albay, and according to Section 600 of the Code of Civil Procedure, the Court of First Instance of Batangas lacked jurisdiction and hence, was not the competent court. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, and Moran, JJ. concurring; Laurel and Concepcion, JJ., did not take part.) —*Briefed by* ERNESTO P. VALENCIA.

CIVIL PROCEDURE.—*Ambrosio A. Calleja, Plaintiff-Appellee vs. Narciso B. Matias, Defendant-Appellant, G. R. No. 45317, April 25, 1939.*—In this case for the recovery of a sum of money, judgment by default was rendered against the defendant. Subsequently, the defendant presented a petition to set aside such judgment, to call the case anew for hearing, and to be allowed to present an answer. The petition was denied and hence this appeal on the ground that the defendant was not notified in writing of the continuance of the hearing. *Held:* The defendant is entitled to be notified in the manner prescribed by the rules of court. However, if he is notified in open court and he accepts such notification, that is sufficient. He cannot thereafter impugn the validity of such notification. The excuse presented by the defendant to the effect that through oversight of his counsel the date set was not noted is not a ground to declare null the court's order denying the re-opening of the case. Decision affirmed. (Per Avanceña, C. J.; Villa-Real, Imperial Diaz, Laurel, Concepcion, and Moran, JJ., concurring.)—*Briefed by* ALEJANDRO D. YANGO.

COMMITTEE ON CLAIMS—*National Investment Board, Petitioner vs. Hon. Emilio Peña, Judge of the Court of First Instance of Tayabas, Miguel Suarez Tanunliong and Petra Martinez, as Administrator of the Intestate of the deceased Severino Martinez, Respondents, G. R. No. 46448.*—A mortgage creditor, in order to institute the foreclosure of the mortgage against his deceased debtor, initiated the latter's intestate proceedings wherein an administrator was appointed and against whom he brought the action. Pending the action, a committee was appointed to hear the claims against the estate with the requirement to give the creditors the necessary notice to present their claims within six months from date of notice. A decision for the foreclosure of the mortgage was granted in favor of the creditor and the property mortgaged was sold to pay the debt but the proceeds were insufficient, so the court ordered the creditor to present the balance before the committee on claims. The six

months period for the committee to hear the claims having expired, the creditor filed a motion to renew the commission, which motion was granted. Petitioner herein, another creditor whose claims had been allowed by the committee, moved for the reconsideration of the order of the court on the ground that it was not notified of the motion and that the court had no power to renew the commission. Motion denied, hence this petition for certiorari. *Held:* (1) Failure to give notice not being jurisdictional, it may not be corrected by certiorari. (2) Although the period of six months limited by the court has expired, yet section 690 of the Code of Civil Procedure empowers the court to renew the commission of the committee on claims if a petition is filed within six months after the lapse of the period limited by the court. Since the motion to renew the commission was filed five months after the period previously limited expired, the respondent court therefore acted within its jurisdiction in renewing the commission. Petition denied. (Per Laurel, J.; Avanceña C. J., Villa-Real, Imperial, Moran, Diaz, JJ. concurring. Concepcion, J. did not take part.)—*Briefed by* HERMINIA YATCO.

CREDIT TRANSACTIONS.—*Jacinto Mesina, Plaintiff-Appellant vs. Petra Delino, Administratrix in the Intestate Succession of Angel Evangelista, Defendant-Appellee, G. R. No. 45318, May 12, 1939.* A mortgage on a registered parcel of land was executed by Angel Evangelista to secure the payment of a certain sum in favor of Jacinto Mesina. After the debtor's death, the creditor Mesina brought an action to recover the amount then unpaid which action was filed against Petra Delino as administratrix in the intestacy of Evangelista. The judgment provided that in case the defendant would not be able to pay the principal and interest then due within a period of ninety days, the mortgage would be foreclosed. Defendant defaulted and thus the land was sold at public auction. From the order of the court approving the sale, the defendant excepted and moved for a reconsideration based on the contention that the sale was illegal as the mortgaged property when sold was then in *custodia legis* since the owner thereof died intestate. Motion was granted. On appeal by the plaintiff-mortgagee, the order granting the motion for reconsideration was reversed, and the Supreme Court decreed that the public sale which was legally executed should be confirmed. *Held:* Under section 708 of the Code of Civil Procedure, a creditor who holds against the deceased person a claim secured by a mortgage or other collateral security possesses three remedies at his option: (1) He may abandon the mortgage or security and then prosecute his claim before the committee on claims and share in the general distribution of the assets of the estate, or (2) he may foreclose his mortgage or rely upon his security by ordinary action in court making the executor or the administrator as party defendant and then present deficiency judgment, if there be any, before the committee against the estate of the deceased, or (3) he may rely solely on the mortgage or security, at any time before prescription of action, in which case he could not be admitted as a creditor before the committee, nor could he receive any share in the property under administration. Plaintiff elected the third remedy. The fact that the mortgaged property when sold was in *custodia legis* is immaterial as the law authorizes such sale as long as it is made in accordance with section 257 of the Code of Civil Procedure. (Per Imperial, J.; Avance-

ña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring.) —*Briefed by* BIENVENIDO C. AMBION.

CRIMINAL LAW.—*The People of the Philippines, Plaintiff-Appellee vs. Ignacio Beltran and Teotimo Baltazar, Defendants-Appellants, G. R. Nos. 46119, 46120, 46121, May 12, 1939.* The defendants were convicted by the court of first instance of the crime of murder. Defendants presented a motion for a new trial on the ground of newly discovered evidence. The motion having been denied, the defendants appealed putting at issue the identity of the assailants. It appears from the record of the case that Simeona Castillo, identified the defendants as the assailants. She reiterated her testimony on the identity of the assailant. The defense offered an alibi and introduced two witnesses who testified that Simeona Castillo told them that one of the assailants was "Kuya Simeon". The supposed newly discovered evidence consisted in the testimony of Miguel Umali, a convict, who happened to receive the confession of three persons to the effect that they were the ones who had committed the crimes herein charged. The question therefore turned on the credibility of the witnesses. *Held:* There is no ground to disturb the conclusion of the trial court as to the credibility of Simeona Castillo. And as between the testimony of Lieutenant Rueda and the witnesses for the defense, there is every reason to accept the former because Lieutenant Rueda was complying with his duty and was further corroborated by the fact that he arrested the defendants. With respect to the motion for new trial, the supposed evidence comes from a polluted source and is to be taken with precaution. It is also contrary to the evidence offered by the defense of Beltran. Besides, the government may proceed to the investigation of the facts testified to by said convict, for the guilt of the three persons referred to is not entirely inconsistent with the guilt of the defendant herein. Judgment affirmed. (Per Moran, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concurring).—*Briefed by* YUSUP R. ABUBAKAR.

CRIMINAL LAW.—*People of the Philippines, Appellee vs. Jose M. Baes, Appellant, G. R. No. 46000, May 25, 1939.* An information was presented in the justice of the peace court by a Roman Catholic parish priest against the accused on the charge of offending religious feelings by causing the funeral of a follower of the religious sect, *Iglesia de Cristo,* to pass and march through the Catholic churchyard which is dedicated to religious worship. The act was done through violence, threats, and maltreatment against the parish priest and with grave profanity to the place. In the court of first instance the fiscal, instead of filing the corresponding complaint, presented a motion for dismissal on the ground that the act complained of did not violate article 133 of the Revised Penal Code. The court dismissed the case, reserving, however, to the fiscal the right to file another complaint for the crime that the accused might have committed. *Held:* The Catholic viewpoint should decide whether or not the act complained of offends the religious sentiments of the Catholics because certain acts offensive to the sentiments of those who profess a certain religion may not be so to the believers of another religion. Therefore the fiscal should file the corresponding complaint and the defendants should be held liable as may be proved. (Per Concepcion, J.; Avanceña, C. J., Villa-Real, and Diaz JJ. concurring.)—*Briefed by* ALEJANDRO D. YANGO.

INTERLOCUTORY ORDER.—*Intestate estate of the deceased Benita Lambengco. Ambrosio Santiesteban, Administrator, Rosa Santiesteban and Heirs of Perfecto Santiesteban, Appellees vs. Guadalupe Santiesteban and Clara Santiesteban, Appellants, G. R. No. 45217, June 30, 1939.* The heirs of the deceased executed a contract of extrajudicial partition which was approved by the court. The proceedings were closed by the order of the court of November 29, 1932. To the widower, Ambrosio, was allotted a greater portion of the estate including 8 parcels of land. He conveyed said 8 parcels to Guadalupe, who immediately instituted proceedings for the registration thereof, to which Macondray & Co. opposed. The court adjudicated the land to the oppositor. After more than two years from the expiration of the intestate proceedings, a motion was presented by Ambrosio to reopen the same. The motion was denied by the court, but upon reconsideration, the court, on November 12, 1934, reopened the proceedings and required Ambrosio to nominate a new administrator. Ambrosio died. No administrator having been nominated, the court required the heirs to appear and show cause why the proceedings should not be closed again definitely. Guadalupe appeared and showed cause, to which appellees objected vigorously. On October 1, 1935, the court granted the motion to reopen the intestate proceedings, but, upon reconsideration, it revoked said order by another order of December 11, 1935. Appellants contend that the court exceeded its jurisdiction by revoking the orders of November 12, 1934, and of October 1, 1935, for the reason that the order of November 12,, 1934, being final, could not later be modified nor revoked. *Held:* That the order of November 12, 1934, was interlocutory in character, the arguments of the appellants to the contrary notwithstanding. The order did not determine nor adjudicate any right nor controversy and the court did nothing more than to reopen the proceedings in order to hear and resolve the rights to the supposed damages allegedly suffered by one of the parties. (Per Imperial, J,; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring).—*Briefed by* GUILLERMO P. VILLASOR.

PENALTIES.—*People of the Philippines, Plaintiff-Appellee vs. Albina Montoya y de Jesus, Defendant-Appellant, G. R. No. 46611, July 27, 1939.* The defendant pleaded guilty to a charge of *estafa*. She was sentenced to undergo the penalty of 1 year imprisonment, to indemnify the offended party the sum of ₱748.00, to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. She appealed from that judgment. *Held:* The defendant having pleaded guilty, the only question is whether the lower court imposed the proper penalty. Since the *estafa* committed involved an amount over 200 pesos but not exceeding 6,000 pesos, it falls within the provision of paragraph 3, Art. 315, of the Revised Penal Code which penalizes it with *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or 4 months and 1 day to 2 years and 4 months. The aggravating circumstance of recidivism is offset by the mitigating circumstance of having pleaded guilty; therefore, no modifying circumstance can be taken into account, and the penalty should be imposed in its medium period, that is, 1 year and 1 day to 1 year and 8 months. But, in fixing the penalty, account should be taken of Act No. 4103, known as the Indeterminate Sentence Law, as amended by Act No. 4225, which provides that in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amend-

ments, the Court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rule of the said code, and to a minimum which shall be within the range of the penalty next lower in degree to that prescribed by the code for the offense. The penalty next lower in degree to that of *arresto mayor* in its maximum period to *prision correcional* in its minimum period is that of *arresto mayor* in its minimum and medium periods, or 1 month and 1 day to 4 months. From these must be taken the minimum term of the indeterminate sentence, while the maximum must be taken from the penalty imposed by the Revised Penal Code, or that of 1 year and 1 day to 1 year and 8 months. The indeterminate sentence therefore should be 2 months and 1 day of *arresto mayor* to 1 year and 1 day of *prision correcional*. Judgment affimed. Penalty modified. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, Moran, JJ., concurring).—*Briefed by* CICERON SEVERINO.

PLEADING. — *Josue Soncuya, Plaintiff-Appellant vs. The National Loan and Investment Board et al., Defendants-Appellees, G. R. No. 45590, June 30, 1939.* The demurrer having been sustained, the Court ordered the plaintiff to amend his complaint. The plaintiff refused to amend it as ordered, and so the Court dismissed his complaint. The plaintiff admitted that his amendment did not conform with the order of the Court but he contended that it had been amended in accordance with law. *Held:* (1) An amendment which does not conform with the order of the Court is not in accordance with law. (2) When a demurrer to the complaint is sustained and the plaintiff refuses to amend, the Court should dismiss the complaint and assess the costs against the plaintiff. (Per Concepcion, J., six Justices concurring.) —*Briefed by* LUIS J. GONZAGA.

SALE.—*Jesus Azcona, Plaintiff-Appellant vs. Pacific Commercial Company, Defendant-Appellee, G. R. No. 45608, May 27, 1939.* This is an action to rescind a contract and to recover the sum of ₱658.39 paid on account of the same wherein the plaintiff, a practising physician and surgeon, bought an X-Ray Dosimeter thru the intervention of the defendant. The facts showed that the plaintiff had returned two other Dosimeters to the defendant because it was discovered that they had broken parts. The machine which is the subject of the present action was delivered intact to the plaintiff and it functioned properly for 10 or 15 minutes after it was installed whereupon it absolutely failed to function. In spite of the machine's failure to function, the plaintiff executed a promissory note for the sum of ₱1,180 in favor of the defendant. Montrly payments at the rate of ₱147.50 were made by the plaintiff on account of such note so that up to the time of this suit the plaintiff had paid the total amount of ₱706.52 which included interest on the principal. Plaintiff explains the periodical payments by the fact that one Buckman, an alleged representative of the manufacturer of the machine, promised to repair said machine, and that one Becker, an employee in the chemical department of the defendant, made the same promise. Plaintiff contends that the defendant is under obligation to deliver a machine in good working order and condition. Defendant in turn contends that when the plaintiff bought the machine he did so at his own risk; that he received the machine in good order and condition; and that he was never given any promise that the machine would function satisfactorily.

As a counterclaim the defendant asked for the payment of ₱786.68 representing the unpaid balance of the purchase price, together with interest at 12% per annum from September 6, 1935 when the plaintiff stopped payment. Lower court entered judgment for the defendant and the plaintiff appealed. *Held:* The defendant was not bound to insure the proper functioning of the machine. The fact that the defendant took back the first two machines should not be confounded with the defendant's exemption from liability. The first two machines were with broken parts when they were delivered to the plaintiff, while the machine in question was delivered to the plaintiff apparently in good condition. The fact that the plaintiff executed the promissory note the day following the delivery of the machine altho the same failed to function properly showed that he had considered the sale as consumated. The promises made by Buckman and Becker could not be relied upon to show that the defendant assumed liability to repair the machine. Buckman had totally no relation with the defendant, and Becker had no authority to make the promise because he was a mere employee in the chemical department of the defendant's establishment. Furthermore, the Dosimeter in question was well-known to the plaintiff not only because he had five of them in his clinic but also because he had received information regarding the machine. And also the law says that if the sale takes place by samples or by a fixed quality known in commerce, the purchaser cannot refuse to receive the articles contracted for, if they are in accordance with the samples or quality mentioned in the contract. Judgment affirmed. (Per Diaz, J.; Imperial, Laurel, and Concepcion, JJ., concurring. Moran, Villa-Real, JJ., and Avanceña, C. J., dissenting)—*Briefed by* VICENTE ABAD SANTOS.

TAXATION.—*Compania General de Tabacos de Filipinas, Plaintiff-Appellee vs. Collector of Internal Revenue, Defendant-Appellant, G. R. No. 45207, May 27, 1939.* The plaintiff, a "sociedad anonima" existing in accordance with the laws of Spain, maintains branch offices in New York and in Manila. Sugar is exported from the Philippines and sold in the United States under instructions coming from the Manila office as to minimum prices. When discretion is given to the New York office as to price limits, the Manila office advices it of the costs of the stocks of sugar in Manila. The plaintiff paid under protest the annual tax of three per centum, provided for by Act 2833, as amended by Act 2926, on the profits derived from these transactions in the years 1928, 1929, and 1930. The only question is whether the income has its "source within the Philippine Islands" as the law provides. *Held:* The case of Compania General de Tabacos vs. Collector of Internal Revenue, 51 Phil. 154, is adhered to and followed. The *ratio decidendi* in both cases is that the sale is under the direct control of the Manila office. Another reason is that the sugar exported from the Philippines is the product of Philippine soil bought by the company or is the produce of its own hacienda. It is, therefore, logically concluded that the sale mentioned forms part or is a necessary incident of its business in the Philippines. The tax is legally imposed and the judgment of the lower court ordering the defendant to make reimbursement is reversed. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, JJ., concurring. Justice Moran, dissenting). *Briefed by* EMILIANO R. NAVARRO.