

# RECENT DECISIONS

## Digest of Current Cases

APPEAL.—*Tiburcio Ruges, Petitioner-Appellant vs. Tereso M. Dossos et al., Respondent-Appellee, G. R. No. 46341, November 10, 1939.* Tiburcio Ruges was convicted of physical injuries in the Municipal Court of Cebu from which conviction, he appealed verbally on the same day he was informed of the decision. The respondent judge refused to consider his appeal on the ground that according to section 45 of Commonwealth Act No. 58 (Charter, City of Cebu) appeals in criminal cases from the Municipal Court of Cebu must be filed in writing with the said court not later than six o'clock post-meridian of the day after rendition and entry of judgment. The Court of First Instance held that the verbal appeal of Ruges was perfected in due time but the Court of Appeals reversed said judgment, hence this appeal by writ of certiorari. The sole question resolves itself into whether or not an appeal from a decision in a criminal case rendered by the Municipal Court of Cebu to the Court of First Instance may be oral. *Held:* That the appeal was duly perfected. The Supreme Court, by virtue of the authority conferred upon it by the Constitution, has amended section 43 of General Orders No. 58 by the promulgation of its resolution of March 24, 1937 to such an extent as to allow verbal appeals from Justice of the Peace Courts of municipalities and the Municipal Courts of the various chartered cities. Having been promulgated later than the aforementioned Commonwealth Act No. 58 (Charter, City of Cebu), the amendment should

therefore prevail. Writ granted. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concurring.)—*Briefed by* ALEJANDRO D. YANGO.

CIVIL PROCEDURE.—*Alfredo Montelibano, Petitioner vs. Municipality of Iloilo, Respondent, G. R. No. 46585, Nov. 11, 1939.* This is a certiorari case growing out of an expropriation proceeding initiated by the Municipality of Iloilo. Montelibano alleged that the Court of Appeals acquired no jurisdiction over the case, because the bill of exceptions filed by the Municipality was submitted outside the period allowed by law; nor did it have the power to review the evidence as there was no exception to the order denying the motion for new trial. It was found that the exception made was directed to the decision and not to the order denying the motion for new trial. *Held:* The Court of Appeals erred in considering the exception made of record as equivalent to an exception to the order denying the motion for new trial. Consequently, under section 497, par. 2 of the Code of Civil Procedure the Court of Appeals did not have the power to review the evidence, there being no motion for new trial based on the insufficiency of the evidence, and exception made to the order denying the same. The action of the Court of Appeals in reviewing the evidence finds no justification under section 145-F of Act 2711 as provided for by section 3 of Commonwealth Act No. 3 (amended by section 11 of

Commonwealth Act No. 259). The power therein granted to the Court of Appeals should be exercised in accordance with section 497 of the Code of Civil Procedure. The order of the Court of Appeals is reversed. So ordered. (Per Imperial, J.; Avanceña, C.J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by* EMILIANO R. NAVARRO.

CIVIL PROCEDURE.—*Li Seng Gap & Co., Inc., and Du Uy, Petitioners vs. Hon. Juan G. Lesaca, et al., Respondents, G. R. No. 46608, November 14, 1939.* In the intestate proceedings of the deceased Irene Jaucian del Rosario, the claims of the petitioners were approved by the commission on appraisal and claims and the court ordered the administrator to pay the same. No exception nor appeal was taken, hence the order became final. Subsequently, the new administrator appealed from such order, which appeal was approved by the court notwithstanding the lapse of the period fixed to perfect the appeal. Later, the new administrator presented a motion to declare abandoned the claims of the petitioners for not having been commenced within 30 days according to Sec. 776 of the Code of Civil Procedure as amended by Act No. 4229. In another motion he asked the permission of the court to sell the interest of the deceased in two parcels of land. These motions were granted on the ground that the report of the commission was still appealable for the commission did not notify the administrator of its submission to the court, and because the heirs of the deceased agreed to the sale thereof, it being for their interest respectively. At the instance of the petitioners the Supreme Court issued a preliminary writ of prohibition. *Held:* As to the first motion, the court acted without jurisdiction because according to Sections 694 and 691 of the Code of

Civil Procedure, it is not necessary to notify the administrator of the presentation of the report, and the appeal having been filed after the lapse of the time fixed, the decision of the commission approving the claims became final. As to the second motion, the court acted in excess of discretion because the reason for the sale was not in pursuance of law, therefore the order of the court granting permission to sell was null and void. Petition granted. (Per Imperial, J.; Avanceña, C.J., Villa-Real, Diaz, Laurel, Concepcion, JJ., concurring; Moran, J., concurring with the dispositive part.)—*Briefed by* ERNESTO P. VALENCIA.

CONTRACTS.—*Tagaytay Development Co., Petitioner-Appellee vs. Antonio E. Osorio, Oppositor-Appellant, G. R. No. 46069, November 16, 1939.* The oppositor, represented by his brother executed a contract of barter with the petitioner wherein his land in Cavite was exchanged with that of the petitioner in Batangas. The contract further provided that it was provisional in character and that a definite one would be executed later. In accordance therewith, the petitioner prepared a definite contract of barter and presented it to the oppositor but the latter refused to sign it claiming that his agent was authorized not to barter but to sell his portion of the land. The lower court rendered judgment in favor of the petitioner, hence this appeal. *Held:* That the contract of barter was already perfected and consummated when the parties took respective possessions of the exchanged lands. The stipulation to the effect that the parties will later execute a definite contract of barter does not impede a contract already existing to produce all its legal effects. The authorization of the brother of the oppositor was to dispose of his portion in any manner whatever and this includes

the contract of barter. This was confirmed by the fact that the oppositor with his brother executed a contract of lease in favor of the Manila Hotel affecting a certain portion of the land received by them from the petitioner. Judgment modified. (Per Imperial, J.; Avanceña, C.J., Villa-Real, Diaz, Laurel, Concepcion, JJ., concurring; Moran, J., dissenting.)—*Briefed by VICENTE Q. QUINTILLAN.*

CONTRACTS.—*A. O. Fisher, Plaintiff-Appellee vs. John C. Fisher, Defendant-Appellant, G. R. No. 46274, Nov. 2, 1939.* The plaintiff was a subscriber of the Philippine Greyhound Club, Inc. He made two payments on his subscription. Because of the failing condition of the corporation, the defendant, one of its promoters, wrote a letter to the plaintiff stating that he felt morally obliged to repay him the second payment which he made. Upon failure of the defendant to fulfill the obligation which he voluntarily assumed, the plaintiff brought this action for the fulfillment of said obligation. *Held:* One of the requisites of a contract is legal consent. In the case at bar, the defendant voluntarily assumed to pay the second payment which the plaintiff made. A mere moral obligation or conscientious duty arising wholly from ethical motives or a mere conscientious duty unconnected with any legal obligation does not furnish a consideration for an executory promise. (Per Villa-Real, J.; Avanceña, C.J., Imperial, Diaz, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by JUAN JACINTO.*

EXECUTION OF JUDGMENT.—*Felisa S. Marcelo, Plaintiff-Appellee vs. Daniel V. Estacio, Defendant-Appellant, G. R. No. 46626, November 7, 1939.* One year after their marriage, the plaintiff and the defendant separated. Hence, plaintiff filed this action for alimony, and the

court decreed in her favor a monthly pension of P30.00. The defendant presented a motion that he be allowed to introduce evidence to show that his means would not permit him to comply with the court's order. The court allowed him to do so, but having failed to present the aforesaid evidence his motion for reconsideration was denied. After the defendant had presented his bill of exceptions, the plaintiff-appellee presented a petition that he be required to give a bond of P2,000 to secure the payment of the monthly allowance, or to deposit in court P30.00 monthly. The court approved the bill of exceptions, but issued an order for the execution of the judgment. The question is whether or not the trial court can issue an order of execution after approving the bill of exceptions. *Held:* That the issue must be decided in favor of the defendant-appellant. The approval of the bill of exceptions deprives the trial court of jurisdiction over the action, transfers the same to the appellate court, suspends the judgment appealed from, and stays the order for alimony. There are, of course, cases where execution may issue but such may be granted by the court only for special reasons appearing on the bill of executions which do not exist in this case. Therefore, the part of the judgment requiring the payment of alimony is affirmed, but denied as to that part decreeing execution after the approval of the bill of exceptions. Judgment modified. (Per Villa-Real, J.; Avanceña, Imperial, Diaz, Laurel, Concepcion, and Moran, concurring.)—*Briefed by EUGENIO R. FILIO.*

INSOLVENCY.—*China Insurance & Surety Co., Plaintiff-Appellee vs. C. Kelling as receiver for the insolvent Yu Ping Kun, Defendant, Fur Eastern Surety & Insurance Company, Inc., Intervenor-Appellant, G. R. No. 46131, November 14, 1939.*

Yu Ping borrowed ₱40,000 from plaintiff securing this obligation with a mortgage on real property. The loan became due but was not paid and the claim was presented in the insolvency proceedings, Yu having become insolvent. The intervenor states that the mortgage is null for the sum was not actually received, hence the loan was fictitious. Judgment for plaintiff was given by the lower court for the sum with interests and attorney's fees. *Held*: The loan being evidenced by a check, consideration is presumed. Judgment modified to exclude from the sums adjudicated a separate item for attorney's fees, the same being already included in the loan as stipulated by the parties. (Per Imperial, J.; Avanceña, C.J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by* FRINÉ C. AS-PRER.

PUBLIC SERVICE COMMISSION.—*Batangas Transportation Co. & Laguna Tayabas Bus Co., Petitioners vs. Hon. Vicente de Vera & Eliseo Silva, Respondent, G. R. No. 46625, Oct. 6, 1939.* Respondent Silva holds a certificate of public convenience for the operation of a bus transportation service between Manila and Batangas subject to the restriction prohibiting the rendering of local service, either passenger or freight, within certain specified limits. He applied to the Public Service Commission for the lifting of said restriction, and notice to petitioners herein was given. The Commission, after apprising itself of the application, but without hearing the evidence of the applicant to show that the removal of the restriction would promote public convenience, and of the oppositors to support their opposition, ordered the provisional lifting of the restriction. It also ordered the Chief of the Division of Transportation to maintain checkers on the restricted points to determine

the justification of lifting the restriction. The order was challenged in the present certiorari proceedings as having been given without proper hearing and in abuse of discretion of the Respondent Commission. *Held*: While the Public Service Act denies to the Commission the power to amend any certificate issued by it without notice and proper hearing, the order complained of however, does not amend the certificate of public convenience. It is only an order of investigation preparatory to the final hearing and decision of the application. Under the Public Service Act and the Taxicab Cases, the Commission can, even without a previous hearing, investigate matters within its jurisdiction and consider the results of its own investigation in rendering its decision. If the provisional lifting furnishes reliable data which will determine the justification of permanently abrogating the restriction, the order is a mode of investigation, which properly is within the power of the Commission. Petition dismissed. (Per Moran, J., Avanceña, Villa-Real, Imperial, Diaz, ceña, Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* HERMINIA YATCO.

SALE.—*Herminia Oliveros, Solicitor-Appellee vs. Julia Catot, Oppositor-Appellant, G. R. No. 46431, November 14, 1939.* A motion was filed by Herminia Oliveros in the course of a registration proceedings requesting the court to order Julia Catot, the oppositor herein, to surrender the Transfer Certificate of Title which she claimed is illegally possessed by her. She based her claim on the 2 parcels of land covered by the title by virtue of a sale made to her by the heirs of the deceased Ramon Arevalo y de Jesus, in whose name the land in question was originally registered. As a defense the oppositor claimed ownership over the same

parcels of land by virtue of a Deed of Sale made to her by the widow of the deceased, which sale is evidenced by means of a public instrument executed before a notary public. The court requested the oppositor to surrender the Transfer Certificate of Title in her possession, hence this appeal. The question to be resolved therefore is whether or not the oppositor illegally possessed the Transfer Certificate of Title covering the two parcels of land. *Held*: The lower court erred in declaring that the oppositor had no right to the possession of the Transfer Certificate of Title. The fact that the sale made by the widow to the oppositor herein was valid with respect to one half of the property in question, she being the owner of the same by virtue of a previous adjudication to her of said half by the court, was sufficient motive for the oppositor to keep and retain in her possession the Transfer Certificate of Title. Judgment reversed. (Per Imperial, J.; Villa-Real; Diaz, Concepcion, JJ., concurring; Moran, J., concurring in the dispositive part of the decision; Avanceña, C.J., Laurel, J., did not take part.)—*Briefed by AMORSOLO V. MENDOZA.*

**TAXATION.**—*Manila Electric Company, Plaintiff-Appellant vs. A. L. Yatco, Collector of Internal Revenue, Defendant-Appellee, G. R. No. 45697, November 1, 1939.* Plaintiff company, a corporation organized and existing under the laws of the Philippines, insured some real and personal properties situated in the Philippines with the City of New York Insurance Company and the United States Guaranty Company, which had

no license to do business in the Philippines nor had agents here. The contract of insurance was entered into in behalf of plaintiff-appellee by its broker in New York City. Plaintiff, through its broker, paid in New York to said insurance company premiums in the sum of P91,696. Defendant-appellant, as Collector of Internal Revenue, under the authority of Sec. 192 of Act 2427, as amended, assessed and levied a tax of one per centum on the said premium which plaintiff paid under protest. The question at issue, therefore, is whether the disputed tax is one imposed by the Commonwealth of the Philippines upon a contract beyond its jurisdiction? *Held*: Where the insured is within the Philippines, the risks insured against is also within the Philippines, and certain incidents of the contracts are to be attended to in the Philippines, such as the payment of dividends when received in cash, the sending of an adjuster into the Philippines in case of dispute, or making of proof in case of loss. The Commonwealth of the Philippines has the power to impose the tax upon the insured, regardless of whether the contract is executed in a foreign country and with a foreign corporation. Under such circumstances, the substantial elements of the contract may be said to be so situated in the Philippines as to give its government the power to tax. The government, by protecting the properties insured, benefits the foreign corporation, and it is but reasonable that the latter should pay a just contribution therefor. Judgment affirmed. (Per Moran, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concurring.)—*Briefed by YUSUP R. ABUBAKAR.*