

RECENT DECISIONS

Digest of Current Cases

MUNICIPAL CORPORATIONS.—
Bonifacio Carlos, Plaintiff-Appellant vs. Catalino de los Reyes, Defendant-Appellee, G. R. No. 46607, January 15, 1940. The defendant, a policeman of the City of Manila acting under the provision of Ordinance No. 1684, as amended, of said city, ordered the plaintiff's automobile to be brought to the City Pound. Said ordinance provides: "An automobile which is left in a public street for more than 8 hours without anybody taking care of it shall be considered abandoned, and it shall be brought to the City Pound to be deposited there until the owner claims it within three months after paying ₱2.50 a day for its deposit and preservation. If the owner does not claim it within three months, it may be sold in public auction". The plaintiff left his automobile in a public street for more than 8 hours under nobody's care. He now seeks to compel the defendant to deliver to him the automobile on the ground that said ordinance is void. *Held:* The City has the power to pass the ordinance by virtue of Sec. 2444 of the Revised Administrative Code which gives it the power among other things, "to prohibit the placing, throwing, depositing, or leaving of obstacles of any kind, * * * in the streets and other public places and to provide for the collection and disposition thereof" and "* * * to provide for the abatement of nuisances in the

same and punish the authors or owners thereof * * *". Any object which obstructs the free passage through a public street is a nuisance under this section and it is precisely for this purpose that the ordinance in question was passed. When a person leaves his automobile under nobody's care for more than 8 hours in a public street, it will obstruct the free flow of traffic and the City by a valid exercise of its police power can remove such an obstruction, the streets being for the use of the public and not for the exclusive use of any person. The ordinance is valid. (Per Diaz, J.; Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by* ALFREDO LUZ BAUTISTA.

PROHIBITION.—*Go Hap, et al, Petitioners vs. Hon. Mamerto Roxas and Ng Woo, Respondents, G. R. No. 46829, January 15, 1940.* Petitioners pray for a writ of prohibition to forbid the respondent judge from interfering with the execution of a final judgment. In a previous case, the petitioners herein instituted mandamus proceedings in the Court of First Instance of Manila to compel the Mayor, Treasurer, and the Superintendent of Markets and Slaughterhouses of the City to declare vacant certain stalls occupied by Ng Woo, the intervenor, and to move the petitioners to said stalls. Mandamus

was denied, but on appeal to the Court of Appeals, writ was granted and this judgment was affirmed by the Supreme Court. Later Ng Woo filed a complaint to set aside the affirmed judgment on the grounds of fraud, deceit, and misrepresentation and prayed that preliminary injunction be issued against the respondents for the latter to refrain from enforcing the judgment. It was contended that the fraud consisted of the fact that the petitioners had induced the respondents to enter into a false agreed statement of facts to the effect that the stalls occupied by the petitioners were adjacent to and immediately followed the stalls in question. Preliminary injunction was granted, hence the present petition for prohibition. *Held*: When the Court of Appeals renders a decision on a formal stipulation of facts entered into by the parties, and such decision has been affirmed by the Supreme Court, the party adversely affected by the decision will not, as a rule, be permitted on allegation of fraud, to assail such stipulation, for the purpose of arresting the execution of the foregoing decision after the same has become final and executory. A judge of the Court of First Instance, who upon complaint to set aside a decision thus rendered and affirmed, issues a preliminary injunction to restrain the normal course of proceedings leading to execution of a judgment, exceeds his jurisdiction and may thus properly be restrained by a writ of prohibition. Writ granted. (Per Laurel, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, JJ., concurring. Moran, J. took no part.)—*Briefed by BIENVENIDO C. AMBION.*

PUBLIC SERVICE LAW.—*Santiago Sambrano and Eugenio Jamias, Petitioners vs. Florencio Lara, Respondent, G. R. Nos. 46516, and 46519, January 23, 1940.* Eugenio Jamias was the owner of a certificate of public service convenience which he sold to Florencio Lara so that they subsequently filed a petition with the Public Service Commission to have the sale approved. While this petition was pending Jamias sold the same certificate of public convenience to Santiago Sambrano. In pursuance of this latter sale Jamias wrote to the Public Service Commission requesting that the petition seeking approval of the sale he made to Lara be denied on the ground that Lara failed to pay the purchase price. Jamias and Sambrano then filed a petition of their own with the Public Service Commission wherein they asked for the approval of the second sale. After due hearing the Public Service Commission approved the sale made to Lara and disapproved the one made to Sambrano. From this order of the Public Service Commission Jamias and Sambrano appealed and assigned as errors: (1) that no personal notice was served upon them as to the date of the hearing, and (2) that the Public Service Commission had no jurisdiction to determine whether the sale made to Lara was valid or not. *Held*: (1) The Public Service Law does not require personal service of notice. The notice by publication made in *La Opinion* was sufficient inasmuch as Sec. 20, par. (k) of the Public Service Law empowers the Public Service Commission to adopt, maintain, or apply practices and measures, rules or regulations to which the public shall be subject in its relations with the public service. (2) When the Public Service Commis-

sion approves the sale of a certificate of public convenience it does not pass upon its intrinsic or extrinsic validity. It merely exercises its discretionary act by giving its stamp of approval to the sale. The approval given to a sale may even be done by an *ex parte* petitions. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concurring. Moran, J., did not take part.)—*Briefed by* VICENTE ABAD SANTOS.

PUBLIC UTILITIES.—*Guillermo Manlapit, Plaintiff-Appellant vs. V. Fragante, Director of Public Works, Defendant-Appellee G. R. No. 46621, January 29, 1940.* Plaintiff paid under protest the sum of ₱2,040.00 for the registration of six trucks. The protest was decided against him adversely. He filed an action in the Court of First Instance which affirmed the decision on the protest. This is the appeal. Question: Should the appellant as a customs broker pay for the rights of registration of six trucks used for the transportation of effects and articles exclusively imported by his customers or should he pay double for such rights considering the trucks as for public utility. *Held:* Undoubtedly the trucks are not for private use as that term is used in the Revised Motor Vehicle Law No. 3992 because they are not used exclusively for personal purposes. These trucks are within paragraph (g), article 8, section 2, Chapter II of Law 3992 as amended by Commonwealth Act. No. 123, to the effect that the payment for registration shall be double that of motors used for private purposes in cases of passenger vehicles, animal-driven vehicles, and vehicles for contracts of transportation or hire. It is clear therefor that the appellant should pay

as directed by the lower court. (Per Concepcion, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, JJ., concurring. Moran, J., did not take part.)—*Briefed by* FRINE C. ASPRER.

SPECIAL PROCEEDINGS.—*Francisca Mercado and Anastacia Lising, Plaintiffs-Appellees vs. Francisco Macapayag and Roman Pineda, Defendants, Francisco Lorenzo and Concepcion Hizon, Sureties-Appellants, G. R. No. 46984, January 20, 1940.* Plaintiff-appellees obtained the seizure of 320 cavanos of palay in the possession of the defendants. The defendants alleged that they were the tenants of the plaintiffs and claimed 142 cavanos and to secure their return to the plaintiffs, filed a redelivery bond with the sureties-appellants as sureties. Trial court rendered judgment on the stipulation of facts against the defendants to return some of the cavanos of palay. Judgment having become final, plaintiff asked for execution, which was returned unsatisfied. Hence plaintiffs petitioned for execution of judgment against the redelivery bond. The sureties-appellants opposed this petition. The question is whether the sureties are liable on their delivery bond as a consequence of the failure of the defendant to satisfy the judgment. *Held:* By the terms of the redelivery bond the sureties bound themselves to answer solidarily for the obligation of the defendants to the plaintiffs. The liability of the sureties was fixed and conditioned on the finality of the judgment rendered regardless of whether the decision was based on the consent of the parties or not. A judgment entered into on a stipulation of facts is a valid judgment because it is consented to by the parties. Judg-

ment affirmed. (Per Laurel, J.; Avanceña C. J., Villa-Real, Imperial, Diaz, and Concepcion, JJ., concurring; Moran, J., took no part.)—*Briefed by* ERNESTO P. VALENCIA.

TESTATE PROCEEDINGS.—*Testate of the Deceased Rudocindo Adapon. Pedro Adapon, Administrator-Appellant vs. Felisa Maralit, Oppositor-Appellee, G. R. No. 46898, January 20, 1940.* The appellant presented for probate the last will and testament of his deceased father. The will was admitted to probate, and the appellant, having been appointed administrator, filed an inventory of the properties and assets of the estate. The surviving spouse of the testator by the second marriage, the oppositor-appellee herein, presented a petition asking the court to order the administrator to include in the submitted inventory certain properties. But in his answer to this petition, the administrator claimed ownership over said properties. The question to be resolved is whether a Court of First Instance, in the exercise of its probate jurisdiction under Section 599 of the Code of Civil Procedure, could,

upon petition of an oppositor to include certain properties in the inventory prepared by the administrator to some of which the said administrator has laid claims of proprietorship, determine the question of ownership, and thereby meet the issues as thus presented. *Held:* When questions arise as to the ownership of property, alleged to be a part of the estate of a deceased person but claimed by some other person to be his property, not by virtue of any right of inheritance from the deceased, but by title adverse to that of the deceased and his estate, such questions cannot be determined in the course of administration proceedings. The Court of First Instance, acting as a probate court, has no jurisdiction to adjudicate such contentions, which must be submitted to the court in the exercise of its general jurisdiction as a Court of First Instance to try and determine the ordinary actions mentioned in the Code of Civil Procedure. (Per Laurel, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, and Concepcion, JJ., concurring.)—*Briefed by* JUAN JACINTO.