RECENT DECISIONS

Decision Reported in Full

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES

SUPREME COURT OF THE PHILIPPINES

PANGASINAN TRANSPORTATION CO., INC.
Petitioner,

versus

THE PUBLIC SERVICE COMMISSION,
Respondent.*

G. R. No. 47065.
Promulgated:
June 26, 1940.

DECISION

LAUREL, J.:

The petitioner has been engaged for the past twenty years in the business of transporting passengers in the provinces of Pangasinan and Tarlac and, to a certain extent, in the provinces of Nueva Ecija and Zambales, by means of motor vehicles commonly known as TPU buses, in accordance with the terms and conditions of the certificates of public convenience issued in its favor by the former Public Utility Commission in Cases Nos. 24948, 30973, 36831, 32014, and 53090. On August 26, 1939, the petitioner filed with the Public Service Commission an application for authorization to operate ten additional new Brockway trucks (Case No. 56641), on the ground that they were needed to comply with the terms and conditions of its existing certificates and as a result of the application of the Eight-Hour Labor Law. In the decision of September 26, 1939, granting the petitioner's application for increase of equipment, the Public Service Commission ordered:

> Y de acuerdo con lo que se provée por el Art. 15 de la Ley 146 del Commonwealth tal como ha sido enmendada por el Art. 1 de la Ley 454 por la presente se enmienda las condiciones de los certificados de conveniencia publica expedidos en los expedientes Nos. 24948, 30973, 36831, 32014 y la autorización concedida en el expediente No. 53090, así que se consideran incorporadas en los mismos las dos siguientes condiciones:
>
> "Que los certificados de conveniencia publica y autorización arriba mencionados serán validos y subsistentes solamente durante el periodo de VEINTICINCO (25) AÑOS, contados desde la fecha de la promulgación de esta decisión.
>
> "Que la empresa de la solicitante podrá ser adquirida por el Commonwealth de Filipinas o por alguna dependencia del mismo en cualquier tiempo que lo deseare pago del precio de costo de su equipo útil, menos una depreciación razonable que se ha de fijar por la Comisión al tiempo de su adquición."

Not being agreeable to the two new conditions thus incorporated in its existing certificates, the petitioner

* Ruling re-affirmed in BOHOL LAND TRANS. CO vs. PUBLIC SERVICE COMMISSION (G. R. 47237), CEBU TRANSIT CO vs. PUBLIC SERVICE COMMISSION (G. R. 47238), CEBU AUTOBUS COMPANY vs. PUBLIC SERVICE COMMISSION (G. R. 47239), LAGUNA TAYABAS BUS CO. vs. VICENTE DE VERA (G. R. 47117).

filed on October 9, 1939 a motion for reconsideration which was denied by the Public Service Commission on November 14, 1939. Whereupon, on November 20, 1939, the present petition for a writ of certiorari was instituted in this Court praying that an order be issued directing the secretary of the Public Service Commission to certify forthwith to this Court the records of all proceedings in Case No. 56641; that this Court, after hearing, render a decision declaring section 1 of Commonwealth Act No. 454 unconstitutional and void; that, if this Court should be of the opinion that section 1 of Commonwealth Act No. 454 is constitutional, a decision be rendered declaring that the provisions thereof are not applicable to valid and subsisting certificates issued prior to June 8, 1939. Stated in the language of the petitioner, it is contended:

"1. That the legislative powers granted to the Public Service Commission by section 1 of Commonwealth Act No. 454, without limitation, guide or rule except the unfettered discretion and judgment of the Commission, constitute a complete and total abdication by the Legislature of its functions in the premises, and, for that reason, the Act, in so far as those powers are concerned, is unconstitutional and void.

"2. That even if it be assumed that section 1 of Commonwealth Act No. 454, is a valid delegation of legislative powers, the Public Service Commission has exceeded its authority because: (a) The Act applies only to future certificates and not to valid and subsisting certificates issued prior to June 8, 1939, when said Act took effect, and (b) the Act, as applied by the Commission, violates constitutional guarantees.

Section 15 of Commonwealth Act No. 146, as amended by section 1 of Commonwealth Act No. 454, invoked by the respondent Public Service Commission in the decision complained of in the present proceedings, reads as follows:

"With the exception of those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting certificate from the Public Service Commission, known as 'certificate of public convenience,' or 'certificate of convenience and public necessity,' as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interests in a proper and suitable manner.

"The Commission may prescribe as a condition for the issuance of the certificate provided in the preceding paragraph that the service can be acquired by the Commonwealth of the Philippines or by any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation; and likewise, that the certificate shall be valid only for a definite period of time; and that the violation of any of these conditions shall produce the immediate cancellation of the certificate without the necessity of any express action on the part of the Commission.

"In estimating the depreciation, the effect of the use of the equipment, its actual condition, the age of the model, or other circumstances affecting its value in the market shall be taken into consideration.

"The foregoing is likewise applicable to any extension or amendment of certificates actually in force and to those which may hereafter be issued, to permits to modify itineraries and time schedules of public services and to authorizations

to renew and increase equipment and properties."

Under the first paragraph of the aforequoted section 15 of Act No. 146, as amended, no public service can operate without a certificate of public convenience or certificate of convenience and public necessity to the effect that the operation of said service and the authorization to do business will promote "public interests in a proper and suitable manner." Under the second paragraph, one of the conditions which the Public Service Commission may prescribe for the issuance of the certificate provided for in the first paragraph is that "the service can be acquired by the Commonwealth of the Philippines or by any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation," a condition which is virtually a restatement of the principle already embodied in the Constitution, section 6 of Article XII, which provides that "the State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government." Another condition which the Commission may prescribe, and which is assailed by the petitioner, is that the certificate "shall be valid only for a definite period of time." As there is a relation between the first and second paragraphs of said section 15, the two provisions must be read and interpreted together. That is to say, in issuing a certificate, the Commission must necessarily be satisfied that the operation of the service under said certificate *during a definite period fixed therein* "will promote the public interests in a proper and suitable manner." Under section 16 (a) of Commonwealth Act No. 146 which is a complement of section 15, the Commission is empowered to issue certificates of public convenience whenever it "finds that the operation of the public service proposed and the authorization to do business will promote the public interests in a proper and suitable manner." Inasmuch as the period to be fixed by the Commission under section 15 is inseparable from the certificate itself, said period cannot be disregarded by the Commission in determining the question whether the issuance of the certificate will promote the public interests in a proper and suitable manner. Conversely, in determining "a definite period of time," the Commission will be guided by "public interests," the only limitation to its power being that said period shall not exceed fifty years (Sec. 16 [a], Commonwealth Act No. 146; Constitution, Art. XIII, Sec 8.) We have already ruled that "public interest" furnishes a sufficient standard. (People vs. Fernandez and Trinidad, G. R. No. 45655, promulgated June 15, 1938; People vs. Rosenthal and Osmeña, G. R. Nos. 46076 and 46077, promulgated June 12, 1939, citing New York Central Securities Corporation vs. U. S. A., 287 U. S. 12, 24, 25, 77 L. ed, 138, 145, 146; Schenchter Poultry Corporation vs. U. S., 295 U. S. 495, 540, 79 L. ed. 1570, 1585; Ferrazzini vs. Gsell, 34 Phil. 697, 711-712.)

Section 8 of Article XIII of the Constitution provides, among other things, that no franchise, certificate, or any other form of authorization for the operation of a public utility shall be "for a longer period than fifty years," and when it was ordained in section 15 of Commonwealth Act No. 146, as amended by Commonwealth Act No. 454, that the Public Service Commission may prescribe as a condition for the issuance of a certificate that it "shall be valid only

for a definite period of time" and, in section 16 (a) that "no such certificates shall be issued for a period of more than fifty years," the National Assembly meant to give effect to the aforesaid constitutional mandate. More than this, it has thereby also declared its will that the period to be fixed by the Public Service Commission shall not be longer than fifty years. All that has been delegated to the Commission, therefore, is the administrative function, involving the use of discretion, to carry out the will of the National Assembly having in view, in addition, the promotion of "public interests in a proper and suitable manner." The fact that the National Assembly may itself exercise the function and authority thus conferred upon the Public Service Commission does not make the provision in question constitutionally objectionable.

The theory of the separation of powers is designed by its originators to secure action and at the same time to forestall overaction which necessarily results from undue concentration of powers, and thereby obtain efficiency and prevent despotism. Thereby, the "rule of law" was established which narrows the range of governmental action and makes it subject to control by certain legal devices. As a corollary, we find the rule prohibiting delegation of legislative authority, and from the earliest time American legal authorities have proceeded on the theory that legislative power must be exercised by the legislature alone. It is frankness, however, to confess that as one delves into the mass of judicial pronouncements, he finds a great deal of confusion. One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of *delegatus non potest delegari* or *delegata potestas non potest delegari*, attributed to Bracton (De Legibus et Consuetedinious Angliae, edited by G. E. Woodbine, Yale University Press, 1922, Vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D. 17.18.3), has been made to adopt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of "subordinate legislation," not only in the United States and England but in practically all modern governments. (People vs. Rosenthal and Osmeña, G. R. Nos. 46076 and 46077, promulgated June 12, 1939.) Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts. (Dillon Catfish Drainage Dist. vs. Bank of Dillon, 141 S. E. 174, 275, 143 S. Ct. 178; States vs. Knox County, 54 S. W. 2d. 973, 976, 165 Tenn. 319.) In harmony with such growing tendency, this Court, since the decision in the case of Compañia General de Tabacos de Filipinas vs. Board of Public Utility Commissioners, 34 Phil. 136, relied upon by the petitioner, has, in instances, extended its seal of approval to the "delegation of greater powers by the legislature." (Inchausti Steamship Co. vs. Public Utility Commissioner, 44 Phil. 366; Alegre vs. Collector of Customs, 53 Phil. 394; Cebu Autobus Co. vs. De Jesus, 56 Phil. 446; People vs. Fernandez & Trinidad, G. R. No. 45655, promulgated June 15, 1938; People vs. Rosenthal & Osmeña, G. R. Nos. 46076, 46077, promulgated June 12, 1939; and Robb and Hilscher vs. People, G. R. No. 45866, promulgated June 12, 1939.)

Under the fourth paragraph of section 15 of Commonwealth Act No. 146, as amended by Commonwealth Act No. 454, the power of the Public Service Commission to prescribe the conditions "that the service can be acquired by the Commonwealth of the Philippines or by any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation," and "that the certificate shall be valid only for a definate period of time" is expressly made applicable "to any extension or amendment of certificates actually in force" any extension or amendment of certificates actually in force" and "to authorizations to renew and increase equipment and properties." We have examined the legislative proceedings on the subject and have found that these conditions were purposely made applicable to existing certificates of public convenience. The history of Commonwealth Act No. 454 reveals that there was an attempt to suppress, by way of amendment, the sentence "and likewise, that the certificate shall be valid only for a definite period of time," but the attempt failed:

* * * *

"SR. CUENCO.—Señor Presidente, para otra enmienda. En la misma pagina, lineas 23 y 24, pido que se supriman las palabras 'and likewise, that the certificate shall be valid only for a definite period of time." Esta disposicion del proyecto autoriza a la Comision de Servicios Publicos a fijar un plazo de vigencia del certificado de conveniencia publica. Todo el mundo sabe que no se puede determinar cuando los intereses del servicio publico requieren la explotacion de un servicio publico y como ha de saber la Comision de Servicios Publicos, si en un tiempo determinado, la explotacion de algunos buses en cierta ruta ya no tiene razon de ser, sobre todo, si se tiene en cuenta; que la explotacion de los servicios publicos depende de condiciones fluctuantes, asi como del volumen del trafico y de otras condiciones. Además, el servicio publico se concede por la Comision de Servisios Publicos cuando el interes publico así lo exige. El interes publico no tiene duracion fija, no es permanente; es un proceso mas o menos indefinido en cuanto al tiempo. Se ha acordado eso en el caucus de anoche.

"EL PRESIDENTE PRO TEMPORE. Que dice el Comite?

"SR. ALANO.—El Comite siente tener que rechazar esa enmienda en vista de que esto de los certificados de conveniencia publica es igual que la franquicia: se puede extender. Si los servicios prestados por la compañia durante el tiempo de su certificado lo requiere, puede pedir la extension y se le extenderá; pero no creo conveniente el que nosotros demos un certificado de conveniencia publica de una manera que podría pasar de cincuenta años, porque sería anticonstitucional."

* * * *

By a majority vote the proposed amendment was defeated. (Sesión de Mayo de 1939, Asamblea Nacional.)

The petitioner is mistaken in the suggestion that, simply because its existing certificates had been granted before June 8, 1939, the date when Commonwealth Act No. 454, amendatory of section 15 of Commonwealth Act No. 146, was approved, it must be deemed to have the right of holding them in perpetuity. Section 74 of the Philippine Bill provided that "no franchise, privilege, or concession shall be granted to any corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States." The Jones

Law, incorporating a similar mandate, provided, in section 28, that "no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States." Lastly, the Constitution of the Philippines provides, in section 8 of Article XIII, that "no franchise or right shall be granted to any individual, firm, or corporation except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires." The National Assembly by virtue of the Constitution, logically succeeded to the Congress of the United States in the power to amend, alter or repeal any franchise or right granted prior to or after the approval of the Constitution; and when Commonwealth Acts Nos. 146 and 454 were enacted, the National Assembly, to the extent therein provided, has declared its will and purpose to amend or alter existing certificates of public convenience.

Upon the other hand, statutes for the regulation of public utilities, being a proper exercise by the state of its police power, are applicable not only to those public utilities coming into existence after its passage, but likewise to those already established and in operation.

> "Nor is there any merit in petitioner's contention, that, because of the establishment of petitioner's operations prior to May 1, 1917, they are not subject to the regulations of the Commission. Statutes for the regulation of public utilities are a proper exercise by the state of its police power. As soon as the power is exercised, all phases of operation of established utilities, become at once subject to the police power thus called into operation. Producers' Transportation Co. vs. Railroad Commission, 251 U. S. 228, 40 Sup. Ct. 131, 64 L. ed. 239, Law vs. Railroad Commission, 184 Cal. 737, 195 Pac. 423, 14 A. L. R. 249. The statute is applicable not only to those public utilities coming into existence after its passage, but likewise to those already established and in operation. The 'Auto, Stage and Truck Transportation Act" (Stats. 1917, c. 213) is a statute passed in pursuance of the police power. The only distinction recognized in the statute between those established before and those established after the passage of the act is in the method of the creation of their operative rights. A certificate of public convenience and necessity is required for any new operation, but no such certificate is required of any transportation company for the operation which was actually carried on in good faith on May 1, 1917. This distinction in the creation of their operative rights in no way affects the power of the Commission to supervise and regulate them. Obviously the power of the Commission to hear and dispose of complaints is as effective against companies securing their operative rights prior to May 1, 1917, as those subsequently securing such rights under a certificate of public convenience and necessity. (Motor Transit Co. et al. vs. Railroad Commission of California et al., 209 Pac. 586.)"

Moreover, Commonwealth Acts Nos. 146 and 454 are not only the organic acts of the Public Service Commission but are "a part of the charter of every utility company operating or seeking to operate a franchise" in the Philippines. (Streator Aqueduct Co. vs. Smith et al., 295 Fed. 385.) The business of a common carrier holds such a peculiar relation to the pub-

lic interest that there is superinduced upon it the right of public regulation. When private property is "affected with a public interest it ceased to be *juris privati* only." When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to control. Indeed, this right of regulation is so far beyond question that it is well settled that the power of the state to exercise legislative control over public utilities may be exercised through boards of commissioners. (Fisher vs. Yangco Steamship Company, 31 Phil. 1, citing Munn vs. Illinois, 94 U. S. 113; Georgia R. & Bkg. Co. vs. Smith, 128 U. S. 174; Budd vs. New York, 143 U. S. 517; New York etc. R. Co. vs. Bristol, 151 U. S. 556, 571; Connecticut etc. R. Co. vs. Woodruff, 153 U. S. 689; Louisville etc. Ry. Co. vs. Kentucky, 161 U. S. 677, 695.) This right of the state to regulate public utilities is founded upon the police power, and statutes for the control and regulation of utilities are a legitimate exercise thereof, for the protection of the public as well as of the utilities themselves. Such statutes are, therefore, not unconstitutional, either as impairing the obligation of contracts, taking property without due process, or denying the equal protection of the laws, especially inasmuch as the question whether or not private property shall be devoted to a public use and the consequent burdens assumed is ordinarily for the owner to decide; and if he voluntarily places his property in public service he cannot complain that it becomes subject to the regulatory powers of the state. (51 C. J., sec. 21, pp. 9-10.) This is the more so in the light of authorities which hold that a certificate of public convenience constitutes neither a franchise nor a contract, confers no property right, and is a mere license or privilege. (Burgess vs. Mayor & Aldermen of Brockton, 235 Mass. 95, 100, 126 N. E. 456; Roberto vs. Commissioners of Department of Public Utilities, 262 Mass. 583, 160 N. E. 321; Scheible vs. Hogan, 113 Ohio St. 83, 148 N. E. 581; Matz vs. Curtis (J. L.) Cartage Co. (1937), 132 Ohio St. 271, 7 N. E. (2d) 220; Manila Yellow Taxicab Co. vs. Sabellano, 59 Phil. 773.)

Whilst the challenged provisions of Commonwealth Act No. 454 are valid and constitutional, we are, however, of the opinion that the decision of the Public Service Commission should be reversed and the case remanded thereto for further proceedings for the reason now to be stated. The Public Service Commission has power, upon proper notice and hearing, "to amend, modify or revoke at any time any certificate issued under the provisions of this Act, whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed." (Section 16, par. (m), Commonwealth Act No. 146.) The petitioner's application here was for an increase of its equipment to enable it to comply with the conditions of its certificates of public convenience. On the matter of limitation to twenty-five (25) years of the life of its certificates of public convenience, there had been neither notice nor opportunity given the petioner to be heard or present evidence. The Commission appears to have taken advantage of the petitioner to augment petitioner's equipment in imposing the limitation of twenty-five (25) years which might as well be twenty or fifteen or any number of

years. This is, to say the least, irregular and should not be sanctioned. There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in Morgan vs. U. S., 304 U. S. 1, 58 S. Ct. 773, 999, 82 L. ed. 1129, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play." Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan vs. U. S. 298 U. S. 468, 56 S. Ct. 906, 80 L. ed. 1288.) In the language of this Court in Edwards vs. McCoy, 22 Phil. 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration." While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, at least when directly attacked. (Edwards vs. McCoy, supra.) This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

The decision appealed from is hereby reversed and the case remanded to the Public Service Commission for further proceedings in accordance with law and this decision, without any pronouncement regarding costs.

So ORDERED.

(SGD.) JOSE P. LAUREL.

WE CONCUR:

(SGD.) RAMON AVANCEÑA
(SGD.) C. A. IMPERIAL
(SGD.) ANACLETO DIAZ
(SGD.) PEDRO CONCEPCION
(SGD.) MANUEL V. MORAN

Decision Condensed

UNITED STATES OF AMERICA
COMMONWEALTH OF THE
PHILIPPINES

SUPREME COURT OF THE
PHILIPPINES

PEDRO DE LEON,

Petitioner,

versus

ALEJO MABANAG,

Respondent.

G. R. No. 47006

Promulgated

June 26, 1940

DECISION

IMPERIAL, J.:

The petioner in this writ of prohibition, was plaintiff-appellant in a civil case, now on appeal in the Supreme Court. The principal question in that case, was the genuineness or falsity of the document, marked Exhibit "V-1", presented during the trial in the lower court by the petitioner. After the plaintiff-appellant had presented his brief, the defendant-appellee presented a motion in which he alleged that the Exhibit "V-1" which was attached to the record of the case was false because it was not the same Exhibit which has been presented during the tiral, and asked the court to investigate the said document. The court ruled that the motion would be resolved when the case was decided on its merits. While the case was thus pending, the defendant-appellee denounced the petitioner to the respondent fiscal, of the crime of falsification of a public document. The respondent after an investigation, required the petitioner to present his answer, and the latter objected and asked for a postponement of the investigation until the Supreme Court should decide on the alleged falsification. The respondent did not agree to this and threatened to institute the criminal action if the petitioner would not answer the charges against him. So the petitioner now brings this writ of prohibition to stop the respondent from continuing with the preliminary investigation against the petitioner and from instituting a criminal action against the petitioner for the crime of falsification. The respondent contends that the question of the genuineness or falsity of the document Exhibit "V-1" is not *prejudicial,* nor is the pendency of the civil action in this court an obstacle to the bringing of the criminal action for falsification; furthermore that the right given him by law to prosecute crimes cannot be controlled or suspended by the courts.

The theory sustained by the respondent is erroneous. According to Article 3, Chapter II, Title I, Book I of the Spanish Law of Criminal Procedure, which is still in force in this jurisdiction in a suppletory character, and whose provisions apply as a principle of law, in all cases where they do not contradict any positive provision of any law (Almeida Chan Tanco vs. Abaroa, 8 Philippine Reports 178; Berbari vs. Concepcion 40 Phil. Reports 837) questions raised in civil and administrative proceedings based on facts which also form the basis of a criminal prosecution are *prejudicial.* The Encyclopedia Juridica Española defines the *prejudicial* question as "one which arises in an action or cause whose resolution is logically antecedent to the principal question and the cognizance of which corresponds to courts of other jurisdiction." The same article provides that, as a general rule, the court

which takes cognizance of a criminal action has the right to decide *prejudicial* questions solely for the purpose of repression when said questions appear so intimately connected with the punitive act that it is rationally impossible to separate them. But article 4 gives one exception and that is when the *prejudicial* question is determinative of the guilt or innocence of the accused, in which case the court which takes cognizance of the criminal action should suspend such action and have the *prejudicial* question decided in a civil or administrative action.

In this case, the falsification of the document, or better said, the acts which constitute the same, and its substitution in the course of the trial, affect directly the morality of the petitioner as member of the bar and it is the duty of the court to determine if he is guilty of malpractice, the determination of which constitute in this case the *prejudicial* question of an administrative character which should be resolved separately in an administrative proceeding in view of the fact that it would determine at the same time the guilt or innocence of the accused in relation with the criminal action for falsification. When in a civil action which is pending final decision in the Supreme Court facts are shown which may give rise to a criminal action for the crime of falsification of a document, at the same time as the institution of an administrative proceeding for malpractice, for the reason that the supposed person is a guilty member of the bar, the malpractice implies an administrative *prejudicial* question which should be resolved preferably in an administrative proceeding because they determine at the same time the guilt or innocence of the person responsible.

The necessity of suspending the preliminary investigation started by the respondent as also the institution of the criminal action for the crime of falsification becomes more obvious when it is considered that the falsity of the document and its substitution are at present *sub-judice* and if this court should decide that the same is genuine and has not been substituted and consequently that the petitioner is not guilty of malpractice, said fact would be repugnant to the stand sustained by the respondent. In general, the power of the Fiscal and his duty to prosecute crimes should not be controlled or curtailed by courts; but undoubtedly, said power can be regulated so that he should not abuse it. When a fiscal departs from the law and deviates from the right administration of justice, prosecuting a person for acts constituting a crime which are found to be *sub-judice* and from which is advanced an administrative *prejudicial* question, it is the duty of the courts to call the fiscal's attention and to compel him to suspend all criminal action until the administrative *prejudicial* question has been finaly decided. Therefore, the respondent should abstain from continuing the preliminary investigation and from presenting an information against the petitioner for the crime of falsification until the court has definitely resolved the motion for reconsideration of the decision rendered in the civil action. Petition granted. (Per Imperal, J.; Avanceña, C. J., Diaz, Laurel, JJ., concurring; Villa-Real, Concepción, JJ., did not take part.)

MORAN, J., *dissenting:* The general rule is that when there is a civil question and a criminal question over the same crime or offense, the second should be decided before the first, for the reason that the procedure of a criminal action is more suited to the ascertaining of a crime, and not that of the civil action. The exception to this general rule, is that which refers to a *prejudicial* civil question. A civil question is of a *prejudicial*

character and should be resolved before the criminal question, when it arises from an act distinct and separate from the crime, but so intimately connected with it that it determines the guilt or innocence of the accused; such as, a civil action as to the nullity of a second marriage, is of a *prejudicial* character and should be resolved before the criminal action for bigamy. The reason is that in this case the procedure of a civil action and not that of a criminal action, is more suited to find out, for example, the question of the validity or nullity of a marriage. But in these cases, the *prejudicial* civil question refers to a dispute, of a character purely civil but connected in such a way with the offense over which rests the criminal question, that it is determinative of the guilt or innocence of the accused. From which, it may deduced that when, as in the present case, the civil question rests over the same criminal act as that to which the criminal question refers, there exists no *prejudicial* question, and therefore, the general rule that the criminal question should be resolved before the civil question applies. This is under the supposition that the falsification is a question necessarily involved in the civil action, which is not the fact. This question is foreign to the objects of the controversy which gave rise to the civil action, which can be decided without the necessity of declaring whether or not there was such falsification. The criminal action, can, therefore, be initiated without the necessity of suspending the decision of the civil action, since the two actions rest on different questions.—*Condensed by* CARLOS LEDESMA.

"THE highest achievement possible to a man is the full consciousness of his own feelings and thoughts, for this gives him the means of intimately knowing the hearts of others."—GOETHE.

Digest Of Current Cases

ACQUISITIVE PRESCRIPTION —*The Commonwealth of the Philippines, Plaintiff-Appellant vs. Doroteo Gungun et al, Defendant-Appellee, G. R. No. 46839, June 26, 1940.*—During the Spanish regime, Hipolito Gungun possessed in the concept of owner, a fishery with dikes on a river in Bulacan. On the advent of the American regime, he sold said fishery to Epifanio Garcia. After the latter's death, his heirs, the appellees herein, continued exercising acts of ownership over the fisheries in question. By reason of the effects of the stream, a part of the dike was demolished and defendants undertook to have it repaired. While the repair was in progress, protests to it were made by some neighbors by reason of which an investigation was conducted by the office of the District Engineer. The investigation showed that the fishery was surrounded by mangrove swamps and that the dike in the process of being repaired is located in the same place where the original one was situated. A similar report was submitted by the clerk of court of the province when ordered and authorized by the court. On the basis of these two reports, the lower court rendered judgment in favor of the defendant. On appeal to the Court of Appeals the judgement was confirmed, the appellate court ruling that river banks may be the subject of appropriation by private individuals, and that the fishery in question has become a private property by reason of a long, continued and uninterrupted possession. The present petition for a writ of certiorari was presented to have that decision reversed. *Held:* When mangrove swamps are converted by the industry of man into fisheries and possessor maintains possession of it with the intention of owning it, continuously, publicly, and adversely against the whole world and for the time provided for acquisitive prescription, it becomes subject to private appropriation in accordance with the Act of Congress of July 1, 1902 and Act No. 926 of the Philippine Commission. The mere fact that the fishery in question is located on the banks of the river does not of itself make it a public land. It is true that from the dikes of the fishery to the river, there are mangrove swamps filled in by water from the sea during high tide. Inspite of this, however, it is not rendered navigable and in accordance with Article 73 of the Spanish Law of waters of 1886 river banks of these nature may be the subject of private appropriation, the only restriction imposed being an easement on a zone of three meters on the said banks mentioned on the same article of the law. Decision of the appellate court affirmed without any special pronouncement as to costs. (Per Diaz, J.; Avanceña, C. J., Laurel J., concurring.)—*Concurring Opinion*—I concur with the opinion of the majority, based on the two reports submitted showing that the dike being reconstructed is outside of the river's bank. The statement of the appellate court that the dike is situated on the river's bank should not be understood to mean the real bank of the river, but rather the bank of the mangrove swamps and of the low-lands. If, however, the majority decision means that the dike being reconstructed is situated on the river bank, I dissent on the basis of Article 339 of the

Civil Code which provides that banks of rivers are properties of the public domain and as such are not subject to acquisitive prescription as they are outside of the commerce of man. I dissent particularly with the conclusion of the majority opinion to the effect that Article 73 of the Spanish Law of Waters of 1866 does not prohibit private appropriation of river banks. The prohibition of the law cannot be found on said article which merely defines what river banks are and provides the rules by which private banks may be subject to the easement mentioned therein, but rather in Article 339 and 407 of the Civil Code which provide that the banks of rivers are properties of the public domain and therefore, not capable of private appropriation. (Manresa, Commentarios al Codigo Civil, Tomo III, paginas 65, 66, edicion de 1893). (Per Imperial, J.; concurring, Moran, J.)—*Briefed by* FELICISIMO SAN LUIS.

CIVIL PROCEDURE (Res Adjudicata).—*Teodoro Baguisi, in his capacity as Provincial Sheriff of Nueva Ecija, plaintiff-appellant vs. Eulalio Adriano, Crispulo Bantug, and Ng Chiu, defendants-appellees, G. R. 47099, June 17, 1409.*—In civil case No. 5446, before the Court of First Instance of Nueva Ecija, wherein Eulalio Adriano was the plaintiff, and Fructuoso Villarin, the defendant, judgment was rendered in favor of the former. The order for the execution of the judgment was forwarded to the Chief of Police of the municipality of Rizal, province of Nueva Ecija, and said officer, acting as deputy sheriff *ex oficio*, attached on December 23, 1932, fourteen groups of palay belonging to the defendant Francisco, amounting to 536 cavanes. On February 26, 1933, Nicanor Jacinto presented a third party complaint to the provincial sheriff, alleging that the property seized was his property. On the following day, the sheriff notified Eulalio Adriano, through his attorney, of the claim presented and required Adriano to file a bond to respond for any damages that may arise if he wanted to continue with the sale of the property. On March 2, 1933, Adriano filed a bond, with Ng Chiu and Crispulo Bantug as sureties, obligating them jointly and severally to pay up to the amount of ₱1,600 for damages that may arise out of the attachment and the sale of the property. In March 6, 1933, the sheriff announced that the sale of the palay will take place on March 11. On March 9, 1933, Nicanor Jacinto instituted in the Court of First Instance of Manila civil case No. 43928 against the sheriff and Eulalio Adriano to prohibit the sale of such property and to require the defendants to pay damages for what he suffered out of the seizure of the property. On November 29, 1933, judgment was rendered ordering the sheriff to return to Nicanor Jacinto all the palay seized or its equivalent in money at the price of ₱1.50 per cavan, and to pay damages in the amount of ₱300 plus the costs of the suit. After the judgment became final, the sheriff delivered to Jacinto all the palay seized, but did not pay him the damages of ₱300 and the costs of the suit amounting to ₱68. Afterwards, the sheriff (the plaintiff in this case) brought this action against Adriano and his sureties to recover the sum of ₱300 as damages and ₱68 for the costs of the suit. which he was required to pay Jacinto. Ng Chiu was not included in the complaint and did not appear before the court. The lower court decided in favor of the defendants and the plaintiff appealed. *Held:* (1) In the decision of the lower court, the judge declared that the judgment of the Court of First

Instance of Manila ordering the plaintiff to return the palay and to pay an indemnity of ₱300 plus the costs of the suit is *res judicata* in the present case, the judgment having become final, for the plaintiff did not appeal. This is error. The former case could not be invoked in the present action because the parties in the first case and in the present one are different and the object of the action is not the same. (Art. 1252 Civil Code). In the first place, Ng Chiu and Crispulo Bantug, the sureties, were not made parties in the former case, and in the second place, Nicanor Jacinto was not included as an interested party. The first action deals with property and has for its object the recovery of the palay attached by the plaintiff and which was claimed by Jacinto, while this present action refers to the bond executed by the defendants and to require them to comply with the terms of such bond. The parties not being identical, and the subject of the action not being the same, the principle of *res judicata* could not be invoked. (2) The lower court likewise decided that the sheriff could not recover from the defendants the sum of ₱368 because it appears that the same were not yet paid to Nicanor Jacinto and the action of the plaintiff is therefore premature. As we have said, the present action is to require the defendants to comply with the terms of their bond and as the judgment ordering Adriano and the plaintiff to restore the palay to Jacinto, and to pay him damages became final, the essential condition of the bond has already been attained and therefore, it cannot be legally claimed that the obligation is not yet demandable simply because payment was not yet made to Jacinto. If the judgment is not yet executed until now and if the plaintiff has not yet paid to Jacinto the sum of ₱368, it is only because Jacinto has agreed to postpone the payment until the result of the present case. (3) Even granting that the plaintiff could not recover from the defendants the sum which they promised to pay, the defendant Adriano is still liable for the indemnity in accordance with article 1729 of the Civil Code which provides that the principal must indemnify his agent for all the damages he has suffered in complying with the terms of the agency without fault or negligence on the part of the agent. From the moment that the defendant Adriano executed a bond in favor of the plaintiff, the latter was made the agent of the former and therefore, the bond must respond for whatever damages the plaintiff has suffered, in accordance with article 451 of the Code of Civil Procedure (Alzua vs. Johnson, 21 Phil. p. 318). Judgment reversed. Right of the defendants to recover from Ng Chiu for his proportional share in the obligation reversed. Per Imperial, J.; Avanceña, C. J.; Diaz, Laurel, Moran, J. J., concurring).—*Briefed by* GRACIANO C. REGALA.

CONTRACTS (Interpretation).—*Maria Aves with her husband Segismundo Alzona & Tan Siamco, Petitioners vs. Hugo Orillieneda, Respondent, G. R. No. 46640, June 27, 1940.*—Respondent took merchandise on credit and borrowed certain amounts in cash from the petitioners on various occasions. To secure the payment of the accumulated debt a special power of attorney was given to the petitioners authorizing him to lease a lot and a house standing thereon, both owned by respondent, and to apply the rentals to the outstanding debts of the respondent. Later, in view of the additional debts incurred, the respondent was made to execute a notarial document purporting to be a sale of the above-mentioned house and lot with right to

repurchase within one year. The one-year period having expired, another document was executed whereby the foregoing mortgage deed or alleged conditional sale was novated for another year with some modifications. Respondent having failed to meet his obligations in due time, the petitioners caused him to execute another document wherein he was made to waive his right of redemption.

The present action was brought to recover from the respondent the possession of the house and lot. The lower court rendered judgment in favor of the petitioners. But on appeal the Court of Appeals held that all of the foregoing documents were obtained through fraud and misrepresentation; that the alleged conditional sales were mere mortgages; and that the use of phrases in those documents conveying the idea of conditional or absolute sale was a cloak to cover excessive interest charged by petitioners on the debt of respondent. In conclusion the Court of Appeals held that the petitioners were debtors of the respondent in the sum of ₱269.81.

By way of certiorari, an appeal from this verdict was interposed alleging that the Court of Appeals erred in not giving due weight to the contents of (1) the documents in question and (2) another document wherein the petititioners sold a parcel of land, owned by a third person and held by petitioners in mortgage, to the respondent with right of repurchase and which land, said third person, on his own behalf, had also mortgaged to the respondent. *Held*: The first assignment of error deals more with questions of fact and weight of evidence which this Court cannot alter by way of certiorari. As a general rule, documents must be construed by the precise terms in which they are executed. But courts in the exercise of their sound discretion may allow direct and circumstantial evidence, which is necessary for the correct interpretation of documents, so that the true intention of the parties may prevail. (Arts. 1281 and 1282, Civil Code.) The other document, by its contents, is clearly fictitious and devoid of probative value. If the land referred to in this document was simply mortgaged to the petitioners, it is evident that he could not transfer the same by way of a conditional sale to the respondent. Neither could this third person mortgage the said land to the respondent without first paying the petitioners; but even if this had been done, still the petitioners could not have sold the land to the respondent. In view of the foregoing, the writ prayed for is denied with costs against petitioners. (Per Imperial, J.; Avanceña, C. J.; Diaz, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by* CESAR C. CLIMACO.

CONTRACTS—*Catalina de la Cruz, Petitioner vs. Emigdio Buenaventura, Respondent, G. R. No. 46634, June 27, 1940.*—In 1917, the respondent herein, Emigdio Buenaventura approached petitioner herein, Catalina de la Cruz for a loan of ₱250, to which the latter agreed on condition that the former would pay interest of 15% per annum. A document was signed purporting to be a *pacto de retro* sale in which the undivided half interest of the respondent in a certain parcel of land was the consideration of the sum of ₱250, and said amount was delivered to respondent the next day. In 1918, respondent paid to petitioner ₱150 upon the account of the principal and ₱37 upon account of the interest thereon. From 1919 to 1923, he failed to pay anything upon account of the principal but paid interest during

that period at the rate of P15 a year. In 1934 he made full payment of the balance of the indebtedness, as well as a further sum for interest. Since the execution of the document purporting to be a *pacto de retro* sale, respondent herein has been in possession of the land, paid land taxes thereon and collected the rentals as well. In the meantime in 1932, petitioner signed an affidavit showing consolidation of ownership in herself of the interest in the land above referred to, which affidavit was recorded in the office of the Registrar of Deeds of Rizal. In 1935, respondent herein brought action as a result of which the Court of First Instance of Rizal ordered the cancellation of the supposed *pacto de retro* as well as the above mentioned inscription in the office of the Register of Deeds. Petitioner appealed to the Court of Appeals which affirmed the judgment of the lower court with the sole modification that petitioner was exempted from paying back to respondent herein the usurious interest collected by her. Petitioner claims that the Court of Appeals erred in not holding that an action for the reformation of a written instrument which appears on its face to be a deed of *pacto de retro*, in order to convert said instrument into a deed of simple mortgage must be commenced within 10 years from the date of its execution; and in holding that the plaintiff's cause of action accrued only in 1934. *Held:* Finality must be given to the finding of the Court of Appeals that the transaction is one of mortgage and not a *pacto de retro* sale, in view of the fact that, as heretofore stated, apart from the circumstance that the respondent had all the time remained in possession of the land in question, collected all rentals therefrom and paid taxes thereon, petitioner accepted payments upon the account of the transaction. The right of action on the part of the respondent to have the purported *pacto de retro* cancelled therefore accrued only in 1934, when the balance of the principal and interest of his indebtedness had been fully paid. The contract being a mortgage, the acceptance by the petitioner, on various dates ending in 1934, has served to determine the prescriptive period, and the action brought by the respondent became in effect one to redeem mortgaged land. (Cuyugan vs. Santos, 39 Phil. 970, 975.) The fundamental mistake of the petitioner is that she supposes the contract to be a *pacto de retro* sale and that respondent failed to exercise his right of redemption. Petition dismissed with costs against petitioner. (Per Laurel, J.; Avancena, C. J., Imperial, Diaz, Concepcion, Moran, JJ., concurring).—*Briefed by* FRANCISCO S. SANTOS.

CREDIT TRANSACTIONS.—*Enrique Esteban and Isabel Pastor, Plaintiffs-Appellants vs. Crispulo Sorbito, Defendant-Appellee. G. R. No. 47156, June 26, 1940.*—A mortgage on a registered parcel of land was executed by Juan Tuba to guarantee the payment of his debt in favor of Warner, Barnes, and Co., Ltd. One of the conditions of the mortgage was that the debtor could not alienate or encumber the property without the consent of the mortgage creditor. Subsequently, while the first mortgage was in full force, Tuba executed another mortgage on the one-fourth undivided portion of the same land in favor of the defendant to secure a loan which he borrowed from the latter. Later Tuba transferred by way of absolute sale the same parcel of land to the plaintiffs herein who one day previous to the said sale paid the remaining indebtedness of Tuba to the mortgagee-company for which the said company

issued the corresponding deed of cancellation of the encumbrance. Plaintiffs' payment to the mortgagee-company was made at the instance of Tuba and constituted part of the consideration of the sale to the plaintiffs. The documents of sale and the cancellation of the mortgage were duly registered and a Transfer Certificate of Title was issued in the name of the plaintiffs containing an annotation of defendant's mortgage. In an action brought by the defendant to foreclose his mortgage, judgment was rendered in his favor and the encumbered property was sold at public auction. Prior to the sheriff's sale plaintiffs instituted the present action for the purpose of having the mortgage in favor of the defendant adjudged null and void. The sole question to be resolved here is whether or not the plaintiffs, by the mere fact of their having paid the mortgage debt at the instance of Juan Tuba to Warner, Barnes & Co., Ltd., the original mortgagees, have been subrogated to the rights of the latter, notwithstanding the admitted fact that they acquired the land, by way of absolute sale, directly from Juan Tuba. *Held:* In paying Tuba's indebtedness to the mortgagee-company, the plaintiffs' obvious intention was to secure the extinguishment of the debt, and the cancellation of the mortgage in order to enable Juan Tuba to effect the sale to them. There is nothing to show that they desired to keep the mortgage credit alive, and step into the shoes of the original mortgagee. In the final analysis, the plaintiffs acquired the land from Juan Tuba and not from the mortgagee company and payment made to the said company was Juan Tuba's and not the plaintiff's. Payment under these circumstances does not of itself produce legal subrogation. The result is that, in accordance with Sec. 39 of Act No. 496 as amended by Act No. 2011, the plaintiffs, as subsequent purchasers, acquired the land subject to the encumbrance noted on the certificate of title. (Per Laurel, J.; Imperial, Diaz, Concepcion, and Moran, JJ., concurring.)—*Briefed by* ISIDRO T. ALMEDA.

CRIMINAL LAW (Preliminary Investigation)—*People of the Philippines, Plaintiff-Appellee vs. Felipe Magpale, Defendant-Appellant, G. R. No. 46656, June 26, 1940.*—A criminal complaint was lodged against defendant in the Justice of the Peace Court for *illegal possession* of a brand of the Municipal Government with the intent of using it for falsifying the official brand. The preliminary investigation was marked by the presentation of evidence by the prosecution and by the waiver of the defense to present any evidence in rebuttal. The case was remanded to the Court of First Instance where the fiscal filed an information for *illegal manufacturing* of a brand for falsification. Defendant moved for a preliminary investigation on this second information, which was denied by the trial court. *Held:* Defendant is not entitled to a new preliminary investigation on the information filed for two reasons: (1) The offenses of illegal possession and illegal manufacturing of instruments intended for falsification are defined and penalized by the same Article 176 of the Revised Penal Code, and are so related that an inquiry into one would have elicited substantially if not precisely the same facts that an inquiry into the other would have brought into light. It will further be noted that in the notices sent out by the Justice of the Peace in connection with the preliminary investigation of the complaint, he did not specifically refer to only one of said offenses but to both, as he invariably spoke of a violation of the Revised Penal Code

Article 176, thus giving the appellant a chance, and putting him on his guard, to defend himself not only against the change of illegal possession of the iron brand but also against that of making or ordering the making thereof. (2) Defendant waived his right to a preliminary investigation for he invoked such right only after he pleaded not guilty when arraigned. After his motion contesting the jurisdiction of the trial court was denied, the appellant should have brought the appropriate proceedings to compel the trial court to grant him another investigation, this right being a substantial one. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Concepcion. Moran, JJ., concurring,) —*Briefed by* NORBERTO J. QUISUMBING.

DONATION MORTIS CAUSA (Formalities)—*Jose M. Cariño, Petitioner-Appellant vs. P. Fernando Ma. Abaya, Respondent-Appellee, G. R. No. 46706, June 26, 1940.*—The root cause of the present controversy is a document executed on April 11, 1921, hereinafter known as Exh. C-1, by Petrona Gray and Dorotea Gray, sisters. Both sisters died intestate and without either ascendants or descendants, the first on Jan. 28, 1926 and the second on July 9, 1927. Miguel Cariño, designated in the document as the person to administer or deliver the properties therein referred to, predeceased Dorotea Gray as he died on February 12, 1927. After the lapse of about seven years from the death of Dorotea Gray or on February 16, 1935, Jose Cariño, son of Miguel Cariño and petitioner herein, commenced intestate proceedings in the Court of First Instance of Ilocos Sur in which he prayed that he be appointed administrator of the estate left by the Gray sisters. Father Fernando Ma. Abaya, respondent herein and first cousin of the two deceased sisters, interposed an opposition alleging that Exh. C-1 is null and void and praying that the Court make an adjudication to that effect. On the other hand, the petitioner herein contends that the document in question is a donation *inter vivos* creating at the same time a trust while the respondent, on the other hand, alleged that said document is a will. Lower Court held that it was a donation *inter vivos* but upon appeal to the Court of Appeals, it was declared to be neither a donation *inter vivos* as contended by the petitioner nor a will as alleged by the respondent, but a void donation *mortis causa*, void because it was not executed with the formalities of a will. Petitioner now contends that the Court of Appeals erred in declaring Exh. C-1 a void donation *mortis causa* and not a donation *inter vivos*. *Held:* The document is a donation *mortis causa*. The seventh cause of document reciting that "we the sisters do hereby order that all those properties shall be given to whom they have been assigned by virtue of this instrument at the expiration of thirty days after the death of the last one to die between us," considered in conjunction with the fact that the grantors employed the terms "there shall be given to," "shall administer," and "shall be administered," which have reference to the future, clearly shows the intention of the Gray sisters to make the distribution of their estate effective after their death. The above-quoted clause, being without limitation, applies as well as to the properties intended to be distributed by Miguel Cariño. It is worthy of observation also, that in the ninth clause of Exh. C-1 the phrase "together with those who had been mentioned to inherit from us" supplies a cogent reason for concluding that the grant therein made was meant

to take effect after the death of the grantors. for the word "inherit," as used here, implies the acquisition of the properties by the heirs after the death of the Gray sisters. (2) Donations which are to become effective upon the death of the donor partake of the nature of disposals of property by will and shall be governed by the rules established for testamentary successions. (Art. 620, Civil Code). Accordingly, said donations can only be made with the formalities of a will. (Tuason and Tuason vs. Posadas, 54 Phil. 289). As Exh. C-1 was not executed in conformity with the provisions of Section 618 of the Code of Civil Procedure, especially in its lack of attestation clause and marginal signatures, the document is null and void. (Per Laurel, J.; Avanceña, C.J., Imperial, Diaz, Moran, JJ., concurring.) *Briefed by* EMMETT P. SHEA.

EXECUTION OF JUDGMENTS—*Juan Tomaneng, et al., Petitioner vs. Hon. Roman A. Cruz, Judge of First Instance of Ilocos Norte, et al., Respondent, G. R. No. 47020, June 17, 1940.*—Petition for certiorari against an order of Judge Cruz of the Court of First Instance of Ilocos Norte. In 1929, in an action for *reivindicacion*, Civil Case 2672, G. R. 30425, by Ignacio Miguel et al., petitioner herein, against Alejandro Andres et al., respondent herein, title of the former to some parcels of land were confirmed by the Supreme Court. On order of execution, the Deputy Sheriff placed the said Ignacio Miguel et al., in possession of the parcels of land. On petition by respondent herein, the Court of First Instance of Ilocos Norte issued two orders to ascertain the extent of the land to which petitioners herein were entitled. It was found that they were in possession of three lots rightfully, but also of four lots which belonged to the respondents. Due to a preliminary injunction issued against the respondents in 1929 by said Court the petitioner continued in possession of all the seven lots. In 1934 the Court overruled its former order of preliminary injunction. In 1935, respondent presented a motion for the purpose of obtaining the possession of the above-mentioned four lots. In 1937, upon hearing with notice to both parties, the Court issued an order declaring that the decision in Civil Case 2672, G. R. 30475 by virtue of which three of the seven parcels were conveyed to the petitioner had become final and executed, and directed the Sheriff to comply with this order. Petitioner now contend that after the judgment of the Supreme Court in Civil Case 2672, G. R. 30475 had become final and executed, the respondent judge had no more jurisdiction to issue another order of execution, more than 5 years after the execution of said judgment. *Held*: The contention of the petitioners is untenable. They rest their contention on the supposition that the decision of the Supreme Court in the case of *reivindicacion* had been executed legally, and therefore had lost jurisdiction to issue aforementioned order. This supposition is inaccurate, because there was error by the Sheriff in the execution of the judgment by giving to petitioners the whole of the seven lots. Having dispossessed the respondent illegally of the four lots, we do not see any reason for the court's lack of jurisdiction to correct the error and to comply faithfully with the writ of execution in the case for *reivindicacion*. Contention is further untenable because the order of the Court in question is nothing but a true execution of the judgment in favor of the petitioners, the previous execution being null. Said order is

nothng more than a mere reiteration of the order of 1929, which in effect suspended the judgment as far as the four parcels were affected. Petition for certiorari denied with costs against the petitioners. (Per Concepcion, J.; Avanceña, C.J.; Imperial, Diaz, Laurel, Moran, J.J., concurring.)—*Briefed by* FRANCISCO S. SANTOS.

LAND REGISTRATION. (Res Adjudicata)—*Gabriela San Diego, in her own behalf as administratrix of the intestate estate of the deceased Pedro Alejandrino, Petitioner vs. Bernabe Cardona and the Register of Deeds of Tarlac, Respondents, G. R. No. 46655, June 27, 1940.*—An appeal by certiorari from the judgment of the Court of Appeals. Petitioner filed this action to quiet title over lot No. 2051 and to annul transfer certificate of title No. 6433, alleged to have been fraudulently obtained by the defendant in collusion with the register of deeds of Tarlac, who is joined as co-defendant. It appears that the questions herein litigated have already been determined and decided in a former civil case, in which the herein respondent was the plaintiff and the herein petitioner, in her capacity as administratrix of the intestate estate of her deceased husband, the defendant. The subject matter was the same lot and one of the issues involved was whether or not the defendant had secured, through fraud, the same transfer certificate of title in collusion with his brothers. The Supreme Court, in said case, declared the transfer certificate of title to be valid and ordered the then defendant, now plaintiff and petitioner, to deliver the lot in litigation to the now respondent. Defendant in the instant case interposed the defense of *res adjudicata*. Petitioner, however, argues that there is no *res adjudicata* for the following reasons: (a) There is no identity of parties because, in the former action, she was sued in her capacity as administratrix, while in the present action, she is suing in her own name and in her capacity as administratrix; (b) there is no identity of cause of action, for, in the first case, the action was for illegal detainer, while, in the second, it is on title or ownership; and (c) the fraud alleged in the first action is not the same fraud alleged in the present action, for, in the first case, the fraud was alleged to have been committed by the defendant in collusion with his brother, while in the present case, the fraud is alleged to have been committed by him in collusion with the registrar of deeds. *Held:* There is *res adjudicata* because all the following requisites are present: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject-matter and of the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of parties, of subject-matter, and of cause of action. There is no question as to the presence of the first three requisites of *res adjudicata* above stated. As to the fourth requisite, there is substantial identity of parties because, in the former case, the petitioner has pleaded not only the rights of her deceased husband, but her own personal rights as well, the action being one which affects her personal rights in the conjugal property, the liquidation of which should be carried out in the intestacy of her deceased husband. Although the register of deeds, who was not a party to the first action, has been joined as co-defendant in the second action, there is still *res adjudicata*, if the party against whom the judgment is offered in evidence was a party in the first action. The petitioner's second contention is

without merit, inasmuch as the first action was not an action for illegal detainer, as alleged, but one founded on a right of possession by virtue of title or ownership. As to the third contention, the new allegation of fraud, not having been made in the former action, is barred. The former judgment operates as a *res adjudicata* not only in regard to the specific defense alleged in the former action, but also as to the non-existence of another defense which has not been pleaded therein. A defendant cannot split up his defenses when they are indivisible and present them by piecemeal in successive suits growing out of the same transaction. (Per Moran, J.; Avanceña, C.J., Imperial, Diaz, Laurel, and Concepcion, J.J., concurring.)—*Briefed by* LUCIANO E. SALAZAR.

PRESCRIPTION (Action to Demand Support).—*Felisa S. Marcelo, Plaintiff-Appellee vs. Daniel V. Estacio, Defendant-Appellant, G. R. No. 47055, June 26, 1940.*—Defendant and plaintiff are husband and wife. They separated in 1921. In 1937 the wife brought this action for support. Defendant claims that under Article 1966, par. 1, of the Civil Code an action for support prescribes in five years and that under Sec. 432 of the Code of Civil Procedure, an action to enforce an obligation created by law prescribed in 6 years. Hence, under either law, plaintiff's cause of action had prescribed. As a second assignment of error, defendant-appellant maintains that if plaintiff is at all entitled to support, she must live with the defendant. *Held:* (1) According to Art. 1969 of the Civil Code, prescription of action for support begins to run not from the time the right of action accrudes but from the time the motive for the action arises. And according to Art. 148 of the Civil Code, the action for support is demandable from the time there is need for the support. Therefore prescription in this case begins to run from the time the motive for the action arose, which is the time the support became needed by the plaintiff. This time is presumed to be the date when the action was brought, which is 1937. Hence, the action had not prescribed. (2) Under Article 149, defendant has the right to elect to support his wife in his own house, although the wife is not obliged to accept such support. (Per Imperial, J.; Avanceña, C. J., Diaz, Laurel, Moran, J.J., concurring.)—*Briefed by* JOAQUIN V. GONZALEZ.

"ONE of the obstacles to advance in every science is the domination of the ghosts of departed masters. Their sound methods are forgotten, while their unsound conclusions are held for gospel. Legal science is not exempt from this tendency." — DEAN POUND.