RECENT DECISIONS

Decision Reported in Full

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES

REX TAXICAB COMPANY,
Petitioner

versus

HONORABLE COURT OF INDUSTRIAL RELATIONS and THE PHILIPPINE TAXI DRIVERS' UNION,
Respondents.

G. R. No. 47303.

Promulgated:
November 25, 1940.

DECISION

LAUREL, J.:

This is a petition for the issuance of a writ of certiorari annulling the order of the Court of Industrial Relations of February 1, 1940, ordering the petitioner, Rex Taxicab Company, to reinstate to their respective positions in said company all its striking employees.

The petitioner, an operator of a taxicab service in the City of Manila and its suburbs, promulgated on December 31, 1939 a set of regulations for the observance of its drivers beginning January 1, 1940. Said regulations imposed certain fines upon drivers who do not wear caps, have no ties or sport shirts, smoke while having passengers, have no coats while driving, are absent without excuse, come late to the car barn, make provincial trips without notice, or do not report accidents. Some time after January 1, 1940, the petitioner promulgated another set of regulations effective February 1, 1940, covering the following twenty-one points, namely: drivers' clothing, late report for duty, absence from duty, late return of car, overloading, provincial trips, broken taximeter, signal light, alcoholic drinking, gambling, speeding, personal use of taxi, putting the flap up while having passengers, leaving the taxi, damages to the taxi, running with flat tire, insubordination, sleeping while on duty, slow earners, shortages, damages due to careless handling of car, discourtesy, complaints of passengers. Said regulations imposed penalties ranging from fine to dismissal for the violation thereof. It is noteworthy that the second set of regulations covered practically all the points dealt with in the first. On January 17, 1940, the petitioner imposed on and collected from some of its drivers certain fines for alleged non-observance by them of the regulations first promulgated. The next day, or on January 18, 1940, the respondent Philippine Taxi Drivers' Union in which the drivers of the petitioner were affiliated, addressed a letter to the latter protesting against the regulations and making the fourteen demands enumerated therein, copy of which letter was furnished the Department of Labor. As a result of said protest, various conferences between the representatives of the petitioner and of the respondent union were held in the Department of La-

bor, by virtue of which a settlement was reached as to ten of said demands. Another conference was to be held in the office of the Department of Labor on January 22, 1940, but before said conference could be held the drivers of the petitioner went on a strike on the evening of January 20, 1940. Whereupon, on January 22, 1940, the Secretary of Labor certified to the Court of Industrial Relations that an industrial dispute existed between the petitioner and its forty drivers, with the information that the issues to be considered and decided have reference to the following demands of the strikers: (1) The petitioner should not impose any fine on drivers caught overspeeding or overloading; (2) Regular drivers should continue as such and should not be dismissed without due consultation with their union; (3) No slow earners should be fined or punished; and (4) Readmission of driver Santiago Agbulos. The industrial dispute was docketed in the Court of Industrial Relations as Case No. 148, entitled Philippine Taxi Drivers' Union vs. Rex Taxicab Company.

At the commencement of the trial of said case No. 148 in the Court of Industrial Relations, the respondent Philippine Taxi Drivers' Union, through its attorney, verbally petitioned the court to order the petitioner Rex Taxicab Company to reinstate its striking drivers to which petition the petitioner Rex Taxicab Company objected, on the ground that the strike was unjustified and that (a) the strikers were guilty of violence and sabotage by unlawfully and feloniously assaulting, injuring, threatening, or coercing the petitioner, its employees and laborers and damaging its property and business; (b) they were not permanent employees as they worked only when they pleased, had no fixed salaries or wages, and worked only on a commission basis; (c) they had already left voluntarily petitioner's service before the case reached the Court of Industrial Relations and the petitioner had already admitted sufficient number of drivers in its service; and (d) the public service was not in the least affected by such change of drivers.

The Court of Industrial Relations, after hearing, found that the strike was justified and ordered the petitioner Rex Taxicab Company to reinstate all the strikers to their respective positions. The pertinent findings of the Court of Industrial Relations are contained in the following passages of the appealed order:

"As to the contention regarding the unreasonableness of the strike, it has been established in evidence that the same was provoked by the management itself when it put into force and effect part of the company regulation appearing on folios 3 to 7 of the record of this case. It is true that these regulations existed since the date the respondent commenced its taxicab operation, but, then, no pecuniary penalties were imposed on the chauffeurs who infringed them. In lieu thereof, warnings, suspensions, or dismissals in case of persistent infractions, were meted to violators. The practice of imposing fines was resorted to only after respondent's driver had, in case No. 99 of this Court petitioned for better working conditions, and was made effective in January 17, 1940, when it began deducting from the salaries (commissions) of its chauffeurs said fines as shown by Exhibits A and A-1 to A-15 of the petitioner.

"These regulations have been the subject of perusal by the Court and it finds that the penalties stipulated therein for chauffeurs who

might breach them are oppressive and unjust. Oppressive because the fines provided are too heavy for the drivers to bear and are imposed summarily upon the drivers without previous investigation of the offense. Unjust because as stated by the company cashier, the fines collected were destined to form part of the miscellaneous income of the respondent. The Court is of the opinion that no concern has the right to enrich itself on fines collected from its employees.

"The Court finds the protest of the taxi drivers justified. If the strikers quit work even while their grievances were pending investigation by the Department of Labor, it was mainly because at said investigation they were unduly provoked by the manager of the respondent and partly because they have reached that point when patience has ceased to be a virtue with them.

"Coming to the imputation of sabotage, the Court is of the belief that no such acts of sabotage have been proven against the strikers. On the contrary, it has been established to the satisfaction of the Court that the officers of the petitioner have, at its daily meetings, been counselling its members to maintain and preserve peace and order, and to await the decision of the Court of Industrial Relations. Even witnesses of the respondent testified to fact which clearly proved that the strike was carried on peacefully. While it has not been contradicted that two of the witnesses of the respondent, namely, Arsenio Gler and Domingo de la Cruz, were assaulted and injured, there is no definite proof that the assaults upon their persons were means employed to obstruct the operation of the business of the respondent. Rather, it could be inferred from their testimony that the motives of the assaults were purely personal. Take the case of Gler. After he was allegely hit by one of his two passengers, he jumped out of his car, ran and was pursued by his assailants. The car he was driving, when found, exhibited no damage. And as to the case of de la Cruz. This man declared that "Totong" a person to whom he was indebted, stopped his car, brought him to a toilet nearby and gave a blow in the stomach after he informed the said "Totong" that he had no money with which to pay his debt. Another witness of the respondent testified regarding some damage to the car he was driving. Both of them could not however, point to the authors of the said acts."

It is the contention of the petitioner that the Court of Industrial Relations erred in applying section 19 of Commonwealth Act No. 103, as amended; in holding that the strike was justified; and in not holding that the strikers either voluntarily ceased to be in the employ of the petitoner or gave just cause for their separation by declaring an unjustified and illegal strike.

The Constitution, in Article XIII, section 6, provides that the State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant and between labor and capital in industry and in agriculture, and may provide for compulsary arbitration. In conformity with this constitutional objective, the National Assembly enacted Commonwealth Act No. 103 creating the Court of Industrial Relations which has jurisdiction over the entire Philippines to consider, investigate, decide, and settle all ques-

tions, matters, controversies, or disputes arising between, and or affecting employers and employees or laborers, and landlords and tenants or farm-laborers, and regulate the relations between them, subject to the provisions of said Act. (Commonwealth Act No. 103, section 1, as amended by Commonwealth Act No. 559.) Said court shall take cognizance for purposes of prevention, arbitration, decision, and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout, arising from differences as regards wages, shares or compensation, dismissals, layoffs, or suspensions of employees or laborers, tenants or farm-laborers, hours of labor, or conditions of tenancy or employment, between employers and employees or laborers and between landlords and tenants or farm-laborers, provided that the number of employees, laborers or tenants or farm-laborers involved exceeds thirty, and such industrial or agricultural dispute is submitted to the court by the Secretary of Labor, or by any or both of the parties to the controversy, but the court shall, before hearing the dispute and in the course of such hearing, endeavor to reconcile the parties and induce them to settle the dispute by amicable agreement. (Ibid., section 4 as amended by Commonwealth Act No. 559). It is also provided that in every contract and employment or tenancy, whether verbal or written, it is an implied condition that when any dispute between the employer or landlord and the employee, tenant or laborer has been submitted to the Court of Industrial Relations for settlement or arbitration pursuant to the provisions of said Act, and pending award or decision by the court of such dispute, the employee, tenant, or laborer shall not strike or walk out of his employment when so enjoined by the Court after hearing and when public interest so requires, and if he has already done so, that he shall forthwith return to it, upon order of the Court, which shall be issued only after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled; and if the employees, tenants or laborers fail to return to work, the court may authorize the employer or landlord to accept other employees, tenants or laborers. (Ibid., section 19, as amended by Commonwealth Act No. 559).

While it is apparent that the policy of the State is, in the first place, to appeal to voluntary arbitration in the settlement of industrial or agricultural disputes and, in the second place, to employ mediation or conciliation for that purpose and, lastly, to recur to the more effective system of official investigation and compulsory arbitration in order to determine specific controversies between labor and capital in industry and in agriculture, it cannot be said that strikes are under no condition or circumstance justified. (National Labor Union, Inc. v. Court of Industrial Relations & Manila Gas Co., G. R. No. 46598, promulgated October 4, 1939, but cf. National Labor Union Inc. v. Philippine Match Co., G. R. No. 47107, promulgated June 27, 1940.)*

Independently of the right to organization and collective bargaining which, according to some authorities, connotes the right to strike in the

* In National Labor Union vs. Phil. Match (Vol. XX, Phil. Law Journal No. 1) the Court held: "The recognition, if at all, by law of the laborer's right to strike is, at most, a *negative* one, and, in the last analysis, *nugatory*. A strike is a remedy essentially coercive in character . . . *an economic weapon at war with the policy of the Constitution and the law;* a resort thereto by laborers shall be deemed to be a choice of remedy peculiarly their own, and *outside of statute*, and, as such, the strikers must accept all the risks attendant upon their choice." (Italics ours.) See also Notes and Comments: The Legality of Strikes in the Philippines by Mary Concepcion (Phil. Law Journal, Vol. XX, No. 5 (Nov., 1940).—*Ed.*

event that such a course is deemed advisable by the employees for their mutual aid or protection (see cases on Labor Law by Landis, pp. 632, 633), Commonwealth Act No. 103, for instance, provides that when any dispute has been submitted to the Court of Industrial Relations for settlement or arbitration, and pending award or decision by the court of such dispute, the employee, tenant, or laborer shall not strike or walk out of his employment when so enjoined by the court after hearing and when public interest so requires, and if he has already done so, he shall forthwith return to it, upon order of the court, which shall be issued only after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled. (Commonwealth Act No. 103, section 19, as amended by Commonwealth Act No. 559.) In other words, the employee, tenant or laborer is inhibited from striking or walking out of his employment only when so enjoined by the Court of Industrial Relations and after a dispute has been submitted thereto and pending award or decision by the Court of such dispute. It follows that, as in the present case, the employees or laborers may strike before being ordered not to do so and before an industrial dispute is submitted to the Court of Industrial Relations, subject to the power of the latter, after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled, to order them to return, with the consequence that if the strikers fail to return to work, when so ordered, the court may authorize the employer to accept other employees or laborers. Furthermore, the jurisdiction of the Court of Industrial Relations does not extend to cases where the number of employees, laborers or tenants or farm-laborers involved does not exceed thirty, and it is apparent that in any of these cases the prohibition against a strike pending the determination of the dispute before the Court of Industrial Relations cannot be invoked.

We are here concerned with a definite and well-marked policy of the Legislature and not with the extent to which the policy should go. If the Legislature should decide to prohibit or abolish strikes absolutely, as it has attempted to do in the past, this is its prerogative, not ours. In this case, we cannot supply what we might conceive to be the defects of the law and interpolate into it what, in our opinion, ought to have been put there by the lawmakers. We can neither mar nor change a clear legislative policy.

In cases not falling within the prohibition, the legality or illegality of a strike depends, first, upon the purpose for which it is maintained, and, second, upon the means employed in carrying it on. The fact that the combination is for a lawful purpose does not render it less unlawful where the end is to be attained by the employment of improper means, and a strike for an unlawful purpose may not be carried on by means that otherwise would be legal. The Court of Industrial Relations has recognized the right to strike here and concluded that the same was for justifiable purpose, was conducted in an orderly and peaceful manner, and that considering the public interest and the particular circumstances of the case, and for the sake of justice and equity, the strikers should be reinstated. This conclusion, based upon the facts set forth in the appealed order and hereinabove quoted at length, should not be disturbed. (Section 2, Rule 44, of the Rules of Court, similar to section 2 of the old Rules for the Review of Orders or Judgments of

the Court of Industrial Relations; section 14, Commonwealth Act No. 103).

With reference to the contention that the drivers in question, by declaring a strike, either voluntarily ceased to be employees of the petitioner or gave just cause for their separation, it need only be stated that the declaration of a strike does not amount to a renunciation of the employment relation (National Labor Relations Board vs. Mackay Radio & Telegraph Company, 304 U. S. 333; National Labor Relations Board vs. Fansteel Metallurgical Corporation, 59 Sup. Ct. 490, 83 L. ed. Adv. Ops. 469, quoted in National Labor Union, Inc. vs. Court of Industrial Relations et al., G. R. No. 46598, October 14, 1939) and that, at any rate, the Court of Industrial Relations is empowered to reinstate the strikers under section 19 of Commonwealth Act No. 103.

The petition for certiorari will, therefore, be, as the same is hereby, denied, with costs against the petitioner.

SO ORDERED.

(SGD.) JOSE P. LAUREL.

WE CONCUR:

(SGD.) RAMON AVANCEÑA
" CARLOS A. IMPERIAL
" ANACLETO DIAZ
" A. HORRILLENO

Decision Condensed

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES

SUPREME COURT OF THE PHILIPPINES

JUAN SUMULONG, in his capacity as President of "Pagkakaisa ng Bayan" (Popular Front Party),
Petitioner,

versus

THE COMMISSION ON ELECTIONS, and PEDRO ABAD SANTOS,
Respondents.

G. R. No. 47903.
Promulgated:
November 29, 1940.

(FACTS: Petitioner filed a petition with the Commission on Elections for a declaration of his rights to minority representation on the Boards of election inspectors in the 1940 general election for provincial and municipal officials. The respondent Pedro Abad Santos also claimed this right in opposition to petitioner's petition. Upon what appears to be a conflicting claim to minority representation on the boards of elections inspectors, the respondent Commission on Elections, on October 17, 1940 rendered its ruling in the form of telegraphic instructions, laying down certain rules to be followed by the presiding officers of the municipal councils in the appointment of minority inspectors. Petitioner's motion to reconsider this ruling was denied by the Commission on November 4, 1940. Petitioner now files a petition for review by the Supreme Court of these rulings. Ed.)* LAUREL, J.:

DECISION

LAUREL, J.:

It does not seem necessary to take up seriatim the errors assigned by the Petitioner, for the reason that, in our opinion, the legal questions raised may be reduced to two principal propositions: (1) whether or not the respondent Commission is empowered to issue the instructions hereinabove quoted; and (2) whether or not the instructions thus issued are in accordance with law.

With reference to the first proposition, we observe that the Commission on Elections is a legislative creation and its organic act (Commonwealth Act No. 607, approved August 22, 1940) is virtually a reproduction of Article III of Resolution No. 73 of the National Assembly, adopted April 11, 1940, proposing an amendment to the Philippine Constitution, by establishing an independent Commission on Elections. Under section 2 of this Act "the Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections," and "shall decide, save those involving the right to vote, all administrative questions affecting elections including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officals." The constitution of the boards of election inspectors and the appointment of the members thereof are governed by section 6 of Act No. 357 of the National Assembly. Section 69 thereof imposes upon the presiding officer of the municipal council the duty to appoint "fifty days immediately prior to the date of a regular election, a board of election inspectors composed of three in-

spectors and a poll clerk who shall hold office until their successors are appointed for the next regular election, unless they are sooner relieved." Adopting the system of bi-partisan representation on the boards, section 70 provides that "two of the inspectors and the poll clerk and their substitutes shall belong to the party which polled the largest number of votes at the next preceding election, and the other inspector and his substitute shall belong to the party which polled the next largest number of votes at said election", and in accordance with section 73 "the inspectors and poll clerks and their respective substitutes shall be from among those proposed by the authorized representatives of the national directorates of the parties," imposing upon said parties the obligation to communicate in writing to the presiding officer of the municipal council at least three days before the day fixed for the appointment of the board of election inspectors, the names and addresses of all persons who shall act as their representatives in connection with the appointment of the members of the board of inspectors. Section 71 prescribes the method to be followed in case two major political parties unite, and section 72 denies the right of representation "to any branch or fraction which has seceded from its respective party, or from the party resulting from their fusion."

It is apparent from these divers provisions of the Election Code that it is, *inter alia*, the mandatory duty of the presiding officer of the municipal council to appoint an inspector of election to represent the minority party and that this appointment shall be made from amongst those proposed by the authorized representatives of the national directorate of such party. If this is not done, the matter may be submitted to the Commission, or the Commission may, on its own initiative, direct compliance with the mandate of the law. To avoid having to decide each case as it comes up separately, the Commission may issue general instructions, conformably with law, on the matter of the appointment of election inspectors for the guidance of all concerned. This is the case here.

As there can be no election without election inspectors (Municipal Council of the City of Manila vs. Agustin, G. R. No. 45844, November 29, 1937, XXXVI O. G. 1335) and as the constitution of the boards of election inspectors and the appointment of the members thereof are matters that go to the root of clean and honest elections, the Commission on Elections in virtue of its authority to enforce and administer all laws relative to the conduct of elections, is undoubtedly empowered to issue, for the guidance and compliance of all concerned, such instructions as are properly intended to carry into effect the requirements of the law. Without deciding at this time the question of whether the powers conferred upon the Commission are more extensive than those exercised by the Department of the Interior before the enactment of Act No. 607, there was, in our opinion, at least, a complete transference of the power of direct supervision heretofore exercised by the Department of the Interior over all provincial, municipal and city officials, in the performance and the enforcement of the Election Law. We are, therefore, clearly of the opinion that the respondent Commission has the legal authority to issue instructions conformably with law pertaining to the appointment of election inspectors, with a view to the effectuation and due enforcement of the laws enacted on the subject by the National Assembly.

Upon the second proposition, namely, whether or not the instructions issued by the Commission on Elections are in accordance with law, it should be observed that such instructions are divided into four main parts now to be referred to.

The first part refers to the confederated character of the Popular Front Party, according to the various decisions of this Court. This point, however, is unimportant, and any inference drawn therefrom is also unimportant for the purposes of this decision.

The second part lays down the general rule that the minority inspectors should be accorded to the Sumulong faction or the Abad Santos faction in a given locality "depending as to whether the minority local party in his municipality pertain to the Sumulong faction or to the Abad Santos faction." This is not believed to be in harmony with the policy and mandate of the law. Minority representation is given to the *party* "which polled the next largest number of votes at the immediately preceding election." If the Popular Front Party is the party that obtained this number of votes, it is entitled to minority representation in the locality. It becomes also necessary to ascertain who are its authorized representatives or its chosen spokesman for the purpose of the application of section 73 of the Election Code with reference to the proposal of election inspectors and poll clerks. In case of secession of a branch or faction from an organized party, representation is denied to the seceding branch or fraction.

The third part of the instructions requires that "in the event that the local minority party has been divided into two groups, one of which belongs to the Sumulong faction and the other to the Abad Santos faction, then the group with more following shall be recognized and the corresponding representative of that faction shall have the right to propose the minority election inspectors." This instruction is contrary to law. It recognizes the right of groups to political representation on the electoral boards, contrary to the policy of the law to deny recognition of this purpose to such groups in the presence of a duly organized political party in a locality. In the case of Campomanes vs. The Municipal Council of Sariaya, Tayabas, G. R. No. 45869, promulgated December 8, 1937, XXVI O. G. 1480, we said:

> "Section 417 of the Election Law, prior to its amendment by Commonwealth Act No. 233, recognizes the legal personality of political aggroupments for election purposes, and the right to propose inspectors of election. A 'political group' is there defined. The amendatory section of Commonwealth Act No. 233 no longer accords this recognition and has eliminated the definition of this term. The evident purpose of the law is to foster and encourage the formation of political parties inspired by high political ideals of government. In case, therefore, of antagonism or conflict between a political party whose claim to national character is not denied and a mere political group, the claim of the former, as an opposition party, to an inspector of election under section 417 of the Election Law, as amended, must prevail over that of the latter. That such is the intention of the legislature is, furthermore, inferable from paragraph (f) of the same section."

A party may have but small following, but if it has the legal standing of a "party" under section 76 of the Election Code, it may properly claim representation on the boards of

election inspectors as against a political group. The basis of majority and minority representation on the boards of election inspectors is, under section 70 of the Election Code, the number of votes received at the next preceding election, to be determined in the manner therein prescribed. As stated, if the Popular Front Party was the party that obtained the "next largest number of votes at said election" in a given municipality, this party and no other, is entitled to minority representation. This is true even if the Popular Front Party were considered as a mere confederation or alliance of other minority parties or groups. A party allied or temporarily consolidated with other parties may be such a "party", in contemplation of section 76 of the Election Code, but if it came out as part and held itself under the banner of the resulting confederation, it is not entitled to minority representation under the law. This is because the votes received were accorded by the people to the aggroupment formed, consequent upon the *entente cordiale* or *modus vivendi*, and no succession to any political right is in order in concurrence with what still is an existing confederation.

Although the fourth part of the instructions refers to the question of "as to which of the two factions of the so-called Popular Front Party, one headed by Sumulong and the other headed by Abad Santos, is entitled to use the name Popular Front Party,"—a matter which, in the opinion of the Commission on Elections, "pertains to the courts of justice"—the pleadings and the records disclose that the real question is as to who, upon the evidence presented, is the duly chosen and authorized head of the Popular Front Party and as such head is entitled to represent the directorate in the matter of the appointment of the third inspector of election to which the minority party is entitled under the law. The determination of this question of fact is necessarily involved in the appointment required to be made of the inspectors of election for the minority party. The appointing power must so ascertain, subject to the supervisory and reviewing authority of the Commission on Elections. For uniformity of action and in view of the urgency of the situation, this matter may now be speedily determined by the Commission in the public interest.

Specifically and categorically stated, the right to minority representation on the board of election inspectors is tested by the following rules and is subject to the following conditions: (1) The political organization in whose behalf the claim is made must be a political party in the sense that it is "an organized group of persons pursuing the same political ideals in a government" (Sec. 76, Commonwealth Act No. 357). This is a question of fact, or a mixed question of fact and law. (2) The political party must have taken part at the immediately preceding election and obtained the next largest number of votes at said election (Sec. 70, Ibid.). In concurrence with a "political group" in the locality, the political party is entitled to preferential recognition, if it had taken part in the immediately preceding election and had received votes and the claim of the party to representation is made in good faith. (3) The inspectors of election must be proposed by the authorized representatives of the national directorates of the parties (Sec. 73, Ibid.). Who constitute the party directorate and who are its authorized representatives for this purpose involve an ascertainment of fact which must be made by the appoint-

ing power, subject to the supervisory and reviewing authority of the Commission on Elections (Sec. 2 of Commonwealth Act No. 607.).

Insofar as the instructions issued by the respondent Commission on Elections are not in accordance with this decision and the rules herein specifically formulated, the same are hereby reversed. The case will accordingly be remanded to that body for appropriate action, and if and when necessary, for determination of such facts as have to be ascertained for the proper application of the law and the rules herein given, without pronouncement regarding costs.

SO ORDERED.

(Sgd.) Jose P. Laurel

WE CONCUR:

(Sgd.) Ramon Avanceña (C.J.)
(Sgd.) Carlos A. Imperial
(Sgd.) Anacleto Diaz
(Sgd.) A. Horrilleno

Digest of Current Cases

ADMINISTRATIVE LAW (Immigration; Determination of Fact).—*Tan Kiat Hun and Yap Kong Ha, Petitioners-Appellees vs. Jose Delgado, Chief of the Immigration Board, Cebu, Respondent-Appellant, G. R. No. 47161, November 28, 1940.*—Petitioners claim to be wife and minor son of Y, Chinese teacher in Cebu, and formerly connected with the Chinese Consulate. The Immigration Board held that inasmuch as Y could not prove his connection with the Chinese Consulate by proper documents, it was unnecessary to determine the relations of the petitioners with Y. Petition for writ of habeas corpus was granted by the Court of First Instance, upon evidence showing consular connection and gainful employment of Y, and his relations with petitioners. The Solicitor General, admitting legal residence of Y by virtue of his connection with the Chinese Consulate (thereby exempting him from obtaining necessary certificate), contended that the trial court erred in not remanding the case to the Immigration Board so that the latter could determine the relationship of the petitioners with Y; and in admitting proofs which did not form part of the record of proceedings had before the immigration authorities. *Held:* Determination of relationship between petitioners and Y is purely a determination of a question of fact, and in this jurisdiction, administrative powers of determining questions of fact cannot be usurped by the courts. Such determination—as regards immigration—is exclusively within the authority of the Immigration Board. (Per Horrilleno, J.; Avanceña, CJ., Imperial, Diaz, Laurel, JJ., concurring.)—*Briefed by* ALEXANDER SYCIP.

ADMINISTRATORS (Appointment)—*In re Intestate estate of the deceased Juan Narvaez. Jose Narvaez and Fidel Narvaez, Applicants-Appellees vs. Soledad Punzalan, et al., Oppositors-Appellants, G. R. No. 47309, November 25, 1940.*—On his death, Juan Narvaez left three children—the applicants-appellees and the wife of oppositor-appellant. Narvaez having died intestate, one of the applicants, supported by the other, upon petition, was granted letters of administration. The oppositor, son-in-law of the deceased, on behalf of his family objected to the petition, asserting that he was entitled to the position. In this appeal from the order of the court overruling his objection, it is alleged that the court erred in granting letters of administration to the applicants. The applicants, in turn, maintain that the appeal was one from an interlocutory order; hence, premature and improper. *Held*: In appointing the applicant as administrator, the court exercised its sound discretion in conformity with Sec. 642 of Act 190. The applicant is a legitimate son of the deceased; while the oppositor is merely the latter's son-in-law. The interest of the oppositor and his family in the estate of the deceased amounts to only one-third; that of the applicants, two-thirds. The mere fact that the applicant has opposed the probate of an alleged will, sponsored by the oppositor, is not a bar to the former's appointment as administrator. It was his duty to oppose the will because it failed to comply with the requirements of the

law. Under Sec. 783 of Act 190, the appeal interposed by the oppositor is premature because the order appointing an administrator does not decide with finality any right of the parties. (Per Diaz, J.; Avanceña, C. J., Imperial, Laurel, Horrilleno, JJ., concurring.)—*Briefed by* CESAR C. CLIMACO.

CIVIL PROCEDURE (Adjournments).—*Linda Mohamed Barrueco, Petitioner, vs. Hon. Quirico Abeto, Judge of First Instance, and Juliana Veloso, Respondents, G. R. No. 47755, December 5, 1940.*—Original action for prohibition. Petitioner contended that from April 24, 1940, when the reception of evidence actually took place, and the subsequent postponements for May 4, June 3, June 11, June 21, and July 18, 1940, until the 19th of August, 1940, more than three months had elapsed; and from July 18, 1940 to August 19, 1940, more than one month had elapsed for that single postponement, without the respondent Judge having secured express authority from the Chief Justice of the Supreme Court, as required by Rule 31, sec. 4 of the Rules of Court; consequently, the respondent Judge has lost his right and jurisdiction to further proceed with the trial. *Held*: Rule 133 of the Rules of Court provides that said rules "shall govern all cases brought after they take effect and also all further proceedings in cases then pending." It results that, in computing the three-month period, the postponements allowed prior to July 1, 1940, when the Rules began to take effect, should not be counted; otherwise, the Rules of Court would be given retroactive effect in violation of said Rule 133. At all events, section 4 of Rule 31 which provides that a court "shall have no power to adjourn a trial for a longer period than one month for each adjournment, nor for more than three months in all, except when authorized in writing by the Chief Justice," is merely directory. A wilful disregard or reckless violation of said provision on the part of judges would constitute a breach or neglect of duty which may subject them to corresponding administrative action, but will not nullify a judicial proceeding. (Per Laurel, J.: Avanceña, C. J., Imperial, Diaz, Horrilleno, JJ., concurring)—*Briefed by* HERACLEO HERRERA TAN.

CIVIL PROCEDURE (Custodia Legis).—*David Bustos, Hospicio S. Puno, and Balbino Lupisan, Petitioners, vs. Hon. Jose Ma Paredes, Judge of First Instance of Pampanga, nd Jose P. Quiambao, Respondents, G. R. No. 47359, Nov. 27, 1940.*—Petition to impugn the validity of an order of the Court of First Instance of Pampanga in the case of Pilar Quiambao, Administratrix of the intestate estate of the deceased spouses Daniel Quiambao and Gerarda Bondoc vs. Jose Quiambao. The lower Court ordered Jose Quiambao to deliver and pay to Pilar Quiambao the sum of ₱1,700 which Jose Quiambao had collected from a debtor of the deceased spouses and in case of failure to deliver said sum, then to proceed against the properties of the sureties or against whatever right Jose Quiambao might have in the intestate estate. Jose Quiambao filed motion for reconsideration, but it was denied and the court ordered the attachment of the properties of the sureties to be sold at public auction to satisfy judgment. The sureties in accordance with the terms of the bond obligated themselves to deliver to the court the properties attached or the amount of the properties attached if judgment is rendered for the plaintiff. *Held:*

The order of the court required the sureties to subscribe to a greater obligation than that required by the express terms of the bond. The conditions of the bond cannot be extended by unfounded deductions. (Art. 1281 Civil Code.) The goods which were under attachment and released because of the bond are properties of the intestate of the deceased spouses according to the very petition ex parte filed by the administratrix. The administratrix does not have the right to ask for the delivery of the goods to the sheriff, because neither Jose Quiambao nor the sureties have control over the said properties, but she herself as administratrix. If such properties are the properties of the intestate estate, they are naturally in custodia legis. Sureties according to the terms of the bond are not obliged to pay the sentence against Jose Quiambao, but only the value of the properties attached. Petition granted. (Per Diaz, J.; Avanceña, C. J., Imperial, Laurel, and Horrilleno, J. J., concurring.)—*Briefed by* DOMINGO B. LAUREA.

CONSTITUTIONAL LAW (Delegation of Powers; Police Power; Social Justice).—*Maximo Calalang, Petitioner v. A. D. Williams, etc., Respondents, G. R. No. 47800, December 2, 1940.*—Petition for writ of prohibition against Chairman of the National Traffic Commission and others. By virtue of some rules and regulations recommended by the National Traffic Commission indorsed by the Director of Public Works, approved by the Secretary of Public Works and Communications, and enforced by the Mayor and Chief of Police of Manila, certain portions of some streets in the City of Manila were closed to animal-drawn vehicles during certain hours, all pursuant to Commonwealth Act No. 548. Petitioner contends (1) that there is undue delegation of legislative power; (2) that the rules and regulations promulgated by the respondents pursuant to Commonwealth Act No. 548 constitute an unlawful interference with legitimate business or trade and abridge the right to personal liberty and freedom of locomotion; and (3) that they infringe upon the constitutional precept regarding the promotion of social justice to insure the well-being and economic security of all the people. *Held:* (1) The contention of the petitioner that there is undue delegation of legislative power is untenable. Section 1 of Commonwealth Act No. 548 provides as follows: "SECTION 1. To promote safe transit upon, and avoid obstructions on, roads and streets designated as national roads by acts of the National Assembly or by executive orders of the President of the Philippines, the Director of Public Works, with the approval of the Secretary of Public Works and Communications, shall promulgate the necessary rules and regulations to regulate and control the use of and traffic on such roads and streets. Such rules and regulations, with the approval of the President, may contain provisions controlling or regulating the construction or regulating the construction of buildings or other structures within a reasonable distance from along the national roads. Such roads may be temporarily closed to any or all classes of traffic by the Director of Public Works and his duly authorized representatives whenever the condition of the road or the traffic thereon makes such action necessary or advisable in the public convenience and interest, or for a specified period, with the approval of the Secretary of Public Works and Communications." No legislative power is conferred upon the Director of Public Works and the Secretary of Public Works and Communications. The authority conferred upon them is not to

determine what public policy demands, but merely to carry out the legislative policy laid down by the National Assembly in the Act, namely, "to promote safe transit upon, and avoid obstructions on, roads and streets designated as national roads by acts of the National Assembly or by executive orders of the President of the Philippines" and to close them temporarily to any or all classes of traffic whenever the condition of the road or the traffic thereon makes such action necessary or advisable in the public convenience and interests." The delegated power, if at all, therefore, is not the determination of what the law shall be, but merely the ascertainment of the facts and circumstances upon which the application of said law is to be predicated. (2) Commonwealth Act No. 548 was passed by the National Assembly in the exercise of the paramount police power of the state. Said Act, by virtue of which the rules and regulations complained of were promulgated, aims to promote safe transit upon and avoid obstructions on national roads, in the interest and convenience of the public. In enacting said law, therefore, the National Assembly was prompted by considerations of public convenience and welfare. It was inspired by a desire to relieve congestion of traffic, which is, to say the least, a menace to public safety. Public welfare, then, lies at the bottom of the enactment of said law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations. (3) With respect to the third contention:—The promotion of social justice is to be achieved not through a mistaken sympathy towards any given group. Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the component elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex.* Writ denied. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, J.J. concurring).—*Briefed by* FRANCISCO S. SANTOS.

COURT OF INDUSTRIAL RELATIONS — *Manila Electric Company, Petitioner, vs. National Labor Union, Inc., Respondent, G. R. 47279, November 25, 1940.*—The petitioner, charging three of its laborers with maliciously accusing their foreman with theft, petitioned the Court of Industrial Relations for authority to dismiss them. The respondent, in behalf of the laborers, prayed for the denial of the petition on the ground of unjustifiable discharge due to their union affiliation and activities. The Court denied the petition and ordered their immediate reinstatement. Motions for reconsideration and new trial having been denied, this Certiorari was began. The issue is whether the Court of Industrial Relations has the right and authority under Section 19 of Com. Act. No. 103 to order the readmission of the laborers. *Held*:

The right of the employer to freely select and discharge his employees is subject to regulation by the State basically in the exercise of its paramount police power (Com. Acts. Nos. 103 and 213). The Court of Industrial Relations has found that there is no justifiable cause for dismissal of the laborers in this case. These laborers had not been guilty of any illegal act against the petitioner, but on the contrary had tried to protect the interests of their employer. The Court further found that the actuations of the petitioner were motivated by a desire to get rid of these laborers and to discriminate against them as union members. Writ denied. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, JJ., concurring.)—*Briefed by* RAUL O. DEL CASTILLO.

COURT OF INDUSTRIAL RELATIONS (Jurisdiction) — *Bardwill Bros., Petitioner vs. Philippine Labor Union and Court of Industrial Relations, G. R. No. 47339, November 28, 1940.*—Thirty laborers of Bardwill Bros., presented a petition to the said company asking for an increase in wages. After studying the petition, Bardwill Bros. refused to grant the demands and at the same time dismissed twelve laborers for having signed the petition and for having adhered to the Philippine Labor Union. In protest to such dismissal, thirty-two laborers of the Co. affiliated with the Philippine Labor Union declared a strike. The case was referred to the Bureau of Labor, but the Sec. of Labor endorsed the case to the Court of Industrial Relations. After trial the court ordered that the petitioner, Bardwill Bros., reinstate the dismissed laborers. Petitioner filed a motion for reconsideration, but before the motion was decided, petitioner filed suit for certiorari to the Supreme Court. The certiorari was denied on the ground that it was premature. The Court of Industrial Relations denied the motion for reconsideration, so petitioner once again sued for the issuance of a writ of certiorari, but the Supreme Court once more denied the writ. The Philippine Labor Union presented a motion for the execution of the order of the Court of Industrial Relations. The petitioner presented a motion for the modification of the judgment on the ground that some of the dismissed laborers have found new jobs and others have died and the rest were not affiliated with the Philippine Labor Union. The Court of Industrial Relations reaffirmed its decision. This present petition is for certiorari to annul the judgment of the Court of Industrial Relations on the ground of lack of jurisdiction. *Held*: The denial by the Supreme Court of petitioner's petition for certiorari on the ground that it was premature and the denial of the second petition constitute res adjudicata. Petitioner's allegation to the effect that the Court of Industrial Relations is without jurisdiction for the laborers concerned are less than the minimum required by law, is without merit. Art. 4 of Com. Act No. 103, as amended by Art. 2 of Com. Act No. 559, require that in order for the Court of Industrial Relations to acquire jurisdiction over the disputes between the employers and employees, more than 30 laborers must be affected. There is data to the effect that more than 70 laborers affected as appears in the certification of the Sec. of Labor. Petition denied. (Per Imperial, J.; Avanceña, C.J., Diaz, Laurel, and Horrilleno, J.J., concurring.)—*Briefed by* RHODORA H. JARDELEZA.

CRIMINAL LAW (Habitual delinquency)—*People of the Philippines, Plaintiff-Appellee vs. Santos Lopez y*

Jacinto, Defendant-Appellant, G. R. No. 47323, November 28, 1940.—The defendant voluntarily pleaded guilty to an information charging him with theft. The lower court accordingly sentenced him and imposed the additional penalty provided by law for habitual delinquency which was alleged in the information. On appeal, the defendant contends that he is not a habitual delinquent because he had committed the first crime of theft before he was convicted of a prior crime of robbery. *Held*: Under the doctrine enunciated in the case of *People vs. Venus* (35 O. G. p. 927), the first two convictions of robbery and theft should be considered as one conviction, and the present conviction, therefore, should be the second. The defendant cannot be considered a habitual delinquent, under the circumstances, and it was error to impose the additional penalty for habitual delinquency. The aggravating circumstance of recidivism having been offset by the defendant's plea of guilty, the judgment imposed by the lower court is modified and the penalty provided for by law is imposed in its medium period. (Per Horrilleno, J.; Avanceña, C.J., Imperial, Diaz, Laurel, J.J. concurring).—*Briefed by* MARY F. CONCEPCION.

LAND REGISTRATION (Inscription of Liens)—*Mariano M. Lazatin, Petitioner-appellant vs. Narciso Peña, Registrar of Deeds of Manila and Domingo Reyes, Respondent-Appellees, G. R. No. 47350, November 28, 1940.* —Pilar Tañedo mortgaged her land to respondent Reyes. Lien was noted in the Registry of Property and on the back of the Transfer Certificate of Title. Upon default in the payment, Reyes brought an action and judgment was rendered in his favor. Tañedo paid part of the debt and executed a written agreement with Reyes by which the latter consented to have the mortgage-lien on the land cancelled. In return, Tañedo agreed to pay the ₱250.12 balance on her debt. The aforesaid agreement was presented to the respondent Registrar of Deeds who made the proper notation in the Registry book and also on the back of the Torrens Certificate. Subsequently Tañedo sold the land to Lazatin. Lazatin now presents a motion asking the Court for the cancellation of the original certificate and the issuance of a new one in his name, free from any lien in favor of Reyes. In the original certificate it was shown that Reyes' lien on the property had already been cancelled by virtue of the above mentioned agreement. *Held*: Under the Torrens systems, by virtue of which the Certificate of Title was issued, the inscription in the Registry of Deeds and on the back of the Title Certificate itself are the acts which give validity to any lien on the realty represented in the certificate. It appearing in the Registry of Deeds and on the back of the Certificate of Title that Reyes' lien had been cancelled, the subsequent purchaser in good faith, Lazatin, is entitled to a new certificate free from any lien in favor of Reyes. (Per Diaz, J.; Avanceña, C.J., Imperial, Laurel, and Horrilleno, J.J., concurring.)—*Briefed by* JOAQUIN GONZALEZ.

PUBLIC OFFICERS.—*The People of the Philippines, Plaintiff-Appellee vs. Telesforo Estrañero, Defendant-Appellant, G. R. No. 47277, November 29, 1940.*—The defendant-appellant has been for the past ten years operating trucks for transportation under a Certificate of Public Convenience. On a certain date, the secretary of the municipality entered into an agreement with the chauffeurs of the trucks operated by the defendant

for the transportation of construction materials for the use of a public school building in the town. For the services rendered under the above agreement the defendant collected and received from the municipal treasurer an amount of money as payment. At that time the defendant was holding the office of municipal councilor of the same town. He is charged with violation of Article 2176 of the Revised Administrative Code, which makes it unlawful for a municipal officer to possess any pecuniary interest, either direct or indirect, in any municipal contract, contract work, or other municipal business. *Held*: The purpose of this prohibition is to prevent such public functionary from promoting his interests or those of his relatives and friends to the prejudice of the interests of the public. In this case the defendant did not in any way, as municipal councilor or otherwise, intervene in the agreement between the municipal secretary and the chauffeurs of the trucks. Neither was there any prejudice to the interests of the public. He had every right to collect payment for services rendered by his public utility, and he collected no more than what was allowed to him under his Certificate of Public Convenience. (Per Horrilleño, J.; Avanceña, C.J., Imperial, Diaz, Laurel, JJ., concurring.)—*Briefed by* ROSA SANTOS.

WORKMEN'S COMPENSATION ACT.—*The Government of the Philippines, Petitioner vs. The Manila Electric Company, Respondent, G. R. No. 46942, December 2, 1940.*—Casimiro Adona, an employee of the Bureau of Posts, whose work consisted in fixing and repairing the telegraphic lines of said Bureau, while in the line of duty on October 20, 1934, died due to electrocution. His death came about because of a contact between the line he was fixing and the electric wires of the Manila Electric Company. In accordance with Act No. 3428 (the Workmen's Compensation Law), the Government paid the heirs of the deceased the corresponding compensation, and brought an action against the electric company, under the provision of Article 6 of Act 3428, by which the Government is subrogated to the rights of the heirs of the deceased. The lower court decided for the defendant, which decision was sustained by the Court of Appeals. So the petitioner now files this writ of certiorari, assigning as errors: 1. that the Court of Appeals erred in not finding that the respondent was bound under its franchise to use insulated wires and that it was negligent in failing to use wires of this kind. 2. that the Court of Appeals erred in not finding that the respondent was also negligent in having failed to replace the service wire in question with one duly coated or at least, to tape or otherwise cover the uncoated portion of said service wire. *Held:* 1. The franchise granted to the respondent referring to the quality and class of materials that should be used in its electric wires, provides: "all the apparatus and accessories that the grantee uses or that its successors may use, shall be modern and of the first class under all technical concepts and the wires that should be used for the transmission of electricity shall be isolated and carefully connected and fixed so that they cannot come into direct contact with any object by which a ground connection may be formed." Therefore, there is nothing in the franchise which obligates the grantee to use insulated wires, which are only used for electric lights inside a house or building, since its high cost prohibits its customary use in wires that are

exposed to the action of the elements. If, as contended by the petitioner, the respondent was under obligation to use insulated wires, the franchise would have stated that "the wires that the company should use shall be insulated wires" and not simply that "the wires to be used for the transmission of electricity shall be isolated and carefully connected." 2. As to the alleged negligence of the respondent in not substituting the service wire which caused the electrocution of the deceased with one duly coated, it should be borne in mind that the incidents causing his death occurred on October 20, and that on October 16, a storm blew over said place, hence only four days transpired between those two events. The extension and range of the activities of the respondent company is of general knowledge. It is not just, therefore, to insist that during the short space of four days, that the respondent should inspect all its lines and to fix them, substituting with new ones those wires which, because of the action of the elements, had been damaged. Furthermore, there is nothing said in the decision of the Court of Appeals from which it may be deduced that on account of the storm, the transmitting wire for electricity in the place where the deceased met his death had been broken or disconnected from the posts. The only thing stated in the decision, which is the subject of this writ of certiorari is that the wire with which the deceased wanted to repair the telegraphic lines of the Bureau of Posts, were placed in contact with a part of the transmitting wires for electricity whose coat had fallen off. The falling away of the coat of the conducting wires for electricity which are exposed to the elements is nothing extraordinary or rare; it is a very common thing. It is also a proven fact that the deceased before going to work to repair the telegraphic lines was warned by a laborer of the respondent company that the electric light service had been reestablished and hence to be careful about the wires. The deceased was therefore aware of the danger he was running. Besides this, the deceased by reason of the nature of his work should have known how dangerous it was for him to pursue his work on such occasion without taking the necessary precaution to see to it that the wire with which he was trying to repair the telegraphic lines do not come in contact with the electric wires of the respondent. Since, inspite of all this, he did not do so, his negligence is more clearly shown. Therefore, the conclusion is that the respondent has not been guilty of any negligence in this case. The decisions in the cases of del Rosario v. Manila Electric Co. 57 Philippine Reports, 499, and Astudillo v. Manila Electric Co. 55 Philippine Reports, 457, are not in point. Judgment affirmed. (Per Horrilleno, J.; Avanceña, C. J., Imperial, Diaz, Laurel, JJ., concurring.)—*Briefed by* CARLOS LEDESMA.

WORKMEN'S COMPENSATION ACT.—*Bohol Land Transportation Co., Plaintiff-Appellant vs. Fermina Vda. de Madanguit et al, Defendants-Appellees, G. R. No. 47360, November 28, 1940.*—The husband of defendant was a driver employed by the plaintiff company. While driving one of the company's trucks on a regular trip to another municipality, he overtook and passed another truck, and in doing so he fell one Ciriaco Dalmao (then riding a bicycle in the opposite direction), ditching him. Dalmao immediately turned around and pursued the truck, which a few minutes later had to park in front of a house for passengers. Taking

advantage of the stop, the driver went to a drug store across the street to wash his hands which had become dirty when he cleaned the truck. In the meantime, Dalmao arrived, went into the drug store, and, without much ado, knifed the driver to death. Dalmao was prosecuted and having pleaded guilty, was sentenced accordingly. Subsequently, the heirs of the driver filed this action for compensation under Act 3428, as amended, and obtained judgment against the company in the trial court. The company appealed. The Court of Appeals sustained the right of the heirs to compensation, holding that the death arose out, and in the course of his employment. The company elevated the case to the Supreme Court by certiorari. The only question raised on appeal was whether or not the driver's death arose out of and in the course of his employment so as to entitle his heirs to the benefits of the Workmen's Compensation Law, as amended. *Held:* A liberal construction in favor of the employee should be given to the provisions of the Workmen's Compensation Act. When an employee suffers injury in the course of his employment, a reasonable factual presumption is that the hurt arose out of the employment. Where an employee is injured while seeking toilet facilities or going to or from a toilet, the injury arises out of the employment and in the course of it. (citing Corpus Juris). Following the construction given by the Supreme Court to the same provision in the cases of Bellosillo vs. City of Manila (G. R. No. 34522) and Pollisco vs. Basilan Lumber Co., (G. R. No. 39721), the heirs of Madanguit are entitled to compensation. Judgment affirmed. (Per Horrilleno, J.: Avanceña, C. J., Imperial, Diaz and Laurel, J. J., concurring.)—*Briefed by* LUCIANO E. SALAZAR.

WORKMEN'S COMPENSATION ACT.—*Florencio Garduke, Plaintiff-Appellant, Antamok Goldfields Mining Co., Defendant-Appellee, G. R. No. 47186, December 12, 1940.*—A laborer of the defendant company while working in one of its tunnels, was taken ill and when taken to the hospital, his sickness was diagnosed as lobar pneumonia. Two weeks later he died. A complaint was filed by the father of the deceased against the defendant for the recovery of damages under the Workmen's Compensation Law. Lower Court denied plaintiff's claim on the ground that although a person working in a tunnel may become a prey to lobar pneumonia because he may be subjected to sudden changes of temperature, fatigue, or sudden exposure to cold, yet it could not be assured that his resistance was lowered by reason of his work only. "There is a great possibility that his resistance was lowered by chronic nephritis. From the evidence submitted, the court cannot arrive at the conclusion that the death of Felipe Garduke was directly caused by the nature of his work". The plaintiff appealed. *Held:* The greater or lesser probability that chronic nephritis was the cause of the lessening of deceased's resistance cannot prevail over the natural elements that may have reduced his resistance to illness, namely: the nature of his work in the tunnel, fatigue, changes of temperature, etc. In civil cases, positive and convincing proofs are not necessary. A preponderance of evidence is sufficient. Plaintiff can recover. Judgment reversed. (Per Horrilleno, J.; Avanceña, C. J., Diaz, Imperial, Laurel J. J. concurring).—*Briefed by* FELICISIMO SAN LUIS.

TAXATION (Actual Market Value.—*Oriental Glass Palace, Petition-*

er-Appellant vs. The Collector of Customs, Respondent-Appellee,, G. R. No. 47410, November 29, 1940.—Petitioner filed with the Bureau of Customs an entry and appraiser's return covering merchandise imported from Germany. Attached to the return was the corresponding consular invoice which showed two values: (1) net market value cif Manila, $2,311.-33, and (2) market value for home consumption in Germany, $4,254.96. The question in: Which value is the proper basis in assessing the duty to be paid on the merchandise in question, the export value, or the home consumption value? *Held:* The answer is found in Rule 13 (a) of the Philippine Tariff Act of 1900. Without straining the letter of the law as it stands, the amount of $4,254.96 (the home consumption value in Germany) is the "actual market value or wholesale price ... at the time of exportation to the Philippine Islands, in the principal markets of the country from whence imported." The fact is that the home consumption value mentioned in the consular invoice is broad enough to cover both the actual as well as the wholesale value. (citing the case of U. S. vs. Passavant, 169 U. S. 16). (Per Laurel, J.; Avancena, C. J., Imperial, Diaz, Horrilleno, JJ., concurring.)—*Briefed by* DOMINADOR C. SAYON.