# RECENT DECISIONS

## Decision Reported In Full

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES

SUPREME COURT OF THE PHILIPPINES

MIGUEL CRISTOBAL,
Petitioner,

versus

HON. ALEJO LABRADOR, etc., et als.,
Respondents.

G. R. No. 47941.
Promulgated:
Dec. 7, 1940.

DECISION

LAUREL, J.:

This is a petition for a writ of certiorari to review the decision of the Court of First Instance of Rizal in its Election Case No. 7890, rendered on November 28, 1940, sustaining the right of Teofilo C. Santos to remain in the list of registered voters in Precinct No. 11 of the municipality of Malabon, Province of Rizal.

The antecedents which form the factual background of this election controversy are briefly narrated as follows:

On March 15, 1930, the Court of First Instance of Rizal found Teofilo C. Santos, respondent herein, guilty of the crime of estafa and sentenced him to six months of *arresto mayor* and the accessories provided by law, to return to the offended parties, Toribio Alarcon and Emilio Raymundo, the amounts of ₱375.00 and ₱125.00, respectively, with subsidiary imprisonment in case of insolvency, and to pay the costs. On appeal, this Court, on December 20, 1930, confirmed the judgment of conviction. Accordingly, he was confined in the provincial jail of Pasig, Rizal, from March 14, 1932 to August 18, 1932 and paid the corresponding costs of trial. As to his civil liability consisting in the return of the two amounts aforestated, the same was condoned by the complainants. Notwithstanding his conviction, Teofilo C. Santos continued to be a registered elector in the municipality of Malabon, Rizal, and was, for the period comprised between 1934 and 1937, seated as the municipal president of that municipality. On August 22, 1938, Commonwealth Act No. 357, otherwise known as the Election Code, was approved by the National Assembly, section 94, paragraph (b) of which disqualifies the respondent from voting for having been "declared by final judgment guilty of any crime against property." In view of this provision, the respondent forthwith applied to His Excellency, the President, for an absolute pardon, his petition bearing date of August 15, 1939. Upon the favorable recommendation of the Secretary of Justice, the Chief Executive, on December 24, 1939, granted the said petition, restoring the respondent to his "full civil and political rights, except that with respect to the right to hold public office or employment, he will be eligible for appointment only to positions which are clerical or manual in nature and involving no money or property responsibility."

On November 16, 1940, the herein petitioner, Miguel Cristobal, filed a petition for the exclusion of the name

of Teofilo C. Santos from the list of voters in Precinct No. 11 of Malabon, Rizal, on the ground that the latter is disqualified under paragraph (b) of section 94 of Commonwealth Act No. 357. After hearing, the court below rendered its decision on November 28, 1940, the dispositive portion of which reads as fololws:

> "Without going further into a discussion of all the other minor points and questions raised by the petitioner, the Court declares that the pardon extended in favor of the respondent on December 24, 1939, has had the effect of excluding the respondent from the disqualification created by Section 94, subsection (b) of the New Election Code. The petition for exclusion of the respondent Teofilo C. Santos should be, as it hereby is, denied. Let there be no costs."

Petitioner Cristobal has filed the present petition for certiorari in which he impugns the decision of the court below on the several grounds stated in the petition.

It is the contention of the petitioner that the pardon granted by His Excellency, the President of the Philippines, to the respondent, Teofilo C. Santos, did not restore the said respondent to the full enjoyment of his political rights, because (a) the pardoning power of the Chief Executive does not apply to legislative prohibitions; (b) the pardoning power here would amount to an unlawful exercise by the Chief Executive of a legislative function; and (c) the respondent having served his sentence and all the accessory penalties imposed by law, there was nothing to pardon. All these propositions involve an inquiry into the primary question of the nature and extent of the pardoning power vested in the Chief Executive of the Nation by the Constitution.

Paragraph 6 of section 11 of Article VII of our Constitution, provides:

> "(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly."

It should be observed that there are two limitations upon the exercise of this constitutional prerogative by the Chief Executive, namely: (a) that the power be exercised after conviction; and (b) that such power does not extend to cases of impeachment. Subject to the limitations imposed by Constitution, the pardoning power cannot be restricted or controlled by legislative action. It must remain where the sovereign authority has placed it and must be exercised by the highest authority to whom it is entrusted. An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction. In the present case, the disability is the result of conviction without which there would be no basis for disqualification from voting. Imprisonment is not the only punishment which the law imposes upon those who violate its command. There are accessory and resultant disabilities, and the pardoning power likewise extends to such disabilities. When granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction. In the present case, while the pardon extended to respondent Santos is conditional in the sense that "he will be eligible for appointment only to positions which are clerical or manual in nature involving no money or property responsibility," it is absolute insofar as it "restores the respondent to full civil and political rights." (Pardon, Exhibit 1, extended

December 24, 1939.) While there are cases in the United States which hold that the pardoning power does not restore the privilege of voting, this is because, as stated by the learned judge below, in the United States the right of suffrage is a matter exclusively in the hands of the State and not in the hands of the Federal Government (Decision, page 9). Even then, there are cases to the contrary (Jones v. Board of Registrars, 56 Miss 766; Hildreth v. Heath, 1 Ill. App. 82). Upon the other hand, the suggestion that the disqualification imposed in paragraph (b) of section 94 of Commonwealth Act No. 357, does not fall within the purview of the pardoning power of the Chief Executive, would lead to the impairment of the pardoning power of the Chief Executive, not contemplated in the Constitution, and would lead furthermore to the result that there would be no way of restoring the political privilege in a case of this nature except through legislative action.

The petition for certiorari is denied, with costs against the petitioner.

SO ORDERED.

(SGD.) JOSE LAUREL.

WE CONCUR:

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

HORRILLENO, J. dissenting *:

The dissent is based on three conclusions: (1) That the pardon granted to respondent Santos has no subject matter. When the pardon was granted, he has already served his sentence. Since the accessory penalty of disqualification for the exercise of the right of suffrage lasts only during the term of the sentence, he has regained his right of suffrage upon completing his sentence. There was therefore nothing to pardon. (2) While pardon remits the punishment imposed upon the culprit, it does not have the effect of obliterating the commission of the crime by the accused and his conviction. Pardon involves forgiveness and not forgetfulness. (Washington v. Hazzard 47 A. L. R. 540, 541; State v. Grant 133 Atl 791; People v. McIntyre 163 N. Y. S. 528; U. S. v. Swift 186 Fed. 1003) (3) Paragraph (b) article 94 of the Election Code is not, properly speaking, a penalty or disability resulting from the conviction of the respondent. The Legislature adopted paragraph (b) of article 94 of the Election Code as a measure of protection against those who, because of proven moral turpitude, may adulterate the purity of elections. "Doubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character. But the Legislature power in cases of this kind to make a rule of universal application, and no inquiry is permissible back of the rule to ascertain whether the fact of which the rule is made the absolute test does not exist." (Hawker v. New York 170 U. S. 189)

The majority opinion has given an erroneous interpretation to the term "disability" resulting from conviction. In the present case, the disability consisted of arresto mayor and the accessory penalty of disqualification from the right of suffrage which lasted during the term of the principal penalty. Upon completing his sentence, there was no disability, civil or political left. There was no existing law creating disability of suffrage as the Election Code abovementioned was then not yet promulgated. Paragraph (b) of article 94 of the Election Code is not precisely based on the crime committed but on

* Condensed.

that which the crime has revealed, the moral character of the respondent which has not been obliterated by the pardon.

The majority declares, although not in a categorical manner, that paragraph (b) of article 94 of the Election Code restricts the constitutional pardoning power of the Executive. It does not. On the contrary, it is within the legislative power to adopt under Article V section 1 of the Constitution. It is unquestionable that the power to determine and fix the disqualifications of an election resides exclusively in the legislature. In the exercise of this constitutional power, the legislature may commit error or injustice, but such error or injustice can be cured only by the same legislative power and by the courts.

# 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,
*Respondent*

G. R. No. 47940
Promulgated:
December 5, 1940

(FACTS*: It is admitted that the minority group which was accorded the minority representation on the boards of election inspectors in Bauan, Batangas, is but a faction of the Nacionalista Party, which faction obtained the next largest number of votes at the immediately preceding election in the said municipality. It is likewise admitted that the "Pagkakaisa ng Bayan" is a party of national standing but did not take part in the immediately preceding election in the said municipality. The respondent Commission on Elections held that the present case is not expressly covered by the provisions of the Election Code, but is rather a case falling into that indiscriminate residue of matter not expressly covered by legislative enactment but must, in order not to paralyze the orderly functions of government, be held to fall within the field of administrative discretion; and in the exercise of that administrative discretion, the respondent has decided not to disturb the appointment of the minority inspector from the faction of the Nacionalista Party already made by the presiding officer of the Municipal Council of Bauan. Petitioner now presents this petition for review of this decision.)

* Condensed.

DECISION

LAUREL, J.:

The principal question to be determined, therefore, is as between a faction of a party which obtained the next largest number of votes in the preceding election and a national party which did not participate in such election and did not obtain votes therein, which has a better right to minority representation on the boards of election inspectors.

The question here presented is not specifically provided for in the Election Code, and if we were to interpret section 70 of the said Code strictly, neither the faction nor the party in question would be entitled to name the third election inspector. We are of the opinion, however, that in case of doubt the balance should be inclined in favor of an interpretation which would effectively safeguard the purity of suffrage and avoid a monopoly of inspectors of election by a single party. It is, of course, to be expected that the opposing group of the majority party will check up the actuations of the other group and guard against abuses during the entire period of election, but this is only true in cases where the two groups of the majority party have different candidates for all the provincial and municipal offices. Upon the other hand, if "Pagkakaisa ng Bayan" is not accorded an inspector of election, the result would be that a single party

would have a monopoly of the election inspectors contrary to the spirit and purpose of the law. In the case of Emiliano Tria Tirona vs. The Municipal Council of Dagupan, Pangasinan, XXXVI O. G. 1102, we said:

" . . . It is clear, however, that the purpose of the legislature in providing for a system of political representation on all the boards of election inspectors is to insure the purity of elections. Any attempt therefore, to deprive a political party of representation to which it is entitled should not be permitted. We are of the opinion and so hold that where the two major political parties at the last preceding general elections have fused or consolidated into one party, and there are two sets of candidates of this party for elective provincial and municipal candidates against one set of candidates of an opposing party, the opposition party is entitled to one inspector and substitute inspector of election in each and every electoral precinct of the municipality. As it does not appear that the Partido Nacionalista has presented official candidates but that each of the two wings of this party has presented a complete ticket of candidates for provincial and municipal offices in Pangasinan, one of the two inspectors and substitute inspectors of election in every electoral precinct of the municipality of Dagupan shall correspond to the *anti* faction and the other inspector and substitute inspector to the *pro* faction. The third inspector and substitute inspector shall go to the *Frente Popular*.

"The judgment of the lower court is accordingly reversed and the municipal council of Dagupan is hereby ordered to meet within 48 hours from notice of this decision and to revoke the appointments of inspectors and substitute inspectors of election for the *anti* faction and forthwith to appoint an inspector and substitute inspector of election for the *Frente Popular* in each and every electoral precinct of Dagupan, Pangasinan, such appointments for the *Frente Popular* to be made in accordance with the proposal of the duly authorized representative of this party in the province or municipality aforementioned."

We see no reason why we should depart from the doctrine laid down in the above-entitled case. Each faction of the Nacionalista Party in Bauan, Batangas, is, therefore, entitled to one inspector and the "Pagkakaisa ng Bayan" to the third inspector in each and every election precinct of the municipality, such inspectors to be appointed in the manner prescribed by section 73 of Commonwealth Act No. 357.

Decision Reversed.

(Sgd.) JOSE P. LAUREL

We concur:

(Sgd.) RAMON AVANCEÑA
CARLOS A. IMPERIAL
ANACLETO DIAZ
A. HORRILLENO

# Digest Of Current Cases

CIVIL PROCEDURE (Prescription)—*Oriental Commercial Co., Inc., Petitioner vs. Jureidini Inc., et al., Respondents, G. R. No. 46970.*—The petitioner sold office equipments to purchasers in Cebu through its branch agent, M. Cordoba. The equipments were delivered to Cordoba to be re-delivered to the respective purchasers. While the said equipments were still in the possession of Cordoba, they were seized pursuant to a levy execution issued on a judgment rendered against Cordoba in the case of Jureidini Inc., vs. Cordoba. Said seizure was made on Jan. 29, 1930. On Nov. 15, 1930, petitioner presented a complaint in the Court of First Instance of Cebu to recover said property, but the case was dismissed on Oct. 19, 1931. On Nov. 29, 1930, the petitioner presented a third party claim, so the sheriff required of Jureidini Inc., the filing of a bond and upon compliance the property was sold at public auction. On Sept. 7, 1933, the petitioner presented another complaint in the Court of First Instance of Manila for the recovery of the proceeds of the sale, but the action was dismissed on the same ground as the former. A fourth complaint was filed on Oct. 2, 1934 in the Court of First Instance of Manila, which rendered judgment in favor of the petitioner. The respondent appealed to the Court of Appeals and secured a reversal of the judgment on the ground of prescription. The petitioner now sues for the issuance of a writ of certiorari to revoke the decision of the Court of Appeals. *Held*: From Jan. 29, 1930 to Oct. 2, 1934, the filing of the fourth complaint, 4 years, 8 months, and 3 days had elapsed. The action should have been brought within four years in accordance with sec. 43, par. 3 of Act No. 190. The running of the prescription period cannot be computed from Nov. 21, 1931, the date of the public sale by the sheriff, but from Jan. 29, 1930, when the property was seized. The action is for the recovery of the possession of personal property and in accordance with Sec. 43, par. 3 of Act 190, it prescribes 4 years after the cause of action accrues. Judgment affirmed. (Per Diaz, J.; Avanceña, C. J., Imperial, Laurel and Horilleno, J. J., concurring.)—*Briefed by* DOMINGO B. LAUREA.

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COURT OF INDUSTRIAL RELATIONS (Minimum Wage)—*International Hardwood and Veneer Company, Petitioner vs. Pañgil Federation of Labor, Respondent, G. R. No. 47178, November 25, 1940.*—An industrial dispute existed between the petitioner and some of its employees who are members of the respondent union and which arose from the latter's demand that minimum daily wages of common laborers be fixed. In its resolution, the Court of Industrial relations fixed the minimum wages as prayed for by the respondent. This petition is for a writ of certiorari to review the said resolution. Petitioner alleges (1) that the Court of Industrial Relations has no authority to determine minimum wages for an individual employer in connection with a particular and specific industrial dispute under the provisions of Sec. 4 of C. A. No. 103. The National Assembly, in granting the said court general power to decide any industrial dispute under Sec. 4 of C. A. No. 103, could not

have granted, within such general power, authority to decide a matter which has been made determinable in a specific manner in Sec. 5 of the same Act; (2) that such authority would constitute an undue delegation of legislative power to the Court of Industrial Relations and would deny the petitioner the equal protection of law. Petitioner argues that the determination of minimum wages is a legislative function, and that Sec. 4 of C. A. No. 103 does not indicate in what manner, by what manner, by what standards, or in accordance with what rules, the Court of Industrial Relations shall determine minimum wages under said section. The main question to be resolved, therefore, is whether or not the Court of Industrial Relations has the power to determine minimum wages for an individual employer in connection with an industrial dispute which said Court may take cognizance of under the provisions of Sec. 4 of C. A. No. 103, and if it has, whether such grant of power is valid or not. *Held*: (1) Under Sec. 5 of C. A. No. 103, minimum wages are determinable in reference to a given industry or given locality, which should be of general application and have the force and effect of law after approval by the President of the Philippines. This section, however, does not contemplate the arbitration and settlement of industrial or agricultural disputes causing or likely to cause a strike or lockout, and is designed merely to provide for a workable device whereby a scheme of minimum wage or share for laborers or tenants in a given industry or locality may be evolved whenever conditions therein warrant. On the other hand, Sec. 4 of the same Act, together with the other sections complementing it, is designed to provide for compulsory arbitration in order to prevent non-pacific methods in the determination of industrial and agricultural disputes. Under the view suggested by the petitioner, if an industrial dispute between an employer and its employees causing or likely to cause a strike or lockout arises from differences as regards a minimum wage, the Court of Industrial Relations would be without authority to take cognizance of the dispute for arbitration and settlement unless the President of the Philippines, under Sec. 5 of the Act, directs it to investigate and study all the pertinent facts related to the industry concerned, with a view to determining the necessity and fairness of fixing a minimum wage which shall apply generally to all the employers engaged in such industry. To adopt such a narrow construction would be to set at naught the plenary powers conferred upon the Court to enable it to "settle all questions, matters, controversies, or disputes arising between, and/or affecting employers and employees" and to frustrate the very objective of the law, namely, to create an instrumentality thru which the intervention of the government could be made effective in order to prevent non-pacific methods in the determination of industrial or agricultural disputes. It is fundamental that the intention and policy of the National Assembly, as expressed in the enactment, should be given effect and the Act should receive a construction that will lead to this result. (2) Sec. 20 of C. A. No. 103 prescribes that in the hearing, investigation and determination of any question or controversy and in exercising any duties and power under this Act, the Court shall act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms. The National Assembly by this section has furnished a sufficient standard by which the Court

will be guided in exercising its discretion in the determination of any question or controversy before it, and we have already ruled that the discretionary power thus conferred is judicial in character and does not infringe upon the principle of the separation of powers, the prohibition against the delegation of legislative function, and the equal protection clause of the Constitution. (Antamok Gold Fields Mining Co. vs. Court of Industrial Relations et al, G. R. No. 46892). Petition for certiorari denied. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, and Horrilleno, JJ., concurring).—*Briefed by* ISIDRO T. ALMEDA.

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CRIMINAL LAW (Estafa)—*J. C. Willis, Petitioner vs. Government of the Philippines, Respondent, G. R. No. 47297* .....—The petitioner Willis ordered 4800 bricks valued at ₱216.00 from Miclat, promising to pay immediately upon delivery. The bricks were delivered in four consignments. After each delivery, the carrier demanded payment but Willis said he would pay when the whole order was delivered. But after the delivery was completed, he failed to pay and instead asked to be allowed to pay the next day since he had no money with him. Miclat refused and ordered the bricks sent back whereupon Willis informed him that the bricks could not be removed without damaging them since he had used them already. The next day and thereafter, he failed to pay after demand. He was accused, and convicted of estafa. He now petitions the Supreme Court to set aside the judgment of conviction on the ground that there was no estafa, Miclat having consented to a novation of their original contract by giving him till the next day to pay. *Held*: Petition denied. There was no novation voluntarily consented to by Miclat. He had no other alternative, under the circumstances, except to wait till the next day for the payment. The mere indulgence or resignation to the delay cannot be said to have injected a new character into the orginal obligation of Willis as to constitute a novation of the contract. Petitioner is guilty of estafa as defined under paragraph 2, Art. 315, Revised Penal Code. (Per Imperial, J.; Avanceña, C. J., Diaz, Laurel, Moran, JJ, concurring)—*Briefed by* MARY F. CONCEPCION.

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CRIMINAL LAW (Libel, Offended Party's Complaint)—*Pedro M. Blanco, Petitioner vs. People of the Philippines, Respondent, G. R. No. 47129, December 5, 1940.*—An editorial entitled "Is L. R. Aguinaldo a Japanese Tool?" appeared in a magazine edited by B. The editorial charges L. R. Aguinaldo of pro-Japanese leanings, of lending his name and prestige to "an enterprise capitalized by Japanese money," and of consenting to appear as nominal shareholder thereof for the requisite number of shares to show an apparent compliance with the Corporation Law and the Constitution. "The most plausible conclusion," reads the article, "is that Mr. Aguinaldo has not given a single centavo for his subscriptions." B was prosecuted for libel under Arts. 353 and 355, R.P.C. and convicted. Appeal. *Held*: The article in question, containing as it does, a clear imputation of offended party's participation in an act penalized by law, is *per se* defamatory. Moreover, it portrays the offended party as one without any scruples or affection for the ideals which, as President of the Philippine Chamber of Commerce, he should be most zealous to uphold, conceived as they were for the protection of the economic life of the country. It places him in ridicule and makes him ap-

pear worthless before the eyes of his country men. In such cases, mere good motives and justifiable ends are no defense; the accused must, in addition, prove the truth of his charges. This, B. did not do. Evidence was to the contrary. Nor could it benefit him that the proceedings in this case did not proceed upon complaint of the offended. Article 360, R. P. C. solely requires the aggrieved party's complaint in defamations consisting in imputations of offenses which can not be prosecuted de oficio. The acts of which L. R. Aguinaldo was charged were such as, if true, could have been prosecuted at the instance of the fiscal. Judgment affirmed. (Per Diaz, J.; Avanceña, C. J., Imperial, Laurel, and Moran, JJ., concurring.) —*Briefed by* HERACLEO HERRERA TAN.

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CRIMINAL PROCEDURE (Speedy Trial)—*Juan S. Rustia, Petitioner vs. Avelino R. Joaquin, Justice of the Peace of San Rafael, Bulacan, Avelino D. Villafria, and Catalino Cailipan, Fiscal, Respondents, G. R. No. 47633, December 6, 1940.*—Two criminal complaints against petitioner herein were set for hearing on May 7, 1940. At the instance of the fiscal, the trial was postponed to May 21, and, again, to June 11, 1940. When the case was called for trial, the fiscal again moved for another postponement on the ground that their principal witnesses were absent and prayed that warrant of arrest be issued. The court postponed the trial indefinitely and issued the warrant of arrest, over and above petitioner's objection. Subsequently, on the 18th and 29th of June, 7th and 15th of July, the petitioner moved the court in writing for a speedy trial. The court denied the same and on this denial this joint petition for certiorari and mandamus is predicated; praying to have said order revoked and to compel a dismissal of the complaints. *Held*: Dismissal cannot be granted as no sufficient length of time has elapsed which would constitute an unreasonable delay in the prosecution of the case, and in arriving at this conclusion, we have taken into consideration the fact that the prosecution has availed of the remedy provided by law to compel attendance of their witnesses. But we cannot sanction the order of the respondent postponing indefinitely the trial until the witnesses are brought to court. Art. III, Sec. 1 (17), Philippine Constitution; Sec. 15 (7) General Orders No. 58; and Rule 111, sec. 1 (g), Rules of Court, guarantee to all accused speedy trial in criminal cases. (Per Imperial, J.; Avanceña C. J., Diaz, Laurel and Horrilleno J. J., concurring.)—*Briefed by* DOMINADOR SAYON.

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JUDGMENT (Justice of the Peace)—*Isidro Alejandro, Doroteo de los Santos, and Fortunato de los Santos, Petitioners vs. Judge of the Court of First Instance of Bulacan, Felisa Francisco and Modesto Gonzales, Defendants, G. R. No. 47384, December 5, 1940.*—Defendants herein brought an action against petitioner in the justice of the peace court for the recovery of possession of real property and damages. After trial, the justice of the peace, instead of rendering decision therein, granted both parties 15 days within which to submit their memoranda. Judgment was rendered by justice of the peace in favor of plaintiff but only after 34 days had passed after trial. Defendant appealed to Court of First Instance, where he moved for the dismissal of the case on the ground that the justice of the peace was without jurisdiction to render the appealed decision because under Section 66 of Act 190, he only has one week after the trial within

which to render judgment; and the judgment having been rendered 34 days after trial, it was null and void. The Court of First Instance denied the petition. Motion for reconsideration of the same was also denied. Hence present petition for certiorari. *Held:* Jurisdiction of the justice of the peace court once acquired is not lost by mere failure to render his decision within one week after the trial. Section 129 of the Administrative Code permits in a certain way a justice of the peace to decide cases within 90 days and not after, from the time the case is submitted to the court. Such jurisdiction can only be lost if, after having decided it, appeal is perfected, or when by reason of abandonment by the parties, the time within which to prosecute the action should prescribe. The parties to the action should not be made to suffer the consequences of the negligence or neglect of duty of the justice of the peace against whom administrative proceedings may be taken. Order affirmed with costs against the petitioner: (Per Diaz J.; Avanceña C. J., Imperial, Laurel, Horilleno, J. J. concurring)—*Briefed by* FELICISIMO SAN LUIS.

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LAND REGISTRATION (Decree of Registration).—*Vicente Morales, et al., Petitioners vs. Hon. Simeon Ramos, Judge of First Instance of Nueva Vizcaya and Julian Pinaroc, Respondents, G. R. No. 47585, December 5, 1940.*—On August 10, 1932, Juan Recina and Juan Soni, the predecessors in interest of the herein petitioners, were adjudged owners of the two parcels of land in question, in the proper cadastral proceedings. The required notices were sent to all who had contested the titles of these lands, among them, the assignee in insolvency of the respondent Pinaroc who claimed the titles to these lands. None of the parties appealed from these decisions nor did they ask for reconsideration. It is not shown, although it may be inferred from the order of the court which is the object of this petition, and from the pleadings and answers of the interested parties, that the respondent Pinaroc did not lay claim to any of the two parcels, perhaps, because he did not consider it necessary as his assignee in insolvency had already done so. On August 10, 1934, the court issued two orders for the issuance of the corresponding decrees for the two parcels which had been adjudicated to Rocina and Soni; but it is not shown that they were issued. Nearly four years later, the present petitioners were placed in possession of the parcels of land, by virtue of an order of the court, declaring them the heirs of Rocina and Soni. On June 23, 1938, the respondent Julian Pinaroc appeared for the first time before the court to ask for the reconsideration of the aforesaid decisions. The respondent judge, without receiving proof, but after hearing the parties interested, issued an order on March 1, 1940, granting the petition, and declaring the decisions of August 10, 1932 and the orders for the issuance of the corresponding decrees without effect. Contending that this order of the court is contrary to law, because the respondent judge acted in excess of jurisdiction, the petitioners file this petition of certiorari to annul the order of the respondent judge. *Held:* (1) The rule applicable to registration of lands is that decisions both under Act No. 496 and Act No. 2259, become final upon the expiration of 30 days to be counted from the date on which the parties interested received a copy of the decision unless an appeal is interposed in due time, or a motion for reconsideration is made under Sections 113 and 513 of the old law, Act No. 190 (Elviña vs. Filamor, 56 Phil.

305; Caballes vs. Dir. of Lands, 41 Phil. 357) or in Rule 38 of the New Rules of Court within the periods prescribed therein. The presentation by the respondent of his motion for reconsideration, more than five years after said decisions were promulgated, and not within the periods for appeal and reconsideration prescribed, is too late, and it is clear that the respondent judge had no authority to reconsider said decisions, as he did in his order of March 1, 1940. Nor can Pinaroc allege surprise on his part, because the notice of the filing of the petition in said cadastral proceedings, calling all those who laid claims to the lands in question, was for him as well as for the whole world and also for his assignee in insolvency. Since he was well-informed and notified of the cadastral proceedings, of the decisions, and the orders of possessions issued afterwards, and he did not do anything by himself or through his assignee in insolvency, the conclusion is that he acquiesced in all those incidents, or that he renounced all the right or interest that he had therein. (2) In order for the motion for reconsideration to have prospered, it should have been presented within one year from the day that the assignee in insolvency of the respondent Pinaroc was notified of the decisions. The argument that the period of one year should be counted from the date of the issuance of the decree of registration, which until now has not been done, cannot be accepted because this question now raised has already been decided against the contention of the respondent in the case of Rivera vs. Moran, 48 Phil. 841. There it was held: "It is conceded that no decree of registration has been entered and section 38 of the Land Registration Act provides that a petition for review of such a decree on the grounds of fraud must be filed 'within one year after entry of the decree.' Giving this provision a literal interpretation, it may at first blush seem that the petition for review cannot be presented until the final decree has been entered. But on further reflection, it is obvious that such could not have been the intention of the Legislature and that what it meant would have been better expressed by stating that such petitions must be presented before the expiration of one year from the entry of the decree. Statutes must be given a reasonable construction and there can be no possible reason for requiring the complaining party to wait until the final decree is entered before urging his claim of fraud. We therefore hold that a petition for review under section 38, may be filed at any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration." Petition granted. (Per Diaz, J.; Avanceña, C.J., Imperial, Laurel, Horrilleno, JJ., concurring.)—*Briefed by* CARLOS LEDESMA.

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PUBLIC SERVICE COMMISSION —*Manila Electric Company, Petitioner vs. Public Service Commission and Charito Gray, Respondents, G. R. No. 47336, December 5, 1940.* Petition for a writ of certiorari to annul the order of the Public Service Commission dated February 27, 1940, denying the motion of the petitioner to dismiss an action brought by Charito Gray against the petitioner. Charito Gray was operating an Ice Drop Factory and using electric current supplied by the petitioner under a *general power schedule* approved by the Public Service Commission. Gray claims that under the said schedule she was to receive a five per cent deduction after five years and ten per cent after ten years. The petitioner refused to grant the respondent the said discount on the ground that

there was no formal contract executed between them. Respondent Gray then filed a complaint before the Public Service Commission to order the petitioner to refund to her what she was entitled under the discount agreement. The petitioner filed a motion in the Public Service Commission claiming that the Commission had no jurisdiction over the question. On February 27, 1940 the Commission denied the motion on the ground that the question involves not only the payment of the amount to be paid to Charito Gray, but to determine whether the petitioner has applied equally to all consumers without any discrimination, the *general power schedule* and set the day for the hearing on March 4, 1940. The petitioner without excepting from the order nor filling a motion for reconsideration, filled a writ of certiorari to this court to revoke the order of the Commission. *Held:* Writ denied because the Commission has the power under article 7 of Com. Act No. 146 to inquire whether the petitioner has violated any provisions of the *general power schedule*. Even if the Commission has no jurisdiction over the question involved, the Commission has the power to dismiss the case after hearing the parties and, therefore, the remedy sought by the petitioner is premature. (Per Imperial, J., Avanceña, C. J., Diaz, Laurel, Horilleno, J. J., concurring.—*Briefed by* GRACIANO C. REGALA.

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TAXATION (Commission Merchants, Brokers).—*The Government of the Philippines, Plaintiff, vs. Agapito D. Jervasio, Administrator of the estate of the late Dolores S. Jervasio, Defendant. G. R. No. 47468, December 5, 1940.*—The deceased during her lifetime sold for a company automobiles, trucks, parts and accessories for which she received a commission. The legal question presented is whether or not, upon these facts, the deceased was a commission merchant liable to the payment of the sales tax, or merely a merchandise broker liable to taxation as such. *Held:* Under sec. 1459 of the Administrative Code, as amended by Act No. 3243, a commission merchant is not included in the general term "merchant" unless he has an establishment of his own "for the keeping and disposal of goods of which sales or exchanges are effected." This condition must be clearly proven and not left to inference. It not having been shown that the deceased had such establishment, she is liable to be taxen only as a mere broker. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, JJ., concurring).—*Briefed by* ROSA SANTOS.

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WORKMEN'S COMPENSATION ACT (Torts and Damages).—*Philippine Manufacturing Co., Petitioner, vs. Jesus Nabor, Respondent. G. R. No. 47565, November 25, 1940.*—On July 2, 1938, the respondent, Jesus Nabor, was planning a copra cake in the petitioner's oil mill. A particle got into his right eye, and he asked his fellow-worker to take it out. The latter was not able to extract it although the eye was red; and as the pain persisted, the former washed his eye under the tap. He then reported the matter to his foreman, Federico Sudio, in compliance with the regulations of the petitioner. On August 29, 1938, he consulted the company physician about the injury to his eye, and the latter discovered an ulcer in the corner of the right eye. Upon being told that his right would be permanently useless, the respondent filed a notice of injury and claim for compensation with the Bureau of Labor on September 18, 1938. On September 29, 1938, the

Bureau formally notified the petitioner of the notice and claim for compensation, and upon the latter's disclaimer of liability, instituted the action which gave rise to the present appeal. Only two questions need be considered: (1) Did the verbal report made by respondent of his accident to the foreman, Federico Sudio, dispense with the necessity of a written notice of the injury as required by Section 24 of the Workmen's Compensation Act? (2) Should the two-month period prescribed by the same section within which the claim for compensation should be made, be counted from July 2, 1938, the date of respondent's accident, or from August 29, 1938, the date when he learned for the first time that the injury was serious? *Held:* (1) It is admitted that Federico Sudio is a section foreman who has charge of the press section, and there is evidence to show that the report to him was made in compliance with the regulations of the petitioner. As section foreman, Federico Sudio exercises direct and immediate supervision over the pressmen, and a "foreman" or "boss" in charge of a crew or gang of men is an agent or representative of the employer whose knowledge of the injury is sufficient under the statute. Hence, the claim of the petitioner that the foreman is not an agent of the employer under the contemplation of the statute and that his knowledge of the accident did not relieve the claimant of the statutory requirement for written notice is unfounded. (2) The second question has already been settled in the case of Libron vs. Binalbogan Estate, G. R. No. 41475, promulgated July 27, 1934, wherein it was held, that "the fact that the law requires that a notice of injury shall be presented within a reasonable time and claim for compensation shall be presented within two months after the date of the injury, indicates that the injury must be of such a nature as to entitle the injured person to compensation. Since the injury to the plaintiff, at the time of the accident was apparently unimportant and, therefore, did not warrant the filing of a claim for compensation until it became evident that the plaintiff was in imminent danger of losing the sight of the injured eye, he could not exercise his right to claim compensation within two months from the date of the accident. This right accrued at and became available when he finally learned that he had lost the sight of one of his eyes". The respondent's claim having been filed on September 29, 1938, the date when, upon undergoing medical examination, he learned for the first time that his right eye was diseased, we hold that his claim was filed in time under Section 24 of the workmen's Compensation Act. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, J. J. concurring.)—*Briefed by* EMMETT SHEA.