RECENT DECISIONS

Digest Of Current Cases

ADMINISTRATION OF ESTATES (Accounting by Administrators)—*Vicente Peralta, Movant-Appellant vs. Jose Peralta, Administrator-Appellee. G. R. No. 47048, December 13, 1940.*—Appellee was appointed administrator of an intestate estate and rendered accounts up to the term ending October 14, 1932. On May 5, 1936, said administrator with the conformity of all the heirs, moved that he be relieved of the duty of rendering a final account for reasons stated in the petition, which was granted. On August 11, 1936, a project of partition was approved and the properties of the estate were distributed in accordance therewith. Later appellant herein, one of the heirs, filed a motion praying that the appellee as administrator be required to submit a final accounting which would cover the period beginning October 14, 1932 up to the present. This petition was disallowed. Hence this appeal. The question to be determined is whether or not, upon the facts, the court erred in not requiring the administrator to submit the final accounting sought. *Held*: Section 672 of the Code of Civil Procedure provides, that "every executor or administrator shall render an account of his administration within one year from the time of receiving letters testamentary or of administration, unless the court extends the time on account of an extension of time for selling the estate and paying the debts; and he shall render further accounts of his administration as may be required by the Court until the estate is wholly settled." This provision has been reproduced in Section 8 of Rule 68 of the New Rules of Court. After the submission by the administrator of his initial report, the parties beneficially interested, provided they are of age and are not suffering from any legal disability, may, with the approval of the court, release him from his obligation to render further accounts either by express agreement or "by implication from long continued acquiescence after the right to demand has fully accrued." (Vide, 24, C.J. 937), and this discharge, not being violative of any rule of law or contrary to public policy, may not be revoked or set aside." In the administration of estates of deceased person, judges enjoy ample discretionary powers and the appellate courts should not interfere with or attempt to replace the action taken by them, unless it be shown that there has been a positive abuse of discretion." (Concepcion P. Vda. de Padilla vs. Jugo, G. R. No. 45617, XXXVIII. O. G. I.). Order affirmed. (Per Laurel, J.; Avanceña, C. J.; Imperial, Diaz, Horrilleno, J. J. concurring.)—*Briefed by* FRANCISCO S. SANTOS.

APPEAL (Naturalization Law)—*Ricardo Yapjoco, Petitioner-Appellant vs. Commonwealth of the Philippines, Oppositor-Appellee. G. R. No. 47400, December 12, 1940.*—From a decision of the Supreme Court ordering the appeal of this naturalization case to be heard by the Court of Appeals, petitioner files a motion for reconsideration contending that under section 9 of Act No. 2927 (Natural-

ization Law) and section 11 of Commonwealth Act No. 473 (Revised Naturalization Law), the final sentence on a petition for naturalization may, at the instance of either of the parties, he appealed to the Supreme Court. *Held:* Motion denied. When Act No. 2927 was passed, the Supreme Court was the only court to which an appeal in these cases can be taken. Subsequently, the Court of Appeals was created and this appeal not being included within the exclusive appellate jurisdiction of the Supreme Court as defined in Article 138 of Commonwealth Act No. 3, this appeal should be brought before the Court of Appeals. It is not necessary to decide whether after Commonwealth Act No. 473 was passed the decisions of Courts of First Instance on naturalization cases can be applied directly to the Supreme Court, because said Act, according to its Article 22, is not applicable to any suit commenced before its taking effect, as the suit at bar. (Ramon Avanceña, C.J.; Imperial, Diaz, Laurel, Horrilleno, J.J. concurring.)—*Briefed by* NORBERTO J. QUISUMBING.

JURISDICTION (Court of Appeals)—*Eugeniano Borja, Petitioner vs. Faustino Saminiano and the Honorable Ambrosio Santos in his capacity as Judge of the Court of First Instance of Camarines Sur, Respondents. G. R. No. 47433, January 20, 1941.*—On March 28, 1934, the petitioner obtained a judgment against the respondent Saminiano, in the justice of the peace court, for the recovery of a parcel of land and 220 cavanes of palay. At his instance, the petitioner was given the possession of the palay. Saminiano appealed to the Court of First Instance. On March 17, 1937, there being no appearance nor pleadings filed, the Court *motu propio* dismissed the appeal. On December 1, 1938, Saminiano filed a motion in the Court of First Instance for the return of the palay in question. The court dismissed the motion on the ground that it had already lost jurisdiction and that the same was *res adjudicata*. Thereafter, Saminiano sought a writ of certiorari from the Court of Appeals. This court, granting the remedy by a vote of 7 to 6, ordered the petitioner to return the 220 cavanes of palay. The petitioner now, by certiorari, asks the Supreme Court to set aside the order of the Court of Appeals on the ground that the latter court has no jurisdiction to issue the same. *Held*: In the case of Roldan et al., vs. Villaroman et al., G. R. No. 46825, it has been decided that the Court of Appeals has no jurisdiction to grant writs of certiorari and mandamus, save in aid of its appellate jurisdiction. The order of the Court of First Instance denying Saminiano's motion was not appealed to the Court of Appeals; neither could it be appealed directly to said court because the issue involved was the jurisdiction of the Court of First Instance to act on the case—an issue falling under the exclusive jurisdiction of the Supreme Court. The order of the Court of Appeals is, therefore, null and void because it had no original jurisdiction to issue the same. Petition to set aside the order of the Court of Appeals, granted. (Per Imperial, J.; Avanceña, C. J., Diaz, Laurel, Moran, J.J., concurring.)—*Briefed by* RAUL O. DEL CASTILLO.

PUBLIC SERVICE COMMISSION—*Angel Limjoco, Petitioner-Appellant vs. San Miguel Brewery, Jose Flores, and Mariquina Ice Plant, Respondents-Appellees. G. R. No. 47299, December 21, 1940.*—Petitioner applied to the Public Service Commission for the issuance of a certificate of public necessity and convenience to maintain and operate an ice plant in San Juan and Mandaluyong, Rizal. The Commission denied the ap-

plication on the ground that the demand of ice and refrigeration in the said municipalities is small and limited, that this need is being adequately served by the San Miguel Brewery, and that the applicant had failed to show that public necessity and convenience require the proposed service. Petitioner appealed. *Held*: As a general rule, the Supreme Court will not disturb the decision of the Public Service Commission if it is reasonably supported by evidence, but in this particular case the decision of the Commission should be reversed. The mere fact that San Miguel Brewery and the other oppositors have authority to sell ice in these municipalities is not ground for denying the application. It being of general knowledge, and therefore of judicial knowledge, no evidence is necessary to show that an ice plant in the locality is much more advantageous to the general public as to facility in supplying said article of commodity, than a plant some kilometers away from said locality, which distributes ice to its customers by means of delivery trucks at certain hours of the day. Due to the growing importance of ice as a necessity of life, the better policy is to facilitate the establishment of ice plants, unless such establishment is not justified or will lead to ruinous or wasteful competition. Petition granted and decision reversed. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, J.J., concurring.)—*Briefed by* RHODORA H. JARDELEZA.

REAL ESTATE TAXES (Liens)—*In Re Estate of Rafael Jocson, Deceased, Provincial Treasurer of Negros Occidental, Claimant and Appellant vs. Associated Oil Company, Opositor and Appellee. G. R. No. 47014, December 14, 1940.*—This action is brought to recover unpaid taxes due the provincial government on a certain parcel of land. This land, which was the subject of a previous foreclosure proceeding, was ordered sold at public auction. The proceeds from the sale were paid to the mortgage creditor, who, in turn, was ordered by the court to pay to the intervenor therein, the appellee herein, the sum which said mortgage creditor owed to the appellee. The provincial government now seeks to hold liable the appellee for the amount of unpaid taxes on the land. It appears, however, that the purchaser of the land at the foreclosure sale had already paid the said taxes. The appellant, without denying the payment, contends that the purchaser made the payment under protest which "is not in any way a recognition on the part of the purchaser that he is the one legally required to pay the taxes." *Held*: Under the law real estate tax constitutes a burden on the land superior to all other liens whatsoever. The government may proceed against and follow the property for the collection of any unpaid taxes thereon and as far as the government and the collection of that tax is concerned, it is enough that the land sought to be taxed is not lost, and it does not matter whether it is still in the hands of the delinquent or any other person, the purchaser or otherwise. The law in this respect is mandatory and gives the taxing officer no authority to make any qualification as to the manner of its enforcement. Whether the payment is made under protest or not, the tax should be considered paid for the purposes contemplated by the law. Order affirmed, without costs. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, J.J. concurring.)—*Briefed by* ROSA SANTOS.

SETTLEMENT OF ESTATES OF DECEASED PERSONS (Execution of partial allowance of claims)—*In the Matter of the Intestate of the Deceased Hugo Ocampo Cu Jongco. Remigia Valuis, Administratrix-Ap-*

pellant vs. Viuda E Hijos de Cu Toco, Represented by Tan Let, Claimant-Appellee. G. R. No. 47193, January 27, 1941.—Claimant-Appellee, a creditor of the deceased, filed its claim of ₱1,718.89 before the committee on claims and appraisal which allowed only ₱1,416.06. Upon being notified of the committee's report, said claimant-appellee appealed to the Court of First Instance of Camarines Sur, where, pending its resolution, they moved for the execution of the sum awarded to it by the committee on claims and appraisal. To this motion the Administratrix-Appellant objected. Lower Court granted the motion, hence this appeal. The sole question to be decided is whether or not an appeal by a creditor from the partial disallowance of his claim by the committee on claims and appraisal, in the absence of any timely appeal by the administratrix, has the effect of staying the execution of the amount awarded by the committee pending its final determination. In this case, while the creditor appealed from the partial disallowance of his claim to the Court of First Instance, the administratrix did not appeal from the resolution of the committee. By her failure to exercise the right of appeal, the report of the committee as to the items allowed by it acquired due finality and these became liens on the decedent's estate subject to execution under the terms of section 443 of the Code of Civil Procedure. (Felisa Camia de Reyes vs. Juan Reyes de Ilano, G. R. No. 42092, promulgated October 28, 1936; Montinola vs. Villanueva, 49 Phil., 528; 528; De la Viña vs. Yaptico & Co., 48 Phil., 204.) (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Horrilleno, J.J., concurring.)—*Briefed by* ISIDRO T. ALMEDA.