# RECENT DECISIONS

## Digest of Current Cases

ATTORNEY AND CLIENT—*Juan S. Rustia, Petitioner, vs. Quirico Abeto, et al., Respondents. G. R. No. 47914, April 30, 1914.* The petitioner rendered professional services as attorney for the respondent, administratrix of the intestate estate of de la Riva, and of the heirs. When petitioner was relieved as attorney for the administratrix and heirs, he presented a bill for professional services amounting to ₱32,330 and claimed a retaining lien over all funds, documents, and papers in his possession until he was fully paid. Among the papers delivered by the respondent to the petitioner was transfer certificate of title No. 21335 of the Register of Deeds of Manila. Authority having been granted therefor, the land was sold to the Standard Vacuun Oil Co. Upon showing of the respondent administratrix that the certificate was in petitioner's possession, the respondent judge ordered the latter to deliver the title certificate to the clerk of court within three days from receipt of the order. The petitioner filed a motion for reconsideration of the order, stating that (1) he has a retaining lien over the certificate of title; (2) in accordance with the order of the court, the proceeds of the sale of the land, less ₱2,810 which the administratrix was authorized to retain to eject the tenants, are to be deposited with the Philippine National Bank, without pronouncement as to petitioner's attorney's lien, to the prejudice of the petitioner; and (3) petitioner is willing to surrender said certificate if his lien is annotated on the transfer certificate to be issued to the purchaser. The lower court denied the motion; hence this petition for a writ of certiorari and mandamus. *Held*: That the petitioner rendered professional services to the respondent and other heirs is not disputed. The petitioner is not only counsel of the respondent administratrix personally, but also in the later's capacity as personal representative of the estate. Hence, petitioner may exercise a retaining lien not only over the administratrix's personal papers but also over the papers of the estate delivered by the administratrix to him in connection with the administration of the estate. The general or retaining lien of an attorney is dependent upon possession and does not attach to anything not in the attorney's hands. The courts, in the exercise of their supervisory authority over attorneys as officers of court, are mound to respect and protect the attorney's lien (Ulandez vs. Manila Railroad Co., 45 Phil 540) which, in the words of Chief Justice Marshall, "is necessary to protect the decorum and respectability of the profession." So, it has been held that if the papers are improperly taken away from the attorney's custody the lien is not lost thereby. (Dicas vs. Stockberg, 7 Car. & P. 587; Note, 31 Am. Dec., 759); and an attorney from whom papers which he has a right to hold have been taken away, thereby swelling the funds for the property of

the client's creditors, is entitled to the payment of the funds realized from the proceeds of the sale of the client's property, the debt for which the papers were held. Petition granted. (Per Laurel, J.; Avancena, C. J., Imperial, Diaz, Horrilleno, JJ., concurring.)—*Briefed by* MAGDALENA S. LAPUS.

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CRIMINAL LAW.—*Jose League, Petitioner, vs. People of the Philippines, Respondent. G. R. No. 47367, September 2, 1941.*—This is a petition for a writ of certiorari to review the decision of the Court of Appeals convicting the petitioner of rebellion committed as follows: Jose League, while acting as treasurer of the Sakdalista Party, whose object was to obtain absolute independence before the end of 1935, took part in an armed uprising of said party on May 2, 1935, by forcibly detaining the car of Feliciano Gomez and firing upon it, while his other companions engaged in a bloody encounter with the Constabulary soldiers; that the other members of the party stationed themselves in various parts of the town of Sta. Rosa, cutting off the electric power lines, and afterwards marched to the municipal building for the purpose of taking over its control. The petitioner alleges that the facts constitute the crime of sedition only and invokes the same reason that the Court of Appeals took into account when it resolved an analogous question in the case of People vs. Almazan, et al., G.R. No. 44809, decided barely three months before the present case, wherein the court held, on a st of facts substantially the same as the case at bar, that the crime was sedition, not rebellion. In that case the Court of Appeals stated that "rebellion is a rising that affects a large portion of territory; it is national and not local in character and has purely political purpose. The disturbance engineered by the appellants although meant to spread out later into national proportions was, as a matter of fact merely a local disturbance." *Held:* It is not the greater or lesser magnitude of the territory involved that determines the crime of rebellion or sedition but the object sought to be attained. Rebellion has more transcendental purposes, and its consequences are graver and more pernicious for it seeks to remove from the allegiance to the Government a part or all of the territory of the Philippines, or to deprive the Chief Executive or the Legislature of its prerogatives. This was what the petitioner and his companions sought to attain when they took up arms and rose against the government. The purposes of sedition as enumerated in article 139 of the R. P.C. remain the same under C.A. 217 and the acts committed by the petitioner and his companions do not fall under any of them. Petition denied. (Per Diaz, J.; Avanceña, Abad Santos, Laurel, and Moran concurring. Horrilleno and Ozaietan did not take part.)—*Briefed by* ALINA MORALES.

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CRIMINAL LAW—*People of the Philippines, Plaintiff-Appellee, vs. Sotero Peji Bautista, Defendant-Appellant. G. R. No. 6373. June 24, 1941.*—Out of hatred and desire for revenge, defendant charged one Ong Lo with *estafa* before a justice of the peace court. He supported his complaint with an affidavit in which he recited the alleged facts constituting *estafa*. After preliminary investigation, however, the case was dismissed. His affidavit and statements made before the justice of the peace in the preliminary investigation constitute the basis of the present prosecution for false testimony. The lower court convicted appellant under Art. 180, R. P. C., which provides: "False testimony against a defendant.—Any

person who shall give false testimony against the defendant in any criminal case shall suffer: * * *." *Held*: This provision by its plain language, contemplates cases where, after actual trial, there has been a conviction or acquittal. It does not apply where a dismissal of a charge occurs after a preliminary investigation as is the case here. But appellant is guilty of false testimony under Art. 183: "False testimony in other cases and perjury in solemn affirmation.— * * * any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires. * * *." The offense defined in this article has four elements: (a) statement or affidavit upon a material matter made under oath; (b) before a competent officer authorized to receive and administer such oath; (c) willful and deliberate assertion of a falsehood by the offender; and (d) that the sworn statement containing the falsity is required by law. (U.S. vs. Jurado, 31 Phil., 491: People vs. Tupasi, 36 O.G. 2086.). All of these elements concur in the instant case. (Per Melencio, J.: Briones, Montemayor, Enage, Torres, JJ., concurring.)—*Briefed by* FERMIN R. MESINA.

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ELECTIONS—*Wenceslao Q. Vinzons, in his capacity as President of Young Philippines, Inc., Petitioner vs. Commission on Elections, et al. G.R. No. 48596, October 1, 1941.*—In the elections of November 8, 1938, in the North District of Manila, the Young Philippines, Inc., the Popular Front headed by Sumulong, the Popular Front headed by Abad Santos, and the Democrata Nacional, coalesced, under the name of "Alliance of Frente Popular, Young Philippines and Bloque Popular," and obtained the next largest number of votes, the same constituting more than ten per centum of the total number of votes cast in said election. Under Sec. 5 of C.A. 657, this alliance is now entitled to propose the appointment of a second inspector in all the election precincts in the North District of Manila. However, as this alliance is no longer existing, the Commission on Elections, exercising the discretion conferred on it by Sec. 5 of C.A. 657, ruled that the minority inspectors in the said district should be apportioned equally among the aforementioned minority parties. The petitioner, in behalf of the "Young Philippines," claiming the exclusive right to the appointment of such inspectors, sued out this writ of certiorari. *Held*: Under Sec. 5 of C.A. 657 the original alliance formed by the aggroupment of these minority parties having polled the second largest number of votes in the preceding (1938) election and which votes constitute more than ten per centum of the total cast therein, would be entitled to propose the appointment of the second election inspector. But as this alliance no longer exists, the right conferred by law thereto to propose the second inspector cannot now be claimed by any of the component parties the reason being that the votes thus 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 may be claimed by the component parties who have thereafter separated. (Sumulong vs. Commission on Elections, et al., 40 O.G. 216). As none, therefore, of the four minority parties is entitled, as of right, to propose the appointment of the second inspector and his substitute, the Commission on Elec-

tions may choose the same, cn the exercise of the discretion conferred upon it by Sec. 5 of C.A. 657, in a manner it deems appropriate, uncontrolled by any fixed rule of procedure. Thus the Commission, guided solely by the knowledge of its own or derived from its records may, in the exercise of its right to choose, appoint a qualified person without the assistance of any of the parties, or it may inquire formally or informally from the parties themselves or from any other entity or person, or it may authorize the minority parties or any of them or any faction t propose the person or persons to be appointed, or it may designate a neutral or non-partisan person. The order of the Commission on Elections will not be disturbed in the absence of proof that there has been an abuse of discretion. (Per Moran J., Avanceña, C.J., Diaz and Horrilleno J.J., concurring. Ozaeta, J., dissenting). —*Briefed by* PEDRO L. YAP.

ELECTIONS (Interpretation of Ballots)—*Antonio Camingue, Protestant Appellant vs. Jose Gonzaga, Protestee and Appellee. G.R. No. 8891, August 22, 1941. Court of Appeals.* —In the general elections held on Dec. 10, 1940, in the municipality of General Luna, Surigao, Jose Gonzaga and Antonio Camingue received 438 votes each, which tie vote was broken in favor of Gonzaga by the municipal board of canvassers after a drawing of lots. On protest, the Court of First Instance found that the protestant Camingue received 437 as against 438 votes for the protestee. In this appeal appellant contends that the lower court erred in not admitting ballot Exh. C in his favor and in adjudicating the same to his opponent, relying on rule 1 of Art. 144 of the Election Code. In this ballot the name Antonio Gonzaga was written on the line for mayor. In other words the name written contained the Christian name of the protestant and the surname of the protestee. *Held*: The lower court erred in applying said provision of the Election Code. Rule 1 of Art. 144 provides: "Any ballot where *only the Christian name of a candidate* or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the *word* written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter. The phrases "only the Christian name", "only his surname," and the word "word" in the above quotation imply and contemplate the writing of only one word, such word being the Christian name of one candidate and the surname of the other. But where as in this case the name on the ballot consists of two words such rule cannot apply. And although the words "Antonio Gonzaga" include the appellee's surname "Gonzaga" still the ballot may not be adjudicated to him for the reason that the name "Antonio" that precedes it is different from his Christian name "Jose". Lucero vs. De Guzman (45 Phil. 852). The rulings of the trial court as to ballots Exhibits A, D, 3, 4, and 5 were proper. It results that, as modified, the appellant and the appellee are tied with 437 votes each. (Per Montemayor J., Padilla, Briones, JJ., concurring. Enage, J., reserves his vote.)—*Briefed by* EMILIO CENTENA.

ELECTIONS—*Tigbatas Party, Petitioner vs. Hon. Jose Lopez Vito, et al., Respondent. G.R. No. 48594, September 24, 9141.*—On August 5, 1941 eleven individuals, all residents of the province of Iloilo, formed a

non-stock corporation under the name of "Tigbatas Party" for the purpose, among other things, of working for the political and economic independence of the Philippines. It submitted to the Commission on Elections a list of candidates, most of whom were already official candidates of the Nacionalista party, particularly, the candidates for President and Vice-President and the 16 senators. For representatives, it submitted only 5 names, one for each of the 5 representative districts of Iloilo, each one of whom filed a certificate of candidacy stating under oath that he belongs to the Nacionalista Party. Based on the registration of its article of incorporation and by-laws, the Tigbatas Party claimed to be a duly organized political party and requested the Commission on Elections to have the names of its candidates printed on the official ballots for the coming elections in accordance with Sec. 3 of C.A. 666. The Commission on Elections denied the petition first, because, the party did not participate and could not have participated in the 1938 elections since it came into existence only on August 28, 1941, and second, because it was not entitled to recognition as a duly organized political party. This is a petition for a unit of certiorari to review the decision of the Commission. *Held*: Sec. 76 of the Election Code defines "political party" to be "an organized group of persons pursuing the same political ideals in a government and includes its branches and divisions." The organzation contemplated in the definition of political party is not a mere paper organization but a real, bona fide, functioning organization with a personality derived not from a mere corporate name but from its pursuit and advocacy of certain political ideals different from or opposed to those of another party. To recognize the petitioner as a regularly organized political party within the purview of the election law would be to sanction a subterfuge to circumvent the law. It is apparent that the incorporation of the petitioner was mere electioneering tactics. Petition denied. (Per Ozaeta, J.; Avanceña, C.J., Santos, Diaz, Laurel, Moran and Horrilleno JJ., concurring)—*Briefed by* EMILIO CENTENA.

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EVIDENCE—*Feliciano B. Gardiner, as Acting Fiscal of Pampanga, Petitioner vs. Hon. Pedro Magsalin, Judge of the Court of First Instance of Pampanga, Respondent. G.R. No. 48185, Aug. 18, 1941.*—Petitioner, as fiscal of Pampanga, filed an information against Catalino Fernandez, et al., for the murder of one Gaudencio Virac. Fernandez pleaded guilty, while the other four accused pleaded not guilty. Fiscal Gardiner presented Fernandez as first witness for the prosecution in order to prove the existence of conspiracy among the accused. Defense counsel objected, which objection was sustained by the respondent judge, on the ground that the testimony of Fernandez, a conspirator, is not admissible against his co-conspirators until the conspitacy is shown by evidence other than such act or declaration under Sec. 12. Rule 123. A motion for reconsideration having been denied, the fiscal brought this petition for mandamus The only question raised is the interpretation of Sec. 12, Rule 123, which reads as follows: "Admission by Conspirator—The act or declaration of a conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration." *Held*: The above rule is one of the exceptions to the "res inter alios acta" rule. It refers to an estra-judicial declaration of a

conspirator, not to his testimony by way of direct examination. The evidence adduced in court by the co-conspirators as witnesses are not declarations of conspirators, but direct testimony to the facts to which they testify, hence admissible. It is otherwise when what is sought to be presented is an extrajudicial declaration of a conspirator in which case it is inadmissible against his co-conspirators unless the conspiracy be proved by other evidence. (Per Ozaeta, J.; Abad Santos, Diaz, Moran, Horrilleno, JJ., concurring.)—*Briefed by* CESAR LONDRES.

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INSURANCE—*The Insular Life Assurance Co., Ltd., Petitioner, vs. Serafin Feliciano and Angel, Florencia, Eugenio, Herminio, and Leticia, all surnamed Geliciano represented by their guardian ad litem Serafin Feliciano, Respondents. G.R. No. 47593, September 13, 1941.*—Petition for review on certiorari. Facts: Eugenio Feliciano, deceased, filed an application for insurance with the herein petitioner. Two policies to the aggregate amount of ₱25,000 were issued to him. It appears, however, that said Eugenio was already suffering from tuberculosis when he applied, altho this fact appears in the negative both in the application and the Medical report. The Court of Appeals found as a fact that neither the insured nor the members of his family concealed the real state of the health of the insured; that the blank spaces in the application and the medical report were filled in by the agent and the medical examiner who made it appear therein that Feliciano was a fit subject for insurance. *Held*: Insurance companies have sent out all over the length and breadth of the land agents with detailed instructions to solicit and procure applications. They act, in fact and in theory, as the general representatives of the insurance companies. In the case at bar, the medical examiner approved the application knowing full well that the applicant was sick. The applicant did not make any misrepresentation. He paid the price of the risk to be taken by the insurance company. Therefore, as between the petitioner and the respondents, the one who gave character to the third person as its agent, should be the one to bear the loss. If a duly authorized agent, after obtaining from the applicant correct and truthful answers, without the knowledge of the applicant, fills in false answers, such falsity so resulting cannot be asserted by the insurer as a defense in an action for recovery on the policy. (Per Laurel, J.; Abad Santos, Diaz and Horrilleno, JJ., concurring.) *Dissenting Opinion*: The insured and the members of his family were not entirely innocent of bad faith. They were well to do and well educated. They were not ignorant of the practices in the life insurance business. They knew that a person in bad health—let alone one who was in a very serious and practically hopeless condition—was not insurable. So they must have known or at least had reason to suspect that the Agent and the Medical Examiner were not acting in good faith when they made the applicant sign the application in blank and told him that he was fit for insurance. As held in the case of New York Life Insurance Co. vs. Fletcher, 117 U. S. 519: "He could not hold the policy without approving the action of the agent and thus becomes a participant in the fraud committed. The retention of the policy was an approval of the application and of its statements. The consequences of that approval cannot after his death be avoided." Life insurance is a savings institution in which all the policy holders are interested. The

real or ultimate victims of such frauds are the policy holders. In view of this, the safe and sound policy is not to condone but to condemn fraud under any and all circumstances. The majority opinion says that the situation is one in which one of two innocent parties must bear the loss for his reliance upon a third person. This is not true for in the case at bar, the insured and the members of his family were not innocent of bad faith and further because even if the policies in question should be held invalid, the company was willing to return the premiums paid and therefore neither party would be permitted to enrich himself at the expense of the other. (Per Ozaeta, J.; Avanceña, C.J., Horrilleno, J., concurring.)—*Briefed by* ALBERTO MEER.

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PLEADINGS AND PRACTICE—*Pedro Alfeche, et al., Petitioner, vs. Hon. Benito Natividad, etc., et al., Respondent. G.R. No. 8980, July 31, 1941.*—This is an application for mandamus praying that the defendant judge be directed to approve the record on appeal filed in Civil Case No. 1293 of the Court of First Instance of Cebu. The facts are not in dispute. It appears that in said civil case, Judge Natividad rendered judgment in favor of Andrea Alfeche against Pedro Alfeche and Maria Sato, defendants in that case and petitioners in the present case, invalidating certain documents of sale and ordering them to vacate a certain piece of land and surrender its possession to the plaintiff. On January 30, 1941 after they had filed a motion for reconsideration, which was denied, the defendants filed a notice and record of appeal, followed on the next day with a petition for permission to appeal as paupers. The latter petition was granted on the same date by another judge, the Hon. Jose de la Rama. On Feb. 1, 1941 Judge Natividad rendered an order confirming the validity of the ordered granted by Judge de la Rama. Question: Whether or not a judge, other than the judge who originally tried the case, has jurisdicton to pass upon the petition of the accused for permission to appeal as paupers. *Held*: Mandamus granted. The contention that the judge who tried the case is the only judge who can approve the record on appeal is contrary to reason and every day practice and could not have been intended by the codifiers of the Rules of Court. The phrase "trial judge" as used in Section 7, Rule 41 means any of the judges presiding in the trial court. Failure to observe the rules designated to coordinate judicial work will not in itself invalidate a judicial action. However, the petitioners cannot prosecute their appeal as paupers since they own property assessed at over ₱2,000.00. Appeal allowed but appellants will have to pay the corresponding fees and file the required bond. (Per Tuason, J.; Bengzon, Padilla, and Generoso, J.J., concurring). —*Briefed by* ADRIANO R. GARCIA.

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PRESCRIPTION—*Leoncio Adasa, et al., Plaintiffs and Appellants vs. Juana Carreon et al., Defendants and Appellees. O. G. No. 5363, March, 1941.*—This is an appeal from a judgment of the Court of First Instance of Zamboanga awarding to the defendants the ownership and possession of a parcel of land, together with the improvements thereon situated in the municipality of Katipunan, Zamboanga. The land in controversy together with another parcel, 24 hectares in all, originally belonged to the parents of Juana Carreon. Upon the death of their parents, Juana succeeded in possession of the whole parcel as owner for many years. Plain-

tiff Maria de Adasa and defendant Pedro Carreon were children of one Filomeno Carreon, brother of Juana. On May 25, 1920, on the occasion of the marriage of Pedro Carreon to one Sixta Dangase, Juana executed a deed of donation in favor of the spouses, donating the whole parcel of 24 hectares. Plaintiff Maria de Adasa claims however that on April 31, 1924, her aunt Juana Carreon executed a deed of sale in her favor, conveying the 12 hectares in dispute. This, the plaintiff endeavored to prove by her oral testimony and that of her two other witnesses. Furthermore, the plaintiff Maria de Adasa claims title to the land on the ground of prescription. *Held*: That for oral testimony or evidence to overcome the presumption of validity and genuineness which attaches to a public document, it must be clear and convincing. Moreover it is surprising that after the sale the plaintiffs did not even transfer in their name the tax declarations of the land in controversy during all the years from 1924 to 1936 when they filed this action. The presumption is that a person takes ordinary care of his own concerns. With regards to prescription the court found out that there is no decisive proof, that the alleged possession was actual, open and hostile to the defendant for a period of ten years or more. At most, plaintiffs' possession must have been surreptitious, for they did not even declare the land in their name for tax purposes. Neither have they been paying taxes thereon. Prescription is a matter of positive proof and all of its elements must be established. Not only must his possession be without subserviency to, or recognition of, the title of the true owner, but it must be hostile thereto and to the whole world. It is the intention that guides the entry and fixes the character. To paraphase the adjudicated cases, the disseisor must unfurl his flag of occupancy on the lánd and keep it flying so that the owner may see if he will, that another has invaded his property and intends to hold to it. (Per Melencio, J.; Montemayor, and Torres, JJ., concurring.) —*Briefed by* MACARIO M. CRUZ.