RECENT CASES

EJECTMENT—DEFENSE OF OWNERSHIP DOES NOT DIVEST JUSTICE OF THE PEACE COURT OF JURISDICTION.

In an ejectment case the defendants claimed title by prescription and presented a motion to dismiss on the ground that the justice of the peace court had no jurisdiction over the action. The motion having been denied, a writ of certiorari was obtained from the court of first instance ordering the inferior court to desist from further proceedings. On appeal the Supreme Court reversed the decision of the court of first instance and directed the justice of the peace to proceed with the hearing, the reason being that only after evidence has been presented and it is found that what is actually litigated is ownership would the court lose its jurisdiction. (Canaynay v. Sarmiento, G. R. No. L-1246, August 27, 1947)

The original and exclusive jurisdiction of justice of the peace courts over ejectment proceedings brought within the statutory period is limited to the determination of the prior physical possession of the premises involved. (Rule 72, secs. 1 & 7, Rules of Court; Caballero v. Abellana, 15 Phil. 534; Mediran v. Villanueva, 37 Phil. 752; Masalto v. Cesar, 39 Phil. 134; Supia v. Ayala, 59 Phil. 312; Montelibano v. Hinigaran Sugar Plantation, 63 Phil. 797; Lizo v. Carandang O. G. March, 1943, p. 302; Mercado v. Go Bio, G. R. No. L-285, April 10, 1947) From the very beginning our Supreme Court has been called upon to determine the effect of an averment of ownership in forcible entry and detainer cases. Confusion arose out of an apparent conflict in its earlier decisions. (See Ty Laco Cioco v. Muro, 9 Phil. 100; Evangelista v. Tabayuyong, 7 Phil. 607; and Alonso v. Municipality of Placer, 5 Phil. 71, where it was held that evidence of ownership is not admissible in such proceedings; and two kinds of decisions illustrated in Falcon v. Barretto, 26 Phil. 72; and Tiempo v. Vda. e Hijos de Reyes, 27 Phil. 33, where it was held that defense of ownership divested the justice of the peace of jurisdiction; and, on the other hand, Mediran v. Villanueva, 37 Phil. 752; Alderete v. Amanderon, 46 Phil. 488; and Gonzalez v. Salas, 49 Phil. 1, which held the contrary.) The case of Supia v. Quintero, 59 Phil. 312, favorably citing Pettit v. Black, 13 Neb. 142, and Green v. Morse, 57 Neb. 142, served to end the conflict by enunciating the principle that the mere raising of the question of title will not divest the inferior court of its authority to act. Thus the jurisdiction of the justice of the peace was upheld in the following cases in spite of the introduction of proof of ownership: Mediran v. Villanueva, 37 Phil. 752; Supia v. Ayala, 59 Phil. 312; Alderete v.

Amandaron, 46 Phil. 488; Gonzalez v. Salas, 49 Phil. 1; Sevilla v. Tolentino, 51 Phil. 333; Aquino v. Deala, 63 Phil. 582; Fabie v. David, 42 O. G. 511. In Mendoza v. Arellano, 36 Phil. 59; Torres v. Peña, G.R. No. L-898, March 31, 1947; and Peñalosa v. Garcia, G. R. No. L-877, April 1, 1947, the justice of the peace court lost its jurisdiction because the question of ownership raised was essentially linked with that of possession.

It is now well-settled that the jurisdiction of the justice of the peace courts is determined by the allegations in the complaint (Mediran v. Villanueva, 37 Phil. 752; Medel v. Militante, 41 Phil. 526; Villaroman v. Osmundo, G. R. No. 37104; Fuentes v. Justice of the Peace of Pila, 39 O. G. 1271; Lizo v. Carandang O. G., March, 1943, p. 302; Fabie v. Gutierrez David, 42 O. G. 511; Baguioro v. Barrios, 43 O. G. 2031; Aguilar v. Cabrera, G. R. No. 49124); that the plaintiff may give proof of ownership to show the character and extent of possession and damages for detention (Rule 72, sec. 4; Mediran v. Villanueva, 37 Phil. 752; Villaroman v. Osmundo, G. R. No. 37104; Medel v. Militante, 41 Phil. 526); that the mere raising of the question of ownership by the defendant will not deprive the justice of the peace court of its jurisdiction, otherwise the ends of justice in these summary cases would be frustrated by making their efficiency depend upon the defendant in all cases (Mediran v. Villanueva, 37 Phil. 752; Alderete v. Amandoron, 46 Phil. 1; Sevilla v. Tolentino, 51 Phil. 333; Supia v. Quintero, 59 Phil. 312; Aquino v. Deala, 63 Phil. 582; Fabie v. Gutierrez David, 42 O. G. 511; Facundo v. Santos, G. R. No. L-796, Dec. 17, 1946); and that the factor which defeats the inferior court's jurisdiction is the necessity of adjudicating title (Mendoza v. Arellano, 36 Phil. 59; Sevilla v. Tolentino, 51 Phil. 333; Ibarra v. Agustin, 38 O. G. 2146; Tavera-Luna v. Nable, 38 O. G. 62; Torres v. Peña, G. R. No. L-898; Peñalosa v. Garcia, G. R. No. L-877, April 1, 1947; Lizo v. Carandang, O. G. March, 1943, p. 302; Aguilar v. Cabrera, G. R. No. 49129; Fabie v. Gutierrez David, 42 O. G. 511) which may only be determined after the court has heard the evidence given and finds that it would be impossible to decide the case without first settling the question of ownership.

IRENE R. CORTES

EVIDENCE — TESTIMONY OF A SINGLE WITNESS IN CRIMINAL CASES.

The two defendants were convicted of murder upon the single testimony of a supposed eyewitness, Jose Dammay, son of the deceased. This witness's testimony on direct examination was contradicted to a certain extent by his answers on cross-examination. His testimony was inconsistent with his declarations at the preliminary investigation. HELD, The lone testimony of the witness was not sufficient to warrant a conviction. (People v. Cauilan and Quilang, G. R. No. L-873, Sept. 18, 1947)

The present decision confirms the rule, well settled in this jurisdiction,

that an uncorroborated testimony of a single witness is sufficient for conviction, if such evidence convinces the court beyond a reasonable doubt that the defendant committed the crime charged. (U. S. v. Dacotan, 1 Phil. 669; U. S. v. de la Cruz, 4 Phil. 438; People v. Sope, 42 O. G. 1811) The exceptions to the foregoing rule are: Treason (Sec. 97, Rule 123, Rules of Court) and Bigamy. (People v. Evangelista, 29 Phil. 215) The reason for the rule is that our Rules of Court do not require any specific number of witnesses to establish the existence of a material fact. (3 Moran, 2nd Ed., p. 575) The law provides: "In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt." (Sec. 95, Rule 123, Rules of Court) According to this rule, if the court believes beyond a reasonable doubt that the defendant is guilty, it must convict the accused. On the other hand, if a reasonable doubt exists in the mind of the court, it must acquit. So long as this test of sufficiency of evidence satisfies the court, conviction may be had regardless of the numerical weight of witnesses presented. (State v. Hicks, 200 N. C. 539; 157 SE 851)

The general rule that the testimony of a single witness may legally suffice to support a conviction has been held to apply even when the testimony on which the conviction is based is that of the victim of the offense itself. (U. S. v. Mondejar, 19 Phil. 158; U. S. v. Olais, 36 Phil. 828: People v. Sope, supra.) The doctrine was also applied where the lone testimony was that of an accomplice. (U. S. v. Ambrosio, 17 Phil. 295; U. S. v. Callapag, 21 Phil. 262; People v. Sarmiento et al, 40 O. G. [7th Sup.], p. 132; People v. Dizon, 42 O. G. 2766) The rules regarding the testimony of accomplices are as follows: The evidence of accomplices is admissible and competent. Yet such testimony comes from a polluted source and must be scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected. Even then, however, the defendant may be convicted upon the unsupported evidence of an accomplice. If corroborated absolutely, or even to such an extent as is indicative of trustworthiness, the testimony of an accomplice is sufficient to warrant a conviction. This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and the inconsistencies are satisfactorily explained. (U. S. v. Remigio, 37 Phil. 599) However, cases in which the uncorroborated testimony of an accomplice has been held sufficient to convict of grave offenses have been rare and the better rule seems to be that the lone testimony of an accomplice must always be corroborated to serve as a basis for conviction. (People v. Asinas, 53 Phil. 59; People v. Bantagan, 54 Phil. 834)

Where the testimony of a single witness is contradicted and the fact sought to be proved is important and serious, it was held that corroboration is necessary. (See 3 Moran, 2nd Ed., p. 575 and cases there cited)

And where the credibility of a single witness is open to suspicion on account of his character (People v. Bumanlag, supra), or his motives to falsify the truth (U. S. v. Valdez, 1 Phil. 238), or his self contradictions (U. S. v. Asiao, 1 Phil. 304; U. S. v. Garcia, 8 Phil. 589; U. S. v. de los Santos, 24 Phil. 239; and the present case), or the inherent improbabilities of his testimony (U. S. v. Santa Cruz, 1 Phil. 726; U. S. v. Manabat, 42 Phil. 569), corroborative evidence has always been required to sustain a conviction.

FEDERICO G. CABLING

DEBT MORATORIUM—APPLICABILITY TO ALL KINDS OF MONETARY OBLIGATIONS—EFFECT ON CAUSE OF ACTION.

Executive Order No. 32 provides: "Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential Proclamation that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government."

It is settled that the above provision suspends the execution of judgments for money (Palacios v. Daza, 42 O. G. 53; Ternate v. Daza, 43 O. G. 853), including a judgment against a municipality for the value of property taken in the exercise of the right of eminent domain (Palacios v. Daza, supra). Unlike the previous moratorium order (Executive Order No. 25), the present makes no exception of debts entered into prior to Dec. 31, 1941. It is "very comprehensive," "embraces all debts and monetary obligations regardless of source," and includes in "its operation obligations arising under the Workmen's Compensation Act." (Oching v. Rodas, G. R. No. L-1419; Salvacion v. Rodas, G. R. No. L1420; Abueg v. Rodas, G. R. No. L-1421, July 31, 1947)

It is, however, to be observed that the majority in the Rodas cases (supra) was mum as to the applicability in those particular cases of the well-known principle of merger of judgment (30 Am. Jur. secs. 144, 150, 158; Art. 1971, Civil Code; see also Ternate v. Daza, *supra*). As was pointed out by the dissenting opinion, the obligation therein "was created by the judgment of the Supreme Court of Dec. 17, 1946 when the entire Philippines had already been liberated, for which reason the said obligation was not covered by the (debt moratorium) executive order."

It will be observed, further, that the cases above called for and accordingly received the resolution of the issue of the effect of the debt moratorium on the execution of judgments for money. Not even in the more recent case of Henares v. Cordova, G. R. No. L-1536, was the prematurity of the action presented. It seems elementary, however, that an action will not prosper and a motion to dismiss (Rule 8, sec. 1[f], Rule 9, sec. 10, Rules of Court) will lie where there is no cause of action;

that there can be no cause of action where there is no right in one party and/or a violation of the same by the other; that there can be no violation of a right when its enforcement is suspended. Hence, Executive Order No. 32 "not only suspends the execution of judgment that the court may render so far as it orders the payment of debts and other monetary obligations, but also suspends the filing of suit for the enforcement of the payment of (the same) if timely objection is set up by the defendant debtor." (Ma-ao Sugar Central Co., Inc. v. Barrios, G. R. No. L-1539, Dec. 3, 1947)

It may be safely opined that, under the above ruling, the debt moratorium suspends the running of the period of prescription as to actions for the recovery of money obligations embraced therein.

ALBERTO SAN JUAN

REMEDIAL LAW—POWER OF CITY FISCAL TO HOLD PRELIMINARY INVESTIGATIONS.

Petitioner Ricardo Espiritu prayed for a writ of mandamus to compel the respondent judge to receive and docket the criminal complaint filed by petitioner and to refer the same thereafter to the city fiscal of Manila for preliminary investigation or to conduct said investigation himself as the law provides. The Supreme Court ruled that a complaint need not be filed with a court of justice because the power conferred by law upon the city fiscal to conduct preliminary investigations for crimes, misdemeanors, and violations of ordinances committed within the territorial jurisdiction of the city is confirmed by the Rules of Court. (Ricardo Espiritu v. Hon. M. L. de la Rosa, G. R. No. L-1156, July 31, 1947).

In the City of Manila, the accused in a criminal prosecution is not entitled, as of right, to a preliminary investigation. (Act No. 612, Sec. 2; Act 2711, Secs. 2465, as amended by Commonwealth Act No. 537, Sec. 1, and 2474; U. S. v. McGovern, 6 Phil. 621; U. S. v. Ocampo, 18 Phil. 1; Ocampo v. U. S., 234 U. S. 91; U. S. v. Grant et al, 18 Phil. 122; Hashim v. Boncan et al, IX L. J. 109, holding that Secs. 2465, as amended, and 2474, Act No. 2711, were not repealed by Sec. 2, Rule 108, Rules of Court). As a matter of fact, if said accused be allowed such investigation, the city fiscal is the officer to conduct the same. (Secs. 2465, as amended, and 2474, Act No. 2711). Municipal judges do not have to conduct preliminary investigations, such duty being reposed in the city fiscal. (Sec. 2465, as amended, Act No. 2711). The latter may even be assisted by a lawyer whom the Secretary of Justice may appoint in pursuance of the provisions of existing law. (Sec. 1686, Act No. 2711, as amended by Act No. 144, Sec. 4; Lo Cham v. Ocampo, G. R. No. L-831, promulgated Nov. 21, 1946; Moran, Comments on the Rules of Court, 2nd Edition, 1947, p. 558).

The new Rules of Court have not repealed or supplanted the Revised

Administrative Code regarding the power and authority of the city fiscal to conduct preliminary investigations for "the framers of the Rules could not have intended to brush aside these lessons of experience and to tear down an institution recognized by law and decisions and sanctioned by years of settled practice. They could not have failed to keep intact an effective machinery in the administration of criminal justice, as expeditious and simple as any reform they have infused into the new Rules." (Hashim v. Boncan, et al, 40 O. G. 13th Supl. p. 13, No. 21, Nov. 22, 1941). The new Rules, in clear terms, state that the City Fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his city, cognizable by the Court of First Instance. (Sec. 2, Rule 108, Rules of Court). But this power excludes the authority to order arrest (Hashim v. Boncan, supra; Lino v. Fugoso et al, 43 O. G. p. 1214) and the only procedure for the fiscal to follow is to file, after termination of his preliminary investigation, the corresponding information in the competent court wherein he should specifically allege the fact that he has duly investigated the case and on the basis thereof, the court shall issue the warrant of arrest. This is the present practice. (Moran, Comments on the Rules of Court, 2nd Edition, 1947, p. 559). The rule providing for the filing of a complaint or information directly with the Court of First Instance by which the judge thereof shall conduct a preliminary investigation (Sec. 4, Rule 108, Rules of Court) does not apply in the City of Manila where the only officer authorized by law to conduct said investigation is the city fiscal (concurring opinion of Chief Justice Moran in Espiritu v. Hon. M. L. de la Rosa, G. R. No. L-1156, July 31, 1947).

In consonance with the general principles of statutory construction to the effect that a special law is considered an exception to a general law, the Manila Charter, being a special law, should be deemed as an exception to the Rules of Court which is general in character. Furthermore, the petitioner prayed for a method which was by itself superficially redundant and unnecessary because the complaint could be filed directly with the City Fiscal. The Court of First Instance would certainly be hampered in its efficient and proper administration of justice if petitions of similar nature were allowed to clog the court's calendar.

DELFIN J. VILLANUEVA

REMEDIAL LAW—MANDAMUS TO COMPEL EXECUTION OF AN ORDER GRANTING ALLOWANCES.

Petitioners and respondents are the only heirs of the deceased. Under the will all the estate in usufruct pertains to the respondent-widow during her life, and upon her death one-half thereof is to be divided among the petitioners, sisters of the deceased. On September 16, 1940 the petitioners petitioned the probate

court to authorize the respondent as administratrix to pay the former from and after July 1, 1940 monthly allowances, said allowances to be deducted from their shares in the estate of the deceased upon the death of the widow. All parties in interest, including the respondent-administratrix, conformed to the petition. On October 2, 1940, the lower court granted the petition. From July 1, 1940 to December 31, 1941, the respondent made payments as ordered. Payments were resumed from August, 1945 to January, 1947. On February 18, 1947, the petitioners filed with the lower court a petition for the issuance of a writ of execution of the order of October 2, 1940, and asking for the payment of the allowances for February, 1947 and those in arrears for January 1, 1942 to July 31, 1945. The petition was denied and payment of those in arrears refused. Hence the present petition for mandamus to compel the lower court to issue a writ of execution of the order of October 2, 1940.

The Supreme Court, in a decision concurred in by five justices, granted the mandamus. The court was of the opinion that execution was a matter of right under Section 1 of Rule 39, Rules of Court, the order of October 2, 1940 being final. The court said that the conformity of all the parties to the petition of September 16, 1940 gives it the nature of a contract, which is not prohibited by the will nor by law, and therefore enforceable according to its terms; and furthermore, that it is a contract which, by the order of October 2, 1940, has been elevated to the category of a judgment. Overruling the plea of the respondent that the payment of the allowances impairs her usufruct, the court was of the opinion that her conformity to the petition of September 16, 1940 bars her from complaining now. (Sophie M. Seifert, et al v. Bachrach, et al, G. R. No. L-1379, Dec. 19, 1947).

The dissenting opinion, shared by four justices, held that Section 1, Rule 39, applies only to ordinary judgments, and has no application to the present case; that the petitioners, not being the widow nor the minor or incapacitated children, are not, under the law, entitled to allowances, and that such allowances are in reality advancements on account of petitioners' hereditary portions; that, even granting that petitioners have a right to allowances, nevertheless, the court has the legal authority and duty to exercise a continuing control over the amount of the allowances, and more so in the instant case when the allowances are not even provided for by law, nor by will, nor by contract; and that, at any rate, the parties cannot by agreement divest the court of its power of control; and, therefore, the lower court was in the clear exercise of its discretion in refusing to order the respondent to pay the allowances in arrears in view of the circumstances of the estate brought about by the war years.

In Malabanan v. Abeto, O. G., Jan., 1943, it was held that a judg-

ment for support can never become final; that it may always be modified, because of the varying conditions affecting the ability of the obligor to pay the amount fixed as support and the ever changing needs of the recipient himself; and in Gorayeb v. Hashim, 47 Phil. 87, it was held that the appellate court will not, as a rule, interfere with the conclusions and findings of the lower court in regard to such allowances. In Babao v. Villavicencio, 44 Phil. 921, the court ruled that grandchildren are not those who are included among the persons entitled to allowance pending the settlement of the estate of a deceased person.

The majority opinion is without precedent.

J. L. LUNA, JR.

Excerpts of Important Cases *

1. CREDITOR'S LIEN—ANNOTATION THEREOF UNDER ACT NO. 496.

Petitioner as sole heir to a parcel of land registered under Act No. 496, applied for the cancellation of the creditors' lien annotated on the title under section 1 and 4, Rule 74, Rules of Court. Application was based on section 112, Act 496, with a bond being offered to answer for such contingent claims. Upon denial of said application by respondent judge, the case was brought on certiorari to the Supreme Court. *Held:* Certiorari denied. "Applying these provisions to the present case (section 112, Act 496), it is evident that since the registered or annotated contingent interests of the creditors or other heirs of the petitioner's predecessors in interest, established by section 4 of Rule 74, have not yet *terminated or ceased*, for the period of two years from July 9, 1947, has not yet elapsed, the respondent had no jurisdiction or power to order the cancellation of said lien or annotation as prayed by the petitioner, nor authorize the substitution of a bond for such a lien or registered interest." (Rebong v. Hon. Fidel Ibañez, G. R. No. L-1578, Sept. 30, 1947)

2. POLLING PLACES; THEIR TRANSFER.

In connection with the last November elections, the polling places corresponding to the barrios in certain municipalities in Pampanga were transferred to the *poblacion* by resolution of the respondent municipal councils. The Commission on Elections gave its approval to such transfer over the objection of petitioner. Hence, this petition for review. *Held:* The action of the commission authorizing the transfer finds no support in law. "The general rule, therefore, under sections 62 and 63 (Revised Election Code) is that a polling place shall be located in each precinct and as centrally located as possible with respect to the residence of the voters. There are, however, three exceptions in which, under section 63, the polling places may be located in the *poblacion*, namely: (1) where the majority of the voters so request; (2) by agreement of all the political parties; (3) by a resolution of the municipal council, *but this last-named exception shall take effect subsequent to that of November of this year.* The express inclusion of these exceptions is an implied exclusion of all others." (Cortez v. Commission on Elections et al, G. R. No. L-1679, October 16, 1947)

3. DUPLICITY — FAILURE TO MOVE TO QUASH.

The information in this case charges robbery with violence against and intimidation of persons commit-

* These cases are considered leading ones on their respective subjects. The pertinent parts of the decisions are reprinted verbatim.