THE JURISTIC THINKING OF PRESIDING JUSTICE GUTIERREZ DAVID *

Introduction

More often than not, the lawyer's indispensable kit is *argumentum ab auctoritate est fortissimum in lege.* Authorities spring from various sources, court decisions, among several others. And by this is meant not only those enunciated by the Supreme Court, but by the Court of Appeals as well. That the Court of Appeals is a "doctrine-laying" tribunal is sanctioned by *Corpus Juris* declaration that decisions of an intermediate appellate court form part of the law of the state or jurisdiction until such decision is reversed or overruled by the court of last resort, i.e., the Supreme Court; but it is not authoritative if it is not in accord with decisions of the latter court,[1] or if it has so far departed from accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.[2]

Premises evaluated, it is submitted that Court of Appeals' decisions, subject to statutory limitations, have also the force of law as they "form part of our legal system".[3]

Although originally intended to be a constitutional creation, the Court of Appeals was created by legislation because the Constitutional Convention failed to reach a decision on its establishment. It was then deemed advisable to leave this question for future legislative determination in order to avoid the rigors of a constitutional amendment should the Court of Appeals turn out to be a failure.[4]

As a part of the judicial pyramid, the Court of Appeals largely contributes to the administration of justice [5] despite the aphorism "government of laws and not of men" [6] where, in reality, it is man, the *homo-sapiens* who actually dispenses justice. Since this honored task is reposed in Courts [7] which cannot, of necessity, exist without judges,[8] he who administers justice must be endowed with a high degree of moral and intellectual virtue combining his technical training with vision and statesmanship [9] and thus learn to understand trends and peoples' thinking and adjust his own prejudices to the changing ideologies

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Writer's note: Acknowledgment is due Mrs. Rosario V. Diaz of the Court of Appeals for her invaluable help in gathering some of the materials treated herein.

[1] 21 C.J. 347; Domingo v. Imperial, G.R. No. L-49060, Feb. 28, 1947.

[2] Rules of Court, Rule 48.

[3] New Civil Code, Art. 8

[4] *See* Manuel L. Quezon's message to the National Assembly dated Dec. 12, 1935; for more details on the Court of Appeals as a statutory court, see Com. Act No. 3 (December 31, 1935), Exec. Order no. 37, series of 1945 and Rep. Act No. 296 (as amended).

[5] A working definition of "justice" would be "the constant and perpetual disposition to render every man his due" (Justinian, Inst. b. 1, tit. 1; Co. 2d Inst. 56); it is the conformity of our actions and our will to the law (Toullier, Droit, Civ. Fr. tit. 1, prel. n. 5)—BOUVIER'S LAW DICTIONARY 635 (1948). *Cf.* POUND, JUSTICE ACCORDING TO LAW 1-31 (1951).

[6] For a juridical appraisal of the concept "government of laws and not of men", *see* People v. Rosenthal and Osmeña, 68 Phil. 328, 348 (1939); Angara v. Electoral Tribunal, 63 Phil. 139, 141 (1936); U.S. v. Bull, 15 Phil. 27 (1910); Kilbourn v. Thompson, 103 U.S. 168, 190-1 (1881). *See* also Tolentino, Remedial Measures for the Preservation of the Independence of the Judiciary (November 2, 1952),.

[7] "Court" is the body in the government to which the public administration of justice is delegated, being a tribunal officially assembled under authority of the law, at the appropriate time and place for the administration of justice, through which the State enforces its sovereign rights and powers (21 C.J.S. Sec. 16); it is the entity or body in which a portion of judicial power is vested (Lontok v. Battung, 63 Phil. 1054-5 [1936]).

[8] A "judge" while an indispensable part of the "court" is only a part thereof (15 C.J. 717); Tavera v. Gavina and Arciaga, G.R. No. L-1257, Dec. 11, 1947.

[9] Paraphrasing from Quezon, 4 Lawyer's Journal, No. 6, 268 (April 15, 1936).

* Budgetary and spatial limitations compel us to print the articles which follow in finer types.—*Editor's note*

of the people.[10] Such qualities, in addition to statutory requirements,[11] are imperative to "the inescapable obligation of a judge to say what the law is and not what it should be." [12]

Guided by these criteria, this writer will now attempt to present a cursory appraisal of Hon. Jose Gutierrez David with an eye to his affinity with law and jurisprudence to the end that no man shall be deprived of life, liberty or property without due process of law.[13]

Brief Biographical Sketch

Justice Gutierrez David was born in Bacolor, Pampanga on January 29, 1891. The youngest of nine children of Mateo Gutierrez Ubaldo, one of the signers of the Constitution of the First Philippine Republic in Malolos, and Gabriela David, the Pampanga jurist was brought up and educated in San Fernando, finishing the high school course at the Pampanga High School in 1912.

In the same year, he married Concepcion Roque, with whom he has now seven children: Perla (M.D.), Jose, Jr. (B.S.Chem.), Leonardo (LL.B.), Felicitas (B.S. Chem.), Amaury (B.S.M.E.), Alice (A.B.), and Irma (A.B.).

In 1915, Justice Gutierrez David was graduated from the Escuela de Derecho de Manila [14] and was admitted to the Bar in 1916. He immediately entered into private law practice. The young lawyer easily made strides and gained prominence as "the Pampanga trial lawyer." Despite his much-sought counsel, Gutierrez David was not unmindful of his obligation to aid in the administration of justice. In 1918, he accepted an appointment to the Bench as Auxiliary Justice of the Peace in San Fernando, Pampanga, which post he held until 1920. After this two-year judgeship, he served as municipal councilor of the same municipality.

During the constitutional convention in 1934, Gutierrez David was elected delegate and became one of the signers of the present Constitution.

In 1936, the then Justice Secretary Jose Yulo appealed to his sense of public duty when Gutierrez David was offered the position of C.F.I. judge. Although acceptance would mean a tremendous loss of income from his then well-established law firm, Gutierrez David accepted the position. From his district judgeship in the Capiz Court of First Instance, he was assigned to different judicial districts, e.g., Cavite, Baguio and finally in Manila in September 1945. Came November 1946, he was elevated to the Court of Appeals as Associate Justice. On August 6, 1956 he took his oath of office as Presiding Justice of the Court of Appeals.

The Juristic Thinking of Hon. Gutierrez David

Borrowing from Cardoso,[15] the legal eye cannot read some of Gutierrez David's decisions without seeing "honor and courage" written down on every page.

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[10] *See* Abad Santos, *Common Sense in the Administration of Justice*, 9 Lawyer's Journal 260, May, 1941.

[11] PHIL. CONST. Art. VIII, secs. 6-8.

[12] Laurel, J. in Wee Poco and Co. v. Posadas, 64 Phil. 640 (1937). *Cf.* Holmes, J. in Southern Pacific Co. v. Jensen, 244 U.S. 205, 221 (1917) where he observed, "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions." *See* also Justice Undersecretary J. C. Barrera in *Thirty Years of Philippine Judicial System*, Fookien Times 1956 Yearbook at pp. 119, *et seq.*

[13] PHIL. CONST. Art. III, sec. 1(1).

[14] After the American occupation of the Philippines, Felipe Calderon, eminent Filipino lawyer, founded the Escuela de Derecho de Manila (MALCOLM, LEGAL AND JUDICIAL ETHICS 10 [1949]).

[15] This is the first law school outside the royal and pontifical university to be established under the individual initiative and the first to be run under secular guidance. It is noted that classes

Despite the apparent compactness in form and substance, quite a number of his decisions dwelt on easily-understood propositions; but the reader is at a loss to understand why the jurist had to flavor the issue by exponding lengthily [16] on what could otherwise take a few pages of decision "and yet not mar the grace by stint thereof." [16a] It therefore results that the beauty of his language loses much fragrance—at least to a newsman conscious of his "deadline".[17]

Lest this writer be accused of fault-finding, the zealous reader will easily find one marked characteristic of the Gutierrez David decision—his inseparability from the supremacy of law juristic school. Consider his conclusions in *People v. Nevado*,[18] viz:

> "We are not unaware of, and much as we disapprove, the immorality of the appellant in having amorous and carnal relations with a woman, other than his wife, we cannot justify his conviction for the crime herein charged, which, to our mind, has not been perpetrated by him or, at least, there is a strong improbability of its commision."

Again, in *Anonueva v. National Power Corporation* [19] where the unsuspecting eye will easily see the compensability of death arising out of and in consequence of an employment, Justice Gutierrez David regretfully ruled:

> "Our sympathies are certainly with the plaintiffs, but under the facts or (sic) record and in view of the surrounding circumstances, we do not feel justified in holding that a relation between the deceased and the defendant, as employer and employee ever existed, so as to make the latter liable for the damages sought for."

Thus we note the Justice deems it "far better x x x to let a hundred guilty persons go free, than send *one* innocent man to jail." [20] Certainly *hoc quidem perquam durum est, sed ita lex scripta est.* And considering it is for judges merely to *jus dicere* and not *jus dare*,[21] it follows no conviction or judgment for the plaintiff is warranted upon failure to prove the quantum of evidence [21a] the law requires. It is not now doubted that moral belief alone is insufficient to sustain a judgment of conviction.

In 1948, Justice Gutierrez David decided 23 civil cases, 31 criminal cases and penned 18 resolutions, while in 1955 he handed 71 decisions in civil cases, 41 decisions in criminal cases and 10 resolutions.[21b]

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were at first held not in school buildings, but in the houses of law professors; hence, the school was born "sin panales y sin hogar." E. A. MANUEL, A PORTRAIT OF FELIPE CALDERON 31 (1954). Among several others, former Chief Justice Manuel Moran, Senator M. Briones are some of the distinguished alumni of the Escuela de Dercho. e

[15a] 44 HARV. L. REV. 682-92 (1931).

[16] Filipinas Co. de Seguros v. Huenfield and Co., C.A.—G.R. No. 1554, Oct. 31, 1949; Bureros v. Buscato, C.A.—G.R. No. 13213-R, March 18, 1955, and others.

[16a] Quoting from Euripedes, Iphigenia at Aulis (trans. by Arthur S. Way).

[17] Cardoso to Holmes: the judge with a sense of style will balk at inaccurate and slipshod thought. Style is thus a form of honor and courage, Santayana tells us, is the pursuit of truth always. 44 HARV. L. REV. 682 (1931).

[18] CA—G.R. No. 11282-R, March 30, 1954. Cf. Arthur K. Kuhn's concept of supremacy of law in Book Review, 30 PHIL. L. J. 1037 (1955) at note 10.

[19] CA—G.R. No. 9210-R, April 20, 1954. The main issue here is the determination of employer-employee relationship at the time of accident, i.e., if deceased was an employee of the then National Power Corporation or whether it was with the Occupation "Taiwan Electric Company" which took over the operation of the former. The Court held the National Power Corporation" was no longer in operation as a corporate entity" since all properties and operation were placed under the control and management and direction of the Imperial Japanese Forces.

[20] Pastrana, *Judge J. Gutierrez David*, 6 Lawyer's Journal 251-3 (March 20, 1938). Cf. Olmstead v. U.S., 277 U.S. 438, 470 (1918) where it was held, "It is less evil that some criminals should escape than that the Government should pay an ignoble part."

[21] Wee Poco and Co. v. Posadas, 64 Phil. 640 (1937).

[21a] Rules of Court, Rule 123, Secs. 70, 71, 94 and 95.

[21b] Cf. *Juristic Thinking of Justice J. B. L. Reyes*, 31 PHIL. L. J. 156 (1956).

Perhaps, in order to break the occupational disease of using cliches or "rubber stamp expressions", the jurist emerges with a new play of words: "on the whole we find, and so hold, that the guilt of appellant has been established beyond peradventure of doubt" [22] or by his "by and large, we believe x x x there is no sufficient, clear and cogent evidence on record to justify the conviction of x x x" [23] or to trial judge's satisfaction, his ruling that "the trial court fell into none of the errors assigned." [24] Equally noteworthy is the profundity of his thought and clarity of expression when he uses the Castillian language in his decisions.

Elsewhere in this appraisal, we note Justice and Mrs. Gutierrez David now have seven children—all professionals in their respective lines. What better proof can we require to hold that the jurist is a *pater-familias* worthy of emulation? With seven children in the family, it is submitted that the parent must have a well-modulated temperament. That the Gutierrez David temper in the family home was likewise transported to his judicial sala is made evident in *Torres v. Medalla* [26] where the reader could almost see him writhing (wrythe) with indignation against the manifest corruption shown by defendant municipal treasurer and other municipal officials who protected defendant Medalla, allowing the latter to operate a cockpit in a prohibited zone to the gross prejudice of a legitimage operator, the plaintiff. But the Justice, conscious of ethics and judicial propriety, did not use any adjective purporting to show such feeling.

His paternal characteristic is also noted in several cases where law practitioners, human as they are, commit errors in elevating cases to an improper court. Gutierrez David, the father and/or jurist, always comes up giving them sincere advice.

Views on Civil Law

The depth of his juridical insight may be measured by his resolution of the ticklish issue on the "previous notice" requirement of consignation.[28] The question in *Ochoa v. Lopez* [29] was: if the creditor refuses to accept payment of an obligation payable in a fixed term, how shall the debtor effectively discharge the obligation? Justice Gutierrez David exhaustively analyzed the issue, saying:

> "From the clear and unequivocal provisions of the (contract) it is obvious that the intention and agreement of the parties were that the debtor could not pay the whole or a part of the principal x x x before the expiration of stipulated period x x even tho he offered to pay the interest due until the date of maturity, and that such stipulation was made for the benefit of both creditor and debtor as the contract expressly recites.
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> "It should be noted that the payment of interests is not the only reason why creditors may not be bound to receive payment before maturity. (authorities omitted). There may be other reasons, to

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[22] People v. Santos, CA—G.R. No. 11259-R, Feb. 9, 1954.
[23] People v. Dioso, Palomata & Bautista, CA—G.R. No. 11319, Feb. 17, 1954.
[24] Baisic and Tamondong v. Tamondong, CA—G.R. No. 9367-R, April 12, 1954.
[25] Talusan contra Mendoza, CA—G.R. No. 7908, June 29, 1954; El Pueblo de Filipinas contra Poral, CA—G.R. No. 10245-R (1955).
[26] CA—G.R. No. 11484-R, July 14, 1955. The Court awarded a 2,000 peso damage in favor of plaintiff, in addition to relief sought.
[27] Berg v. Nat. City Bank of New York, CA—G.R. No. 6395-R (1955) where the amount involved exceeds P50,000 (Sec. 31, R.A. 296); Panaligan v. City of Tacloban and City Treasurer of Tacloban, CA—G.R. No. 13442-R (1955)—involving validity of municipal ordinance; Cebu Port Labor Union v. States Marine Corp. *et al.*, CA—G.R. No. 12902-R, April 30, 1955—question of jurisdiction; Morales v. Yanez, CA—G.R. No. 12000-R, March 29, 1955—question of law.
[28] *See* New Civil Code, Arts. 1256, 1257, 1258.
[29] CA—G.R. No. 7050-R, June 18, 1954.

> wit; that the creditor may want to keep his money invested safely instead of having it in his hands (Moor v. Cord, 14 Wis. 231) and that the creditor by fixing a period, protects himself against sudden decline in the purchasing power of the currency loaned x x x."

And then Justice Gutierrez David underscored:

> "For consignation to be legally effective, the requirement of previous notice of consignation must be made to persons interested in the performance of the obligation.[29a]
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> Such notice, being so important and indispensable for the validity of the consignation, should be established by clear and positive proofs. It appears in the quoted testimony of x x x he simply had told x x x that he intended ("pensaba") to deposit in court the amount tendered. There is no way of ascertaining how the notice was worded or whether it served the real purpose of the previous notice. No term was given the creditor within which to answer whether he accepts the tender of payment or after which the consignation would be made." [29b]

His fatherly counsel is also exemplified by the statement:

> "x x x there seems to be a misconception on the part of practising attorneys and some courts in this jurisdiction regarding the true nature and purpose of the previous notice. Seemingly, they believe that it is sufficient for the creditor to state in the notice that he would deposit or consign in court the amount offered, should it be refused by the debtor. According to Manresa, the law requires the previous notice "attendiendo a que es aviso mas serio de consecuencias que tal vez venzan resistencias injustificadas y, atendiendo por otra parte, a que la consignacion exija que se prevengan para hacer valer los derechos que con la misma se relationen, aquellos que pueden tenerlos."

From all the foregoing, Justice Gutierrez David concludes:

> "x x x the purpose of the notice is to give the creditor,—upon receiving formal notice that consignation would be made,—a chance to reflect on his refusal to accept payment in view of the adverse consequences that such consignation might work against him, such as the release of the debtor from his liability, the risk of loss of the thing consigned and the payment by him of the expenses of consignation which includes the commission of the amount deposited to be paid to the clerk of court, etc. Such being the object of the previous notice, it stands to reason that the same should not contain a mere *warning* that the deposit of the think tendered would be made in court, but it should fix the date and hour of the consignation and name the court where the same would be made." (citing Mucius Scaevola, Vol. 19, pp. 930 et seq, and Diego de Lora's "La Consignacion judicial, Estudio Teorico-Practico" (1952).[29c]

The *Lawyer's Journal* once commented on the facility with which the then Judge Gutierrez David disposed of 19 election cases [30a] which he terminated "in the astonishingly short period of less than two months, in spite of the fact

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[29a] Art. 1177, Old Civil Code; *See* Art. 1257, New Civil Code.

[29b] In same case.

[29c] *Ibid.* Attention is invited to Supreme Court decision in Arambulo v. Ayson, G.R. No. L-6501, May 31, 1955, where it was held that lack of notice to interested parties of the fact of consignation renders the same void.

For another interesting elucidation of Art. 1197, New Civil Code, construed by Justice Gutierrez David, see De Ungson v. De Lopez and Lopez, CA—G.R. No. 10180-R, March 10, 1954.

[30] 6 Lawyer's Journal, no. 8, 251 (March 20, 1938).

[30a] During the general elections of 1937.

that they involve about sixty election precincts pertaining to 11 municipalities and he was at the same time trying orther urgent cases." [30b]

Having been a trial judge once upon a time, Justice Gutierrez David realizes how much "peculiar advantage" trial judges have in certain aspects of a case. For instance, on questions calling for gauging relative credibility of parties-litigants, Justice Gutierrez David never hesitates to admit that trial judges are better qualified to rule on the matter.[31] Or, where lower court decisions conform to the requirements of the law, he welcomes such decision, adopting it *in toto*.[32]

Nor are Court of Appeals decisions confined to cases involving a large sum of money,[33] for, in *Tampus v. Gerungay* [33a] the measly sum of ₱185.00 was involved. In this case the ownership of a sewing machine, valued at ₱185.00, led the parties to elevate the case to the Court of Appeals. It appears that the trial judge condemned the plaintiff to pay defendant the sum of ₱10.00. After a careful perusal of the case, Justice Gutierrez David shared the trial court's view that witnesses for the defendant deserve more credit. Mention is made of this case if only to show that where principles are concerned the amount involved in a case is immaterial. Recognizing this trait, Justice Gutierrez David devotes the same time and energy as though it were a case involving dear life itself—*fiat justitia ruat coelum*.[33b]

Views on Criminal Law

His "juridicial justice" [34] is vividly seen in *People v. Rayos* [35] where, in a judgement of acquittal disposing of complainant's charge that defendant succeeded in committing acts of lascivousness upon her, the Court, through Justice Gutierrez David, ruled:

> "(The same) is obviously an afterthought. If these facts were true, there is no plausible reason why complainant did not mention them at the earlier stage of the case.
>
> Such testimony was undoubtedly calculated to exaggerate the accusation and make the facts constitute the crime charged by injecting therein the element of lewd designs."

Likewise, his dissertation in *People v. Lauchengco* [36] where he reasoned:

> "Pregnancy is conclusive proof that the offended party had sexual intercourse with someone. In the case of rape and seduction, 'pregnancy is admissible as evidence at least of the intercourse, the accused's identity being provable by other evidence.'
>
> "The law does not require that the offended party should use any particular form of words in conveying idea that the accused had sexual intercourse with her. Words are but the signs of ideas. It is well known that the same idea may be imparted to a hearer in a variety of forms of expression. In the common parlance in this country, the expression 'to obtain a man's desire from a woman' means that he succeeded in knowing her carnally. Such phrase is

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[30b] *See* also Bulacan electoral case in Nicolas v. Mendoza, CA—G.R. No. 11110-R, July 16, 1954.
[31] People v. Dizon, CA—G.R. No. 574-R, March 19, 1954; Rules of Court, Rule 123, sec. 94.
[32] Nicolas v. Mendoza, CA—G.R. No. 111110-R, July 16, 1954.
[33] i.e., his decision in Berg v. NCBNY, *op. cit., supra*, note 27.
[33a] CA—G.R. No. 6979-R, March 29, 1955.
[33b] "Let there be justice although the heavens may fall." *See* also Tan Diu & Columbres, Bernardo v. Madrazo where he ruled a ₱4,000 attorney's fees instead of the ₱10,000 originally sought. CA—G.R. No. 13900-R, Dec. 10, 1955.
[34] ROSCOE POUND, JUSTICE ACCORDING TO LAW, *op. cit., supra*, note 5 at p. 62.
[35] CA—G.R. No. 1377-R, Aug. 31, 1955.
[36] CA—G.R. No. 536-R, March 15, 1948.

> the veiled and decent way of expressing the fact of carnal knowledge or copulation, be it voluntary or not." [36a]

In construing what testimony is inherently improbable and inconsistent with human experience, hence untrustworthy, Mr. Justice Gutierrez Daivd in *People v. Quimio and Cueva* [37] observed—

> "so x x x (the) assertion that he was able to identify the appellant because of the moonbeams that penetrated the hut is hard to believe. For the foregoing reasons and being an isolated one and not corroborated by any other evidence tending to prove the guilt of appellant, the statement of x x x cannot, in our opinion, form the basis of a conviction."

His generous appreciation of settled doctrines is shown in *People v. Guisen*.[38] In this case the issue borders on the effect of payment of entire obligation upon the criminal prosection for estafa. Justice Gutierrez David, seeking shelter under the Supreme Court ruling, emphatically declared:

> "Payment made subsequent to the commission of x x x estafa does not alter the nature of the crime committed nor does it relieve the defendant from the penalty prescribed by law (authorities omitted) . . .
>
> "Pursuant to Art. 315, Sec. 1, par. b (of the R.P.C.) under which provision appellant was charged, a person may be held liable even though his obligation be totally or partially guaranteed by a bond. In this type of estafa, deceit or intent of fraud in obtaining money or other personal property is not an essential element. The breach of confidence takes the place of fraudulent intent and it is in itself sufficient (authorities omitted)." [39]

In *People v. Cruz*,[40] the Justice drew the line between forcible abduction and grave coercion thus:

> "Our review of the records led us to conclude that appellant's claim x x x that offended party went with him voluntarily, without any compulsion on his part because he loved her, is incredible and untenable. The aggrieved party's statement that she was forcibly taken hold of, and carried by appellant into the army truck is corroborated by testimony of eyewitnesses x x x.
>
> "We agree with defendant in that the existence of lewd designs has not been established. Lewd designs absent, he cannot be convicted of forcible abduction; however, he is guilty of the crime of grave coercion [41] because from the moment that he, by means of violence and intimidation, has taken and put the offended party in the army truck against her will, he compelled her to do something against her will whether right or wrong."

These legal gems indeed speak the language of logic!

[36a] *See* also People v. Kapalaran, CA—G.R. No. 1403-R, Aug. 24, 1948. For a rule on compromise judgment, see de Dios v. Luzon Surety Co. Inc. et al., CA—G.R. No. 12495-R, Feb. 2, 1955.

[37] People v. Quimio and Cueva, CA—G.R. No. 10691-R, Feb. 15, 1954.

[38] CA—G.R. No. 10762-R, Feb. 26, 1954.

[39] *See* also People v. Feist & Levy, CA—G.R. No. 12203-R, July 16, 1955; People v. Lopez, CA—G.R. No. 11286-R, Oct. 12, 1958; People v. Abella, CA—G.R. No. 14090-R, Oct. 17, 1955.

[40] CA—G.R. No. 11178-R, March 30, 1954.

[41] Revised Penal Code, Art. 286. Citing People v. Dauatan, 1 Appel. Ct. Reports 429.

Reversed Decisions

From November 1946 to July 31, 1956, Hon. Gutierrez David had increased the stock of contemporary legal thought with several hundred decisions that have become final and executory or confirmed by the Supreme Court. This, however, does not paint the picture of a "perfect judge"; such being has yet to be born. It is interesting to note that during his ten years in the Court of Appeals, Justice Gutierrez David has had only *five* rulings reversed by the higher court.

In *Utea et al. v. Bonsanto*[42] the court of first instance ruled certain deeds of donation were executed by the donor while the latter was of sound mind, without pressure or intimidation; that the deeds were donations inter vivos without any condition making their validity or efficacy dependent upon the donor's death; but as properties donated were presumptively conjugal, having been acquired during the coveture of Bonsanto and his wife, such donations were valid as to an undivided one-half share in the parcels of land described therein.

On appeal to the Court of Appeals, Justice Gutierrez David, speaking for the majority,[42a] reversed this decision and held such donations were *mortis causa* which, without having been executed in accordance with formalities required for testamentary dispositions, were void.

The case was set for review in the Supreme Court with Justice J.B.L. Reyes reversing Justice Gutierrez David's opinion. In holding that the court of first instance was correct in construing the donation to be inter vivos, Justice Reyes ruled:

> "That the conveyance was due to the affection of donor for donees and the services rendered by the latter is of no particular significance in determining whether the deeds x x x constitute transfers inter vivos or not, because a legacy may have identical motivation. Nevertheless, the existence of such consideration corroborates the express irrevocability of the transfers and the absence of any reservation by the donor of title to, or control over, the properties donated, and reinforces the conclusion that the act was inter vivos. Hence, it was error for the Court of Appeals to declare (the deeds) invalid because the formalities of testaments were not observed." [42b]

The other reversed decisions are *Lopez v. Cabrera*,[43] *Filipinas Co. de Seguros v. Huenfield & Co.*,[44] *People v. Abeto*,[45] and *Edwards v. Arce*.[46]

Miscellaneous

On July 31, 1956, Gutierrez David wrote finis to his career as *Associate Justice*. In a 12-page decision of *Elizalde & Co. v. Paredes and Paredes*[47] Justice Gutierrez David resolved the issue on the legal effect of a withdrawal of an attorney from a trial by commissioners, i.e., whether such withdrawal operated as a waiver of defendant's right to be heard.

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[42] CA—G.R. No. 5789, Jan. 12, 1953; Supreme Court, G.R. L-6600, July 30, 1954 (50 OG 8, 3568, Aug. 1954.

[42a] In a division of five with two justices dissenting.

[42b] In donations *inter vivos*, the only solemnities required are those provided for in Art. 749 of the NEW CIVIL CODE; it is undisputed in this case that they have been complied with.

[43] CA—G.R. No. 285-R, May 24, 1947; G.R. No. L-1554, Oct. 31, 1949.

[44] CA—G.R. No. 1472-R, May 31, 1948; G.R. No. L-2294, May 25, 1951.

[45] CA—G.R. No. 4300, May 22, 1950; G.R. No. L-3935, Dec. 21, 1951.

[46] CA—G.R. No. 8337-R, June 29, 1953; G.R. No. L-6932, Mar. 26, 1956.

[47] CA—G.R. No. 14174-R, July 31, 1956.

After analyzing the reasons for such withdrawal, Gutierrez David ruled:

> "x x it is clear x x x that defendants intentionally and unjustifiably [48] refused to be present in the trial and the Commissioner was thus left free to proceed with the trial ex-parte. Defendants had, by taking such position, voluntarily and intentionally relinquished or abandoned their right to be heard. Hence, they were not deprived of their day in court. Their present predicament is their own making. Consequently, the court below committed no errors in refusing to allow defendants to cross examine plaintiff's witnesses and to adduce evidence in their behalf, their rights thereto having been waived by them upon willingly abandoning the trial."

The capacity of the Court of Appeals as a fact-finding body was put to a test in *Iglesia Filipina Independiente, Gerardo Bayaca and Isabelo de los Reyes, Jr. v. Santiago Fonacier.*[49] In this case the religious corporation sought to require defendant Fonacier to render an accounting of his administration of all temporal properties he had in his possession and recover the same from him on the ground that defendant ceased to be *Obispo Maximo* of said religious organization, having been successively replaced as such by plaintiffs. The case was pregnant with so many facts and issues that it took Justice Gutierrez David some 60 pages or roughly 15,000 words to delve deeper into the celebrated case. It would be trite justice to merely quote part of his decision, but the following statement made by the Supreme Court in affirming *in toto* Justice Gutierrez David's ruling will speak for itself:

> "Petitioner assigns in this instance twelve errors as allegedly committed by the Court of Apeals which, in his opinion merely involve or raise legal questions which can be looked into the present petition for review, but this assertion is disputed by respondent who claims that the issues herein involved call for factual conclusions inasmuch as they require an examination of oral and documentary evidence x x x. 'The judgment of the Court or Appeals is conclusive as to the facts, and cannot be reviewed by the Supreme Court. The entry of such judgment is the end of all questions of fact.' (authorities omitted) x x x
>
> "And we find that the discussion made by the Court of Appeals on the points raised by petitioner is correct x x x
>
> "The issues raised in (Assignment of Errors IX to XII) were squarely met by the Court of Apeals whose decision on the matter, because of its lucidity and the interesting discussion made therein concerning the importance of the alleged abandonment of the constitution, restatement of articles x x x we can do no better than to quote in toto (Justice Gutierrez David's findings) x x x
>
> "We can hardly add to the above findings to which we agree." [49a]

In *People v. Leonardo,*[50] the writer's attention is called to an obiter dictum which reads:

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[48] Sensing that the unexpected and unjustified withdrawal of counsel was calculated upon to compel a postponement, Justice Gutierrez David remarked "x x x such a maneuver was improper. It is a travesty of Justice which should not be tolerated x x x' If everytime an attorney withdrew, the cause had to be continued, there would be no end to the suit and the power to postpone and control trials would be placed in the hands of the party litigants."

[49] CA—G.R. No. 6371-R, June 27, 1952; Supreme Court, G.R. No. L-5917, Jan. 28, 1955, penned by Hon. Felix Bautista Angelo with Justices Paras, Padilla, Montemayor, Alex Reyes and J. B. L. Reyes concurring.

[49a] *Ibid.*

[50] CA—G.R. No. 12425-R, March 28, 1956. In this case, two marriages were solemnized, the second having been entered into at the time the first was subsisting. Bone of contention of defense is absence of marriage license and since prosecution failed to show it was a marriage in articulo mortis (allegedly to justify absence of license), the second marriage is void, hence no bigamy (citing People v. Dumpo, 62 Phil. 246). Justice Gutierrez David easily dismissed this defense, saying the second marriage was contracted before the effectivity of the New Civil Code; that under the Marriage Law then in force, the requirement of marriage license was

> "That the second marriage must have been one which, but for the existence of the first, would have been valid, is rather a loose statement and is not supported by the weight of authority. We believe that a more accurate statement is that, where the form of ceremony of marriage with another person is gone through there is sufficient marriage on which to predicate a charge of bigamy. (citing 10 CJS 364)."

The maxim "actus non facit reum nisi mens sit rea" recognizes the commission of crimes only by him who has a criminal mind—not an innocent one. And the presumption of criminal intent from proof of commission of the criminal act (Rule 123, sec. 69, par. b) is predicated on the proposition that the act from which such presumption springs, must be a "criminal act." Now, is the mere "act" of contracting a second or subsequent marriage during the subsistence fo the first criminal *per se?*

The *obiter dictum* further notes:

> "Thus, it was held: 'The fact that the first marriage was invalid, or the second marriage void, for other reasons than the fact that it was bigamous, will not constitute a defense to a prosecution for bigamy because of such second marriage, on the general principle of criminal law, that where a statute makes an act indictable, irrespective of guilty knowledge, then ignorance of fact constitutes no defense.' (Vol. 2, Wharton's Criminal Law, p. 2389)."

U.S. v. Enriquez [51] is authority for the view that defense of good faith, i.e., without any fraudulent intent, is tenable to show that the second or subsequent marriage contracted while the first one subsists, is not actionable bigamy. In this case, a second marriage was entered into by defendant based on a reasonable and well-founded belief that his wife by the first marriage was already dead, since efforts to locate her whereabouts for a period of 19 years proved fruitless. In other words, the Supreme Court recognizes the defense of good faith, apparently in a manner at variance with the above-quoted (Justice Gutierrez David's) dictum.

Moreover, criminal statutes are construed strictly against the state, meaning they cannot be expanded or otherwise construed outside of "cases which are clearly within its letter";[52] or, does the dictum lead the reader to believe that the solemnization of a subsequent marriage during the subsistence of the first constitutes not a *malum in se?* [53]

These thought-provoking questions, notwithstanding, Justice Gutierrez David's ruling is indicative of his foresight and zealous regard of marriage "as an inviolable social institution."

The coverage of law sometimes nearly transcends imagination. For this reason, a learned "judge of facts" must comprehend variety of knowledge outside of Law and Jurisprudence, e.g., scientific knowledge, laws of nature, or take the case of *H. L. Moore and Co., Inc. v. Trans-Asiatic Airlines, Inc.*[54]

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purely directory; hence, the question of whether there was a marriage in articulo mortis is of no consequence.

But he went further: "Admitting arguendo that the absence of marriage license might affect the validity of the second marriage, yet we believe that such defect or irregularity is no defense to a prosecution for bigamy. Upon celebrating the second marriage with the knowledge that the requirements of the law therefor have not been complied with, appellant did commit the crime x x x."

[51] 32 Phil. 202 (1915).

[52] BLACK, STAT. CONST. 444-5.

[53] *See* Am. Jur. Sec. 12 at 761.

[54] CA—G.R. No. 7966-R, Oct. 27, 1955.

where a judge literarlly rolls his sleeves to study engine (airplane) defects. His mechanical deftness may be gleaned from the statement:

> "x x assumed that no pre-flight inspection was conducted prior to the flight in question, but such assumption is negatived by the proven fact that the pre-flight inspection was actually performed. This being so, it may reasonably be inferred from his testimony that in fact, there was no fault in the studs at the beginning of the flight, otherwise it would have been detected during the inspection made prior thereto. According to x x x, the loosening and consequent breakage of the studs in question were due to vibration. Considering that appellant's airship had been flying for three hours from Hongkong before the aforesaid defect had developed or was detected, such fault, in all likelihood, was caused by the vibration of the engine during the said flight. It can, therefore, be safely assumed that the controversial defect was an unforeseen one, against which human care and foresight could not guard, and was not caused, in any degree, by the negligence of any member of appellant's aircraft crew or its agents."

Conclusion

It is well-nigh impossible to assess fully, in so brief a space as this, the magnitude of a man's legal erudition; more so, because the Justice under review has unselfishly devoted the best years of his life to the noble pursuit of "the law." [55] But the foregoing cross-section of his works is now presented for circulation as currency, legal tender in juristic thought.

Summing up, this writer submits without a moment's hesitation that (1) Gutierrez David, the *paterfamilias*, has proved an enviable record in fulfilling his moral and legal obligations to the home; (2) Gutierrez David, the lawyer, and later judge, has thus far lent his judicious hand in steering the course of Law and Justice along the smooth lane of Right; and (3) lastly, Gutierrez David, the Presiding Justice of the Court of Appeals, at 65, has won the well-merited laurels in having more than assisted in the administration of justice [56] in these trying times. Honors, however, are not his idea of "contentment", rather:

> "Thus humble let me live and die,
> Nor long for Midas' golden touch;
> If heaven more generous gifts deny,
> I shall not miss them much,—
> Too grateful for the blessing lent
> Of simple tastes and mild content!" [57]

ROMAN D. TANJUAKIO *

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[55] "the law" contradistinguished from "a law". *See* PASCUAL, LEGAL METHOD (1956) 10 et seq.

[56] The administration of justice is the firmest pillar of good government (inscription in the New York County Supreme Court building); "The rains fell and the floods came and the winds blew, and they beat upon that house and it fell not: for it was founded upon a rock" (Matt. 7: 25).

[57] Oliver Wendell Holmes' "Contentment" (The Oxford Book of American Verse, 191 (1952).

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