DECISION OF THE COURT OF INDUSTRIAL RELATIONS

Hotel & Restaurant Free Workers (FFW), Complainant vs. Kim San Cafe & Restaurant et al., Respondents, Case No. 159-ULP, Lanting, J.

1. COURT OF INDUSTRIAL RELATIONS; UNFAIR LABOR PRACTICES; REMEDIES AND PENALTIES. — In the event of a finding by the Court in an unfair labor practice case initiated under section 5, Republic Act No. 875, that any person has engaged or is engaging in unfair labor practice, only the remedies provided in said section may be granted. In such case, the Court should not and cannot at the same time impose the penalties prescribed in section 25, Republic Act No. 875. On the other hand, in case the imposition of the penalties prescribed in section 25 is sought, a criminal complaint or informaiton must be filed and the requirements of due process as to procedure and evidence in ordinary criminal cases must be observed.

2. ID.; ID.; CHARGE OF UNFAIR LABOR PRACTICE NOT A CRIMINAL COMPLAINT. — The charge filed by the complainant union cannot in any way be considered as a criminal complaint or information which could serve as the basis of a criminal proceeding. Moreover, the absence of an arraignment and plea which, among others, are fundamental requirements of due process in criminal cases, is sufficient to cause the setting aside of the imposition of a fine in such case.

3. ID.; ID.; PROCEDURE TO BE FOLLOWED IN UNFAIR LABOR PRACTICE CASES. — In a case initiated under Section 5 of Republic Act No. 875, this Court cannot in the same proceeding consider both the unfair labor practice aspect and the criminal aspect. The procedure to be followed in unfair labor practice cases is prescribed in said section and it is certainly very lax and liberal as compared to the procedure followed in criminal cases. The imposition of a fine or imprisonment pursuant to Section 25 in an unfair labor practice case initiated under Section 5 would result in the criminal conviction of a person in violation of due process. Furthermore, there is marked incompatibility between the two proceedings as regards the sufficiency of evidence. In an unfair labor practice case, only substantial evidence is required to sustain a finding that unfair labor practice has been committed; on the other hand, to justify a judgment of conviction in a criminal case, there must be proof beyond reasonable doubt.

4 ID.; ID.; IMPOSITION OF A FINE; WHEN PROPER. — Imposition of a fine under the first paragraph of section 25, Republic Act No. 875, can only be done in case there is an express finding that a person has violated section 3 of that Act. On the other hand, to justify the imposition of the fine under the second paragraph of section 25, there must be an express finding that a person has committed a violation of Republic Act No. 875, which is declared unlawful. Where there had been no such findings but only the imposition of the fine, the requirement of section 2 of Rule 116 of the Rules of Court that a judgment of conviction shall state "the legal qualification of the offense constituted by the acts committed by the defendant" had not been complied with.

5. ID.; ID.; INITIAL STEPS IN UNFAIR LABOR PRACTICE PROCEEDINGS. — Under the provision of section 5 (b) of Republic Act No. 875, there are three initial steps which must be followed in unfair labor practice proceedings, namely:

(1) The filing of a charge by the offended party or his representative that a person has engaged or is engaging in unfair labor practice;

(2) The investigation of such charge by this Court or any agency or agent designated by it;

(3) The issuance and service by this Court or its designated agency or agent of a complaint upon the person charged with committing unfair labor practice. The above steps, among others, are indispensable requirements of due process in unfair labor practice proceedings and not mere technicalities of law and procedure.

6 ID.; ID.; FUNCTION OF A CHARGE. — The function of a charge is merely that of putting the machinery of the Board in motion. A charge may, by limited analogy, be compared with an 'information' in criminal procedure A charge, like an information, is neither a pleading nor proof, but is merely a verified notification to an appropriate government agency of the commission by a designated person of a specific violation of the law over which such agency has jurisdiction. At this point the similarity between a charge and an information ends. In the case of an information, if the information complies with the requirements of the law, appropriate process may issue forthwith to bring the offender into court. However, in the case of the charge filed with the Board, such is not the procedure. In proceedings before the Board the mere filing of the charge, no matter how grave the alleged offense nor how adequately the offense may be recited, does not in and of itself sanction and precipitate issuance of summoning process. With the filing of the charge, it devolves upon the Board's General Director, but subject to review and final decision by the Board's General Counsel, to conduct the preliminary investigation to determine the necessity for the issuance of and, if required by the facts, to issue the complaint.

7. ID.; ID.; INDISPENSABILITY OF A PRELIMINARY INVESTIGATION. — Under the original Act it was held that once a charge was filed it was incumbent upon the Board to investigate the matter. While in evaluating the results of the investigation the Board enjoyed broad discretion and the right

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SUPREME COURT DECISION (*Continued*)

tiff, and consequently her personality, has been proven the defendant has no right to dispute them. x x x." (Lubrico vs. Arbado, 12 Phil. 591, 596-597)

"There is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status on heirs to an intestate estate on these who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor." (Hernandez vs. Padua, syllabus, 14 Phil. 194.)

See, also, Inocencio v. Gat-Panden, 14 Phil. 491; Sy Joe Lieng vs. Sy Quia, 16 Phil. 137; Alnea v. Alcantara, 16 Phil. 439; Irlando v. Pitargas, 28 Phil. 383; Castillo v. Castillo, 23 Phil. 364; Noble Jose v. Uson, 27 Phil. 73; Beltran v. Soriano, 32 Phil. 66; Bona v. Briones, 38 Phil. 276; Uy Coque v. Navas L. Sioca, 45 Phil. 430; Fule v. Fule, 46 Phil. 317; Orozco v. Garcia, 50 Phil. 149; Gibbs v. Gov't of the P.I., 59 Phil. 293; Mendoza Vda. de Bonnevie v. Cecilio Vda. de Pardo, 59 Phil. 456; Lorenzo v. Posadas, 64 Phil. 363; Gov't v. Serafica, 32 Off. Caz. 334; De Vera vs. Galauran, 67 Phil. 213; and Cuevas v. Abesamis, 71 Phil. 147.

In view of the foregoing, the order appealed from is hereby reversed, and let the record of this case be, as it is hereby remanded to the court of origin for further proceedings not inconsistent with this decision, with costs against the defendants-appellees.

It is so ordered.

Paras, C.J., Pablo, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, and *J. B. L. Reyes, J.J.,* concur.

Order appealed from, reversed

of decision, the duty of making the preliminary examination itself was a mandatory duty. Although the amended Act prescribes that the Board's General Counsel 'shall have final authority, on the Board's behalf, in respect of the investigation of charges and issuance of complaints under Section 10 . . .,' it is doubtful whether this provision effects any change in regard to the basic duty of conducting a preliminary investigation. While this provision of the amended Act manifestly has the effect of shifting the right of decision in evaluating the results of the investigation, it is not likely that it will be construed as making the task of conducting an investigation a matter of option and prerogative in the Board's General Counsel.

8. ID.; ID.; NATURE OF A COMPLAINT. — Where it is properly determined from the preliminary investigation that there is necessity and justification therefor, the Board has the power to issue a 'complaint'. While the Board has no right to initiate complaint proceedings by filing a charge itself, and, therefore, must await the filing of a charge by an interested party befor it may act, once a charge is properly filed and there follows an investigation which discloses the necessity or propriety of issuing a 'complaint,' the Board, through its Regional Director and subject to the final decision of the Board's General Counsel on the question of necessity or propriety, then has the right to issue the 'complaint'. However, it should be noted that although the Regional Director for the Board, has the right to issue a 'complaint,' he may not be compelled to do so by order of any court, agency or person other than the Board or its General Counsel since this function is one in which the Board, and ultimately, its General Counsel, alone may exercise their own discretion.

9. ID.; ID.; DIFFERENCE BETWEEN THE "CHARGE" AND THE "COMPLAINT". — The difference between the 'charge' and the 'complaint' is basic and fundamental. While the charge, as we have previously seen, is a prime condition to the initiation of complaint proceedings and is, so to speak, the trigger to the action, the filing of a charge does not make the person or the organization filing the charge the 'actor' in the premises; nor is the mere filing of the charge the commencement of the proceedings proper. Treating the term 'proceedings' as the equivalent of 'litigation', the proceedings commence only with the issuance by the Board of a complaint, from which time forward the Board's judicial functions come into play. Its prior acceptance of the charge and the resultant investigation are purely of an administrative character.

Eduardo D. Rivera for the complainant.
Crisanto T. Blaquera for the respondents.

RESOLUTION

In the first paragraph of the dispositive portion of the order sought to be reconsidered, respondents Tan Guan and Sy Teh were "ordered to pay a fine of five hundred (₱500.00) pesos, pursuant to Section 25, Republic Act No. 875." We are of the opinion that this should be set aside. In the order of the undersigned dated October 3, 1953 in Case No. 4-ULP entitled "La Mallorca Local 101 vs. La Mallorca Taxi" the following pronouncement was made:

> "It is our opinion that in the event of a finding by this Court in an unfair labor practice case initiated under section 5, that any person has engaged or is engaging in unfair labor practice, only the remedies provided in said section may be granted. In such case, this Court should not and cannot at the same time impose the penalties prescribed in section 25. On the other hand, in case the imposition of the penalties prescribed in section 25 is sought, a criminal complaint or information must be filed and the requirements of due process as to procedure and evidence in ordinary criminal cases must be observed."

When the case was elevated to the Court in banc, said Order was affirmed in whole by four judges of this Court and the Judge who penned the Order sought to be reconsidered in the instant case concurred in the result.

We have examined carefully the record and we find that the instant case was initiated by the filing of a "charge for Unfair Labor Practice" by the complainant union. After an Answer to said charge was filed by "Counsel for the Respondent-Emilia Go and new management", a hearing on the merits was held by the trial Court after which the Order in question was issued. We need not stress the fact that no criminal information has been filed in the case at bar. The charge filed by the complainant union cannot in any way be considered as a criminal complaint or information which could serve as the basis of a criminal proceeding. Moreover, the absence of an arraignment and plea which, among others, are fundamental requirements of due process in criminal cases, is sufficient to cause the setting aside of the imposition of a fine in this case.

In a case initiated under Section 5 of Republic Act No. 875, this Court cannot in the same proceeding consider both the unfair labor practice aspect and the criminal aspect. The procedure to be followed in unfair labor practice cases is prescribed in said section and it is certainly very lax and liberal as compared to the procedure followed in criminal cases. The imposition of a fine or imprisonment pursuant to Section 25 in an unfair labor practice case initiated under Section 5 would result in the criminal conviction of a person in violation of due process. Furthermore, there is marked incompatibility between the two proceedings as regards the sufficiency of evidence. In an unfair labor practice case, only substantial evidence is required to sustain a finding that unfair labor practice has been committed; on the other hand, to justify a judgment of conviction in a criminal case, there must be proof beyond reasonable doubt.

There are still other considerations which militate against the imposition of fine in this case. It is not clear whether the fine of ₱500.00 is being imposed pursuant to the first or second paragraph of Section 25 of Republic Act No. 875. If the fine is imposed under the first paragraph then the order in question is fatally defective because this can only be done in case there is an express finding that a person has violated Section 3 of the Act. No such finding, however, was made by the trial Court. On the other hand, to justify the imposition of a fine under the second paragraph of Section 25, there must be an express finding that a person has committed a violation of Republic Act No. 875 which is declared unlawful. Again, no such finding has been made. Thus, the requirement of Section 2 of Rule 116 of the Rules of Court that a judgment of conviction shall state "the legal qualification of the offense constituted by the acts committed by the defendant" has not been complied with.

The second paragraph of the dispositive portion of the order of the trial Court reads as follows:

> "Respondents Tan Guan, Emilia Go and Sy Teh are also ordered to offer reinstatement to Pedro Vinluan with back pay from December 10, 1953, until the date of his actual readmission. Said respondents are also directed to cease and desist from discouraging their employees from becoming members of a labor organization, and from interferring in any other manner with their employees in the exercise of their rights to self-organization, or to join labor organization, or bargain collectively, through representatives of their own choosing."

In this connection we find that the procedure prescribed by Sec. 5(b) of Rep. Act No. 875 was not followed. Said section provides:

> "(b) The Court shall observe the following procedure without resort to mediation and conciliation as provided in section four of Commonwealth Act Numbered One hundred and three, as amended, or to any pre-trial procedure. Whenever it is charged by an offended party or his representative that any person has engaged or is engaging in any such unfair labor practice, the Court or any agency or agent designated by the Court must investigate such charge and shall have the power to issue and cause to be served upon such person a complaint stating the charges in that respect and containing a notice of hearing before the Court or a member thereof, or before a designated Hearing Examiner at the time and place fixed therein not less than five nor more than ten days after serving the

said complaint. The person complained of shall have the right to file an answer or otherwise (but if the Court shall so request, the appearance shall be personal) and give testimony at the place and time fixed in the complaint..."

Under the foregoing provision there are three initial steps which must be followed in unfair labor practice proceedings, namely:

(1) The filing of a charge by the offended party or his representative that a person has engaged or is engaging in unfair labor practice;

(2) The investigation of such charge by this Court or any agency or agent designated by it;

(3) The issuance and service by this Court or its designated agency or agent of a complaint upon the person charged with committing unfair labor practice. We can say that the above steps, among others, are indispensable requirements of due process in unfair labor practice proceedings and not mere technicalities of law and procedure. The function of a charge under the American law after which our law was patterned is best explained by I. Herbert Rothenberg in his "Rothenberg on Labor Relations" as follows:

> "The function of a charge is merely that of putting the machinery of the Board in motion. A charge may, by limited analogy, be compared with an 'information' in criminal procedure. A charge, like an information, is neither a pleading nor proof, but is merely a verified notification to an appropriate government agency of the commission by a designated person of a specific violation of law over which such agency has jurisdiction. At this point the similarity between a charge and an information ends. In the case of an information, if the information complies with the requirements of the law, appropriate process may issue forthwith to bring the offender into court. However, in the case of the charge filed with the Board, such is not the procedure. In proceedings before the Board the mere filing of the charge, no matter how grave the alleged offense nor how adequately the offense may be recited, does not in and of itself sanction and precipitate issuance of summoning process. With the filing of a charge, it devolves upon the Board's General Director, but subject to review and final decision by the Board's General Counsel, to conduct a preliminary investigation to determine the necessity for the issuance of and, if required by the facts, to issue the complaint." (pp. 596-597)

The indispensability of the second step, that is, the preliminary investigation of the charge, is discussed by the same author in this wise:

> "Under the original Act it was held that once a charge was filed it was incumbent upon the Board to investigate the matter. While, in evaluating the results of the investigation the Board enjoyed broad discretion and the right of decision, the duty of making the preliminary examination itself was a mandatory duty.
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> "Although the amended Act prescribes that the Board's General Counsel 'shall have final authority, on the Board's behalf, in respect of the investigation of charges and issuance of complaints under Section 10. . .,' it is doubtful whether this provision effects any change in regard to the basic duty of conducting a preliminary investigation. While this provision of the amended Act manifestly has the effect of shifting the right of decision in evaluating the results of the investigation, it is not likely that it will be construed as making the task of conducting an investigation a matter of option and prerogative in the Board's General Counsel". (pp. 598-599)

As to the nature of a complaint and its basic difference from a charge we again quote from the same author:

> "Where it is properly determined from the preliminary investigation that there is necessity and justification therefore, the Board has the power to issue a 'complaint.' While the Board has no right to initiate complaint proceedings by filing a charge itself, and, therefore, must await the filing of a charge by an interested party before it may act, once a charge is properly filed and there follows an investigation which discloses the necessity or propriety of issuing a 'complaint,' the Board, through its Regional Director and subject to the final decision of the Board's General Counsel on the question of necessity or propriety, then has the right to issue the 'complaint'. However, it should be noted that although the Regional Director, for the Board, has the right to issue a 'complaint,' he may not be compelled to do so by order of any court, agency or person other than the Board or its General Counsel since this function is one in which the Board, and ultimately, its General Counsel, alone may exercise their own discretion.
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> "From the foregoing it may be gathered that the difference between the 'charge' and the 'complaint' is basic and fundamental. While the charge, as we have previously seen, is a prime condition to the initiation of complaint proceedings and is, so to speak, the trigger to the action, the filing of a charge does not make the person or the organization filing the charge the 'actor' in the premises; nor is the mere filing of the charge the commencement of the proceedings proper. Treating the term 'proceedings' as the equivalent of 'litigation,' the proceedings commence only with the issuance by the Board of a complaint, from which time forward the Board's judicial functions come into play. Its prior acceptance of the charge and the resultant investigation are purely of an administrative character." (pp. 599-600)

In the instant case, while it is true that a charge of unfair labor practice was filed by the union, still the record discloses that there has been no preliminary investigation of such charge nor is there a valid complaint issued and served by this Court upon the respondents herein. Instead, the trial Court immediately conducted a hearing solely on the basis of the charge filed, and it is our opinion that in so doing it committed a grievous and fatal error.

We must confess that we are at a loss to understand the trial Court's stand as regards respondent Emilia Go. Both witnesses for the complainant testified that at the time of Pedro Vinluan's dismissal only Tan Guan and Sy Teh were the co-owners of the Kim San Cafe and Restaurant. There is no evidence whatsoever that at that time Emilia Go was in one way or another connected with said restaurant. Since this is so then obviously she could not have committed any act of unfair labor practice against the complainant. On the other hand, Emilia Go testified that she bought the share of Tan Guan in the restaurant on Jan. 1, 1954. The trial Court seems to be of the opinion that the sale of Tan Guan's interest to Emilia Go was simulated and fictitious. If this is so, then Emilia Go never became a co-owner of the establishment and hence incurred no liability under the Act. On the other hand, if the sale is considered bona-fide, then Emilia Go became a co-owner only after the discharge of Pedro Vinluan took place and, therefore, no cease and desist order nor any affirmative order may be issued by this Court against her. We therefore conclude that as far as Emilia Go is concerned, the trial Court's Order has no justification.

IN VIEW OF THE FOREGOING, let the order of the trial Court, dated March 19, 1954, be, as it is hereby, set aside.

SO ORDERED.

(SGD.) ARSENIO C. ROLDAN
Presiding Judge

(SGD.) JUAN L. LANTING
Associate Judge

(SGD.) V. JIMENEZ YANSON
Associate Judge

BAUTISTA, *J.*: dissenting —

I beg to differ with the opinion of this Court expressed in its Resolution of June 25, 1954, setting aside the Order of the trial Court of March 19, 1954. The stand of the Court en banc in its majority opinion can be stated briefly, and I quote:

> "While it is true that a charge of unfair labor practice was filed by the union, still the record discloses that there has (had) been no preliminary investigation of such charge nor is (was) there a valid complaint issued and served by this Court

upon the respondents herein. Instead the trial Court immediately conducted a hearing solely on the basis of the charge filed, and it is our opinion that in so doing, it committed a grievious and fatal error."

It is obvious that said opinion was based on American rulings and interpretations. While it is to be admitted that our law on the matter, Rep. Act No. 875, was "patterned" after the American law, it does not necessarily follow that both laws are exactly the same. Even a cursory reading of both laws will bare basic differences of policy and procedure. While the American law expressly provides for a "preliminary investigation" and the machinery therefor, Rep. Act No. 875 is not as insistent on the same. On the other hand, Rep. Act No. 875 contains provisions which are not present in the American law.

Further difficulty lies in the failure of this Court to promulgate its own Rules and Regulations regarding unfair labor practices similar to the Rules and Regulations of the National Labor Relations Board of the United States. Nevertheless, in the absence of such definite rules, this Court cannot legislate for itself and read into our law provisions of the American law which our Congress deliberately left out.

I disagree with the opinion that without such "preliminary investigation", the respondents were deprived of "due process". For "due process" is a matter of substance and not merely of form. The respondent in this case were not deprived of their right to due process. There was a fair and impartial hearing after they were served copies of the charge and summons. They were represented throughout the proceedings by an attorney of their own choice. There was honest evaluation of the evidence presented and no objection to the conduct of the hearing was made by respondents or their attorney.

The Court is presently over-burdened with work and its limited personnel cannot cope with the myriad details of the administration of justice. If we apply the system in the National Labor Relations Board to this jurisdiction (granting that such procedure is provided for in Rep. Act No. 875), this Court will be placed in the anomalous and manifold role of "accuser, prosecutor, judge and executioner" and the functions and burdens as well will become more multiple and varied. In effect, this Court will not only receive and investigate the charges, but also act as an investigatory agent, lodge the complaint, act as accuser and in the conduct of the hearing, act as both the prosecutor and trier of the facts and thereafter as the "executioner".

That is too much to expect of the Court, and it is our opinion that such a procedure is contrary to the policies of Rep. No. 875. To expect the trial Court to go through the whole proceeding *twice* is, in the light of the express provisions of Rep. Act No. 875, not only unreasonable but violative of the statute.

Another difference between the American law and Rep. Act No. 875 is that, while the latter provides for penalties for violation of Section 3 thereof, the former does not contain any like provision. In addition therefore to the remedies provided in Section 5 of Rep. Act No. 875, the Court can impose at the same time the penalties prescribed in Section 25. It is also our opinion that a person who violates Section 4 (a) (1) automatically violates Section 3.

Section 3 states: "Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organization of their own."

Section 4 (a) (1) makes, any interference with, restraint or coercion of employees in the exercise of their right guaranteed in Section 3 an "unfair labor practice" for an employer. A violation therefore of Section 4 (a) (1) is also a violation of Section 3. Otherwise, there can be no violation of Section 3 and consequently, there cannot be any application of the first paragraph of Section 25. In the United States, this is also the case. A violation of any of the four subdivisions of section 8 (a) is regarded in addition as a violation of subdivision (1) which in turn is considered a violation of Section 7.

It is quite clear from the Order of the Court dated March 19 that respondents Tan Guan and Sy Teh were guilty of violating Section 3 of the Act by incriminating and dismissing from employment one Pedro Vinluan, an employee in the Kim San Cafe & Restaurant by reason of his union activities. Respondent Emilia Go was included in the "cease and desist" order because the Court found that she was at least an "agent" of Tan Guan and Sy Teh, contemplated in Rep. Act No. 875.

The undersigned could not understand why the Resolution setting aside the Order of the trial Court did not mention a word about the dismissal of Pedro Vinluan. Based on the evidence introduced at the hearing of this case and on the undersigned's personal observation, there can be no doubt as to the fact that Pedro Vinluan was dismissed only because of his union activities. The trial Court therefore ordered the respondents to offer reinstatement with backpay to Pedro Vinluan from the time of his dismissal up to the date of his actual reinstatement. Was the procedure of the trial Court so "fatal" as to render both the complainant Union and Pedro Vinluan helpless?

I ask the other members of this Court: Will the law that complainants now invoke for the protection of the rights guaranteed thereunder be the very instrument of their destruction?

And now, I wish to make of record the following:

On or about April 21, 1954, this Court adopted a Resolution denying the motion for reconsideration of the Order of March 19, 1954, filed by the Repsondents. Said Resolution was issued by the undersigned, with the concurrence of Judges Castillo and Yanson. A photostatic copy of said Resolution is hereto attached and marked as "Annex A".

After the lapse of two months, that is, on June 25, 1954, Judge Lanting rendered his dissenting vote, which was concurred with by Presiding Judge Roldan. A photostatic copy of said dissenting vote is hereto attached and marked as "Annex B".

On July 14, 1954, a second Resolution was prepared, bearing the date of June 25, 1954, setting aside and reversing said Order of March 19, 1954, which order was affirmed by the first Resolution of April 21, 1954. This second Resolution was issued by Judge Lanting and concurred with by Judges Roldan and Yanson. A photostatic copy of this second Resolution is hereto attached and marked as "Annex C". Judge Yanson changed his vote and signed the second Resolution after having written in front of his signature in the first Resolution, the following: "Concurro con Judge Lanting". Obviously, this annotation could not have been made before Judge Lanting's vote was rendered on June 25, 1954. There was yet no dissenting opinion to concur with.

There being the requisite number of judges necessary to render a decision, on April 21, 1954, the Court pronounced its judgment, and since then, said first Resolution became the lawful decision of the Court.

Of course, Judge Lanting may render his opinion and Judge Yanson change his vote, at any time, even perhaps two months after the adoption of the first Resolution. Their conduct does not concern us. It makes no difference whether their actuation is proper or not. The thing that matters is that such anomaly exists and that in order to place the Court above suspicion, something should be done to stop such practice.

Manila, July 22, 1954.

(*Continued on page 575*)

DIGEST OF DECISIONS OF THE COURT OF APPEALS

PROPERTY: POSSESSION; PRESUMPTION IN FAVOR OF ACTUAL POSSESSOR. — When a party is admittedly in the actual possession of the disputed land, all presumptions are, and all doubts must be resolved, in his favor, it being a rule of law that the present possessor is to be preferred should a question arise regarding the fact of possession (Art. 530, new Civil Code; Art. 445, old). *Victorina Culasito and Francisco Sical, plaintiffs and appellants, vs. Teodoro Clidoro, defendant and appellee, C.A. No.* 10111-*R, November* 7, 1953, *Reyes, J.B.L., J.*

EVIDENCE; INTRODUCTION OF ADDITIONAL EVIDENCE AFTER PARTY HAS RESTED HIS CASE; COURT'S DISCRETION. — It is discretionary with the trial court to admit further evidence after the party offering it has rested, which discretion will not be reviewed except in clear cases of abuse (Lopez vs. Libor, 46 Off. Gaz., (Supp. to No. 1, 211); and this discretion can be said to have been abused only if the additional evidence rejected by the court below would have altered or changed the result of the case. *Ibid, Ibid.*

CRIMINAL LAW; EVIDENCE; WITNESS; TESTIMONY; UNCONSCIOUS PARTNERSHIP. — It has been said that "Perhaps the most subtle and prolific of all the fallacies of testimony arises out of unconscious partisanship. Upon the happening of an accident the occasional passengers on board of a streetcar are very apt to side with the employees in charge of the car," (Wellman, The Art of Cross-examination, 161, 614 and 165). *The People of the Philippines, plaintiff and appellee, vs. Antonio Reyes, defendant and appellant, C. A. No.* 10277-*R, November* 11, 1953, *Dizon, J.*

ID.; DAMAGE TO PROPERTY THROUGH RECKLESS IMPRUDENCE; INDEMNITY; PAYMENT OF DAMAGES BY INSURANCE COMPANY DOES NOT RELIEVE ACCUSED OF HIS OBLIGATION TO REPAIR DAMAGES CAUSED THROUGH HIS NEGLIGENCE; CASE AT BAR. — Accused contends that inasmuch as the owner of the Ford car has already been paid his damages by an insurance company, the lower court erred in sentencing him to pay damages. It should be taken into account, in this connection, that the payment made by the insurance company was made pursuant to its contract with the owner of the Ford car and was clearly not made on behalf of accused. It cannot be said, therefore that the payment had relieved the accused of his obligation to repair the damages caused through his negligence. The insurance company, however, must be deemed to have been subrogated to the rights of the offended party as far as the damages awarded are concerned. *Ibid, Ibid.*

CRIMINAL LAW; EVIDENCE; RULE OF "RES INTER ALIOS ACTA"; CONFESSION OF CONSPIRATOR; ADMISSIBILITY.— The rule of *res inter alios acta* is well established and consistently adhered to in this jurisdiction. "The rights of a party cannot be prejudiced by the act, declaration or omission of another and proceedings against one cannot affect another x x x" (section 10, Rule 123, Rules of Court). Only the confession of a conspirator, made during the existence of the conspiracy, is admissible against his co-conspirator. Again a confession is admissible against a co-accused when it is adopted by the latter or, when given within his hearing, he kept silent about it. *People of the Philippines, plaintiff and appellee, vs. Pedro Obejera, Lupo Fortus and Gregorio Calibara, defendants and appellants, C.A. No.* 10052-*R, November* 13, 1953, *Martinez, J.*

CRIMINAL LAW AND PROCEDURE; SEPARATE TRIAL; USE OF CO-DEFENDANT AS PROSECUTION WITNESS AGAINST HIS CO-DEFENDANT; SECTION 9, RULE 115, RULES OF COURT. — It is well-settled that the granting of a separate trial when two or more defendants are jointly tried with an offense is discretionary with the trial court (section 8, Rule 115, Rules of Court; People vs. Go, L-1527, February 27, 1951); and, that when two or more persons are jointly prosecuted for the same crime, but separately tried, either of the said defendants is competent as a witness against the other, although the case against the witness himself is still pending (People vs. Parcon, 55 Phil., 970; People vs. Trazo, 58 Phil., 258). While section 9, Rule 115, of the Rules of Court, limits the exercise of the discretion of the court in discharging an accused person who is to be used as a witness, it does not prohibit the use of one co-defendant as a witness for the prosecution, when such co-defendant voluntarily takes the witness stand to testify against a co-defendant (People vs. Trazo, (Supra); People vs. Badilla, 48 Phil., 718; and U.S. vs. Remigio, 37 Phil., 599). *People of the Philippines, plaintiff and appellee, vs. Regalado Magsino et al., defendants and appellants, C.A. No.* 8073-*R, November* 16, 1953, *De Leon,J.*

LAND REGISTRATION; EVIDENCE; PRESUMPTION, "JURIS ET DE JURE" OF COMPLIANCE WITH NECESSARY CONDITION FOR GRANT BY THE STATE. — When the possession of lands by the common predecessors-in-interest of the claimants has been, at least, prior to July 26, 1894 and this possession has been passed on to the claimants and the evidence shows that it has been continuous, uninterrupted, open, adverse and in the concept of owner, there is a presumption *juris et de jure* that all the necessary conditions for a grant by the State have been complied with. Pursuant to the provisions of section 48 (b) of Commonwealth Act No. 141, said claimants are entitled to the registration of their title to the lands applied for (Pamintuan vs. Insular Government, 8 Phil., 485; Susi vs. Razon, 48, Phil., 424; Government of P.I. vs. Adelantar, 55 Phil., 793; Gov't of P.I. vs. Abad 56 Phil., 75). *Director of Lands, petitioner and appellee, vs. Rufina Rendon, movant and appellant, Eugenio Z. Rendon, oppositor and appellee, C. A. No.* 8463-*R, November* 20, 1953, *Ocampo, J.*

ID.; DECREE OF REGISTRATION MUST BE DEFINITE AND SPECIFIC IN ACCORDANCE WITH SURVEY PLAN AND TECHNICAL DESCRIPTION. — In a land registration proceeding the decree of registration must be definite and specific and in accordance with a plan and technical description of the property claimed as prepared by a competent surveyor who has surveyed the property, othewise the court cannot order the issuance of the corresponding decrees of registration of the respective titles of the petitioners. *Ibid, Ibid.*

DONATION; DONATION MORTIS CAUSA NOT EXECUTED WITH THE FORMALITIES OF A WILL, INVALID. — According to our jurisprudence, a donation *mortis causa* which has not been executed with the formalities of a will is of no force and effect. *Fidela Arceo, plaintiff and appellant, vs. Gerardo Arceo, Guillermo Arceo, Francisco Arceo and Raymundo Plata, defendants and appellees, C.A. No.* 9020-*R, November* 25, 1953, *Felix, J.*

LAND REGISTRATION; REGISTER OF DEEDS; ERRONEOUS ANNOTATION ON CERTIFICATE OF TITLE; CASE AT BAR. — The annotation of the affidavit at the back of the new transfer certificate of title (Exhibit A) which did have for the purpose to inscribe any lien or encumbrance on the pro-

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DECISION OF THE COURT OF INDUSTRIAL RELATIONS (*Continued*)

CASTILLO, *J.*, concurring and dissenting.

I concur only insofar as the Resolution eliminates or nullifies the imposition upon the respondents of a fine of five hundred pesos (₱500.00). But as regards the reinstatement with back pay of Pedro Vinluan and the requirement that the respondents cease and desist from committing unfair labor practices, it appearing that they are supported by substantial evidence, the order sought to be reconsidered, I think, should not be disturbed.

Accordingly, the Order of March 19, 1954 issued by the trial court is hereby modified.

Manila, Philippines, August 7, 1954.