PHILIPPINE LAW JOURNAL

Published monthly, July to March inclusive, during the academic year, by the College of Law, University of the Philippines.

Subscription ₱5.00 per year. **Single number 60 centavos**

RECENT DECISIONS OF THE SUPREME COURT REVIEWED

WILLS—PROBATE NOT AFFECTING VALIDITY—IMPROPER CHARGE OF COUNSEL FEES.—*Tirso Daconay vs. Silverio Hernandez, R. G. No. 27871*—July 21, 1928. *Facts:* In a will which was probated in court the deceased testator greatly favored his natural children to the prejudice of his legitimate child. *Held:*—The admission of the will to probate did not validate all of its provisions as to the distribution of the estate. The devises and bequests made by the testator in favor of the natural children could only be taken from the one third of "libre disposicion" and devises and bequests in excess of that third would be invalid, notwithstanding the fact that the will had been duly probated.

The will was executed on September 1, 1904, and probated on April 24, 1906. Appellants in their second assignment of error contended that "the court erred in determining the rights of the parties as to the inheritance in conformity with the Civil Code and not in accordance with the earlier legislation" *Held:*—"The question discussed under the second assignment of error might possibly have been decided in favor of the appellants if it had been raised in time. But it is presented for the first time in the appellants' brief and during all the years preceeding the appeal, it seems to have been taken for granted that the Civil Code and not the earlier legislation, governs the distribution of the estate in the present case. The case has been tried on that theory and the trial judge based his decision of September 23, 1916, thereon without objection on the part of the herein appellants and no appeal was taken by them from that decision, a decision which therefore would have been affirmed if this court had not been led astray by the false representations of the administrator of the estate. In these circumstances, we are not inclined to decide the case upon another and different theory, nor is it now our duty to do so."

An administrator may employ competent counsel on questions which affect his duties as administrator and on which he is in reasonable doubt and reasonable expenses for such services may be charged against the estate subject to the approval of the court. But when the administrator deliberately and knowingly resorts to falsified documents for the purpose of defrauding the legitimate heirs of the deceased and thru his own breach of trust brings on the litigation for which he demands reimbursement for counsel fees he is not entitled to such reimbursement.

The *per diem* compensation of an administrator can only be allowed for *necessary services*. If the prolongation of the settlement of the estate is due entirely to the efforts of the administrator to defraud the legitimate heirs he is not entitled to compensation for that period. (*J. James Ostrand*) (*Reported by P. C.*)

FAILURE TO INTRODUCE A WITNESS NOT PREJUDICIAL ERROR WHEN ATTORNEY FOR THE DEFENSE FAILS TO INSIST IN HIS RIGHT THEREBY WAIVING IT. *P. P. I. vs. Juana Yumiaco, R. G. No. 28922. Facts*: Accused was convicted for illegal possession of opium. On appeal she contends that the court erred in not allowing her husband to testify as witness for the defense. Held: As to the introduction of the husband of the accused as witness for the defense it appears that if it is true that her attorney asked leave to present the husband of said accused still he failed to insist in his right and rested his case. This error is not prejudicial. By his failure to insist in his demand of presenting said witness the attorney for the defense lent his conformity and acquiescence when he closed the introduction of his evidence. One cannot be regarded as prejudiced who acquiesces and consents. "Scienti et volenti nulla fit injuria." *Romualdez, J.* (*Division*) *Briefed by Pedro Camus.*

CRIMINAL PROCEDURE; PLEA OF GUILTY NOT UNDER OATH; WITHDRAWAL OF PLEA.—*P. P. I. vs. Moro Quinta, R. G. 29373, 29374, 29375*—August 4, 1928. *Facts*: Defendant in this case pleaded guilty of the crimes of parricide and of lesiones graves. Four days after rendition of judgment, his lawyer de oficio moved to withdraw the plea of "guilty" and to substitute a plea of "not guilty." The trial court denied the motion. Defendant appealed, assigning as errors: (1) The plea of guilty was not made under oath, and (2) the denial of the motion to substitute a plea of "not guilty" for the plea of "guilty."

Held: "..... none of these legal provisions (secs. 24 and 25, G. O. No. 58) requires that the plea of guilty put in by the accused be made under oath. The reason is obvious. The spirit of self-preservation and protection induces a man to do or to say that which is favorable to him, be it true or not; on the contrary, he is reluctant to say or to do that which is prejudicial to him. When an accused admits his guilt, he acts against his own interests and no oath is required to believe his statement, unless it is proven that he was influenced by circumstances foreign to his will."

"With respect to the second question raised by the second assignment of error, section 25 of General Orders No. 58, cited above, leaves to the sound discretion of the court to permit an accused to withdraw the plea of guilty and to substitute it for a plea of not guilty, and unless an abuse has been committed in its exercise, it is not proper to alter it."

"In the present case, the accused herein, on being arraigned on the complaint for parricide presented against him, was assisted by a lawyer de oficio, was informed, on the contents of the same for it was read to him in his dialect, and he was allowed to explain how he committed the crime. And there is nothing in the record to show that when he pleaded guilty, he was subject to any influence, that annulled his will, and deprived him of all notion of the act he was realizing and its consequences."

The trial court acted within its discretionary power and incurred in no error when it denied the substitution of pleas.

Sentence Affirmed. (In division, *Villareal, J.*) (*P. M. S.*)

ADMINISTRATIVE LAW; SUSPENSION OF OFFICER MUST BE MADE AS PROVIDED BY LAW—WHAT CONSTITUTES PROLONGATION OF PUBLIC OFFICE.—*P. P. I. vs. Jose Villanueva, R. G. 29013*—August 11, 1928. *Facts*: Defendant was a municipal councilor. The Court of First Instance convicted him of the crime of "allanamiento de morada" some time in May, 1927. The provincial governor, by letter dated May 16 and received May 25, advised him that he was suspended from his office as municipal councilor. On May 21, the provincial governor presented a complaint against the defendant to the Provincial Board. No copy of this complaint was sent to the defendant. The defendant attended the meetings of the Municipal Council on June 3 and June 20, taking part in its proceedings and signing the minutes as member. On August 23, the Provincial Board by resolution, fixed the trial of the case for August 26, and ordered that the accused be notified. On the day set, trial was had and the defendant was suspended. The present sentence of conviction is for his attendance at the meetings of June 3, and June 20, after he had received the letter from the provincial governor. The Supreme Court reversed the judgment and acquitted the defendant, holding that:

"The alleged suspension of May 16, could not have any effect because it was not made in accordance with the provisions of Article 2188 of the Administrative Code, as amended by Act No. 3167."

"Such suspension being null, it should be considered as if it had never been made and, therefore the attendance of the accused at the meetings of June 3, and June 20, cannot be considered as a prolongation of the exercise of his powers as councilor, from which office he was not legally suspended."

"As to the power of a public officer to suspend or dismiss a subordinate from his post, the rule is that the provisions of the law applicable to the case must be followed strictly (Mechem on Public Officers, p. 286); and when the law establishes or prescribes special proceedings for the validity of his acts, such procedure must also be followed strictly, because otherwise all proceedings would be null and of no value. (Sutherland on Statutory Construction, p. 545) and, as in the present case the provisions of Act No. 3167, amending article 2189 of the Administrative Code have not been followed, the proceedings in relation to the suspension of the accused must be declared null and he, therefore, has not infringed the provisions of article 370 of the Penal Code." (*In division, Villamor J.*) *Briefed by P. M. Syquia.*

CRIMINAL LAW AND PROCEDURE; PENALTIES FOR TWO OR MORE OFFENCES; ARTICLE 88 OF THE PENAL CODE; PROPER FINES AND INDEMNITIES SHOULD BE IMPOSED.—*P. P. I. vs. Rafael A. Aure*, R. G. 28996, 28997, 28998.—August 14, 1928. Defendant, chief clerk in the office of superintendent of schools of Zamboanga, defrauded 13 or more school teachers by a series of falsifications of public documents. In two previous cases, Nos. 27104 and 27105 the accused had been sentenced to a total of 22 years prision mayor, accessories and fines. The amounts involved in cases Nos. 28996, 28997, 28998 were ₱45.19, ₱41.12, ₱402.32 respectively. The judgment of the trial court in the first case,

No. 28996, was that the accused be sentenced to eleven years of prision mayor, to pay a fine of ₱1,000 to be perpetually disqualified from holding any public office, to indemnify the Government in ₱45.19 and to pay costs. The penalty fixed in that judgment is correct. In the other two cases, the trial judge found that since the accused had already been sentenced to a total of 22 years imprisonment and was now sentenced to an additional 11 years imprisonment, in view of the provisions of article 88, No. 2, of the Penal Code, further penalties could not be legally meted out." Recently this court gave attention to an analogous situation and held that while the maximum duration of a convict's sentence cannot be more than three-fold the length of time corresponding to the most severe penalty imposed upon him and can in no case exceed forty years, yet the proper fines and indemnities should be imposed. (U. S. vs. Galarga No. 17194 to 17205; People vs. Gaselde No. 27420 and 27421)."

"In accordance with the foregoing pronouncements the judgment in case No. 28996 will be affirmed; the judgment in case No. 28997 will be modified by sentencing the defendant and appellant to pay a fine of ₱1,000 and to indemnify the Government of the Philippine Islands in the amount of ₱41.12, without subsidiary imprisonment; and the judgment in case No. 28998 will be modified by sentencing the defendant and appellant to pay a fine of ₱1,000 and to indemnify the Government of the Philippine Islands in the amount of ₱402.32, without subsidiary imprisonment with cost in each case against appellant. (In banc, *Malcolm, J.*) (*P. M. S.*)

CRIMINAL LAW AND PROCEDURE; HABITUAL DELINQUENTS UNDER PENAL CODE AND ACT NO. 3397; IMPOSITION OF ADDITIONAL PENALTIES MANDATORY.—*P. P. I. vs. Ignacio Ortezuela, R. G. 29316*—August 14, 1928. Defendant pleaded guilty of theft and admitted that he had been previously convicted of theft three times. The lower court sentenced him under article 518 of the Penal Code to 4 months and 1 day, arresto mayor, and imposed an additional term of 10 years imprisonment as an habitual delinquent, under paragraph (b) of Act No. 3397. The Supreme Court modified the penalty as follows: "The value of the property which was the subject of this offence is stated in the information at ₱81.40 or 407 pesetas. For larceny of this amount the law provides the penalty of arresto mayor in its medium degree to presidio correccional in its minimum degree (No. 4 of Art. 518 of the Penal Code as amended by Act No. 3244). But as the appellant has been more than twice reincident in the commission of the offence of theft, he is guilty of qualified theft, under No. 3 of Art. 520 of the same code. There being neither mitigating nor aggravating circumstances to be considered, the penalty that should be imposed upon him for said offense (independently of Act No. 3397) is presidio correccional in its maximum degree, which extends from 4 years, 2 months and 1 day to 6 years. The trial court therefore erred in imposing on the appellant the primary penalty of imprisonment for 4 months and 1 day arresto mayor; and in accordance with the recommendation of the Attorney-General, it will be necessary to raise this penalty to 4 years, 2 months and 1 day.

To the primary penalty imposed by the trial court there was added the penalty prescribed in paragraph (b) of the Act No. 3397 of the Philippine Legislature. In a motion of reconsideration interposed on behalf of the accused in the trial court, the question was raised whether the descretionary

power given to the court in the provision cited was intended to be exercised with reference merely to the duration of the additional penalty, when imposed, or with reference to the fundamental point of the imposition of any such penalty at all. "The history of the legislation with respect to habitual criminals in the Philippine Islands, shows an intention on the part of the Legislature to make the path of the habitual offender constantly harder, in conformity with tendency of legislation in other countries."

"Other considerations in support of the view entertained by the trial judge readily suggest themselves. In the first place, we note that, if the law be interpreted as giving the court complete discretion with respect to the imposition of the additional penalty instead of merely a discretion with reference to the duration of the penalty when imposed, the result would be anomalous for what sense would there be in declaring that the additional penalty in the different situations contemplated shall not be "less" than the period specified when the court is given completed discretion to impose additional penalty at all? In the second place, the title of the Act itself indicates an intention or on the part of the Legislature to establish additional penalties for habitual criminals; and the title would be really misleading if the Act be interpreted as giving the court complete discretion with respect to the imposition of the additional penalty; for it must be remembered that, under Act No. 3062, the imposition of the additional penalties provided in that Act was inescapable in the cases therein defined."

"It is true that the position of the expression 'in the discretion of the court,' in the provision now under consideration, would seem to indicate that the discretion therein contemplated should be exercised in determining whether any additional penalty or not should be added; and this inference is more easily deduceable in the English version of the Act, since it is a well known fact in linguistics that the English permits of much less freedom than the Spanish in the matter of the location of qualifying phrases. But the Act in question went through the Legislature in all its stages in Spanish, and the Spanish version must here be given more weight than the English version. It results in our opinion, that the trial judge was right in assuming that the imposition of the additional penalty was necessary in the case now before us; and in view of the rigor of the provision to be applied he was undoubtedly justified in imposing the minimum period of imprisonment which the law allowed." (In banc, Street, J.) *Briefed by P. M. Syquia.*

CRIMINAL LAW—THREAT.—*P. P. I. vs. Emilio Lozarte, G. R. No. 28829*, Aug. 16, 1928. *Facts*: B had been suspended as chief of police of Gigaquit province of Surigao and P had been temporarily placed in the same office. The provincial board however decided that B should be restored to office and so directed. The municipal president whose duty it was to reinstate B was for some reason slow to take action, with the result that on the date mentioned there were two rival occupants or claimants to the office of chief of police of Gigaquit.

Among the things pertaining to the office of the chief of police was a revolver; and the president, in order doubtless to keep this arm out of the possession of B delivered it to the appellant L one of the policemen of the municipality. On the forenoon of the day mentioned the appellant was called to the office of the justice of the peace where upon arriving, he found B and others. When appellant entered, B asked him for the revolver but L refused to surrender it. B then said to L "Since I am chief of police you

B then told him that, as his chief, he commanded him to give him the weapon. Upon this L said that he would sooner kill B than give him the revolver, and then, suiting his actions to his words he drew the weapon from its holster and pointed it at B. The latter caught L by the arm and with the help of a bystander, took the weapon from him. The revolver was loaded at the time.

Held: There was a well grounded doubt as to whether the appellant really intended to shoot B. All the probabilities are against it, notwithstanding the menacing words that were spoken by appellant then and afterwards. If the appellant had really intended to make an attempt on the life of B he would at least have fired the gun. What he did was doubtless intended to intimidate B and cause him to desist from his purpose to get possession of the weapon.

Judgment reversed and appellant convicted under No. 2 of art. 589 of the Penal Code of the offense of threats. (In Division, per Street, J.) *Briefed by P. Camus.*

CRIMINAL LAW—CHANGE OF LAWS.—*The Fiscal of the City of Manila vs. Hon. Simplicio del Rosario, Judge of First Instance of Manila, Catalina Orqueta, et al. R. G. 29842*—August 25, 1928. Original Certiorari Proceedings in the Supreme Court. The respondent—accused were arraigned for a violation of the Opium law and with the permission of the respondent judge, were permitted to change their previous plea of not guilty to that of guilty. The respondent judge imposed minimum penalties. The following day, the accused, through a newly employed attorney, asked leave to withdraw their plea of guilty and to substitute for it the plea of not guilty, alleging that the declaration of guilty by the accused was due "without doubt to ignorance or misunderstanding," and that counsel had a good defense to present on behalf of his clients. This application was not verified and was not supported by affidavits. The respondent judge acceded to the petition. In the present certiorari proceedings the City Fiscal challenges as illegal and null the resolution of the respondent judge. The resolution is defended by the trial judge and by counsel for the accused, as authorized by law, and as made subject to an absolute judicial discretion before the judgment in the case had become final.

Held: "As the language of the statute implies and as has often been expressly held, applications of this kind are addressed to the sound discretion of the trial court. One may even go further and say that before judgment is pronounced upon the prisoner he has a right to withdraw his plea of guilty. But the same situation does not obtain after judgment for the law restricts the power of the court by a negative pregnant."

"When the law says before judgment, it does not mean after judgment. The time of judgment has importance. Yet a hard and uncompromising rule need not be announced. Even following judgment, a plea of guilty could be changed to a plea of not guilty in the discretion of the court, as we will now proceed to explain."

After judgment, the showing made must be more than a mere request, a mere motion, a mere petition, and must assume the characteristics of a motion for the reopening of the case. Such reasons must exist as would justify the granting of a new trial. The motion must be verified and supported by affidavits.

1. *Criminal Law and Procedure; right to change plea of guilty to not guilty after judgment; Code of Criminal Procedure, Section 25, construed:* Section 25 of the Code of Criminal Procedure provides: "A plea of guilty can be put in only by the defendant himself in open court. The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted." As the language of the statute implies and as has often been expressly held, applications of this kind are addressed to the sound discretion of the trial court. The purpose of the law is not difficult to understand and should be enforced. Defendants cannot be allowed to gamble on judicial results.

2. *Id.; Id., Id.*:—As to whether a plea of guilty can be withdrawn after judgment has been rendered thereon seems to be a controverted question. Even following judgment, a plea of guilty could be changed to a plea of not guilty in the discretion of the court on making a proper showing.

3. *Id.; Id.; Id.*:—Trial judges have control over judgments in criminal cases until they either become final through the elapsing of fifteen days, or through compliance with the terms of the sentence. Such judgments may be set aside or revised in the interest of justice. But trial judges may not act so as to nullify any provision of law. For a motion to set aside a judgment to gain judicial attention after judgment, it must be verified and supported and there must exist such reasons as would be sufficient to warrant a reopening of the case.

USURY LAW; WHEN ARE ATTORNEY'S FEES ALLOWED.—*Francisco H. Gregorio vs. Valentina Velasquez. R. G. 27824*—August 20, 1928. Action to foreclose a mortgage. Defense was usury. *Held*: "As to attorney's fees for the defendant, since no usurious interest has really been paid, since the defendant became a party to the usurious document, and since to recover the principal the plaintiff has had to institute this action, we are not inclined to rule that the defendant can be allowed attorney's fees to be paid by the plaintiff." (In division, *Malcolm, J.*) *Briefed by P. M. Syquia.*

PROCEDURE; NEW TRIAL, WHAT COURT CONDUCTS IT.—*Rosel Laboratories, Inc. vs. Pilar Bautista and Teofilo Velarde. R. G. 28959*—August 21, 1928. *Facts*: Action to recover a sum of money, balance due and unpaid, for apparatus for the manufacture of candy obtained by Bautista, a married woman. On appeal to the Court of First Instance, judgment was rendered against the defendant. On appeal, the Supreme Court reversed the judgment and ordered a new trial on the technical ground that the husband of the defendant had not been joined in the action. The present appeal is from the second judgment against husband and wife. Exception is taken to the fact that the case was not sent back to the Municipal Court.

Held: "We are of the opinion that there is no merit in the contention that the case should have been returned to the Municipal Court. It had been properly transferred to the Court of First Instance upon appeal, and that court had acquired jurisdiction. There is no requirement that in cases of this kind the cause must be returned to the court inferior to the Court of First Instance, and we are of the opinion that the latter court had jurisdiction to hear the case when remanded from this court." (In division, Street, J.) *Briefed by P. M. Syquia.*

APPEAL—PERIOD CANNOT BE EXTENDED BY J. P. COURT.—

Eduardo de Borja y otros vs. Pedro Maray, R. G. 29300—August 30, 1928. Case of forcible entry and detainer. Judgment against defendant was rendered on June 24, 1927. Defendant was notified on June 29 and on same day defendant moved the Justice of the Peace Court to grant him five more days in which to perfect his appeal. Motion was granted. On July 8, the appeal was perfected. In the Court of First Instance, plaintiff moved to dismiss the case because defendant had not perfected his appeal within the five days prescribed by the Code of Civil Procedure. The Court of First Instance dismissed the appeal. Defendant now appeals to the Supreme Court. *Held*: "The Justice of the Peace of Jalajala lacked the power to extend the period fixed by law for the presentation and perfection of the appeal, and the defendant not having complied with the requisites, the judgment became final and executory, and the lower court committed no error when it dismissed the appeal."

"The procedure established by the law for the conduct of cases in Justice of the Peace Courts is of summary character."

"The law in order to prevent expense to the litigants has shortened the procedure." (In division, *Villareal J.*) (*P. M. S.*)

ELECTIONS; MANDAMUS WILL NOT LIE TO CORRECT ELECTION RETURNS.—*Eulogio Benitez vs. Hon. Isidro Paredes, Juez de Primera Instancia del Duodecimo Distrito Judicial y Tomas Dizon. R. G. 29865,* August 18, 1928. Original Petittion for Prohibition to restrain the respondent judge from taking further cognizance of cases Nos. 4976, 4977 and 4978, instituted in his court by the respondent Dizon.

Benitez and Dizon were candidates for provincial governor of Laguna at the last general elections. Case No. 4978 is a petition for mandamus to compel the election inspectors of the first precint of Biñan, Laguna, to correct their return. The inspectors admitted their mistake and expressed their willingness to make the correction . The respondent judge granted the order and the amended return was sent to the Provincial Board of Canvassers. Case No. 4977 is a petition for mandamus to compel the inspectors of election of the first precint of Longos, to correct the returns sent to the Provincial Treasurer. Case No. 4976 is a petition for prohibition to restrain the Provincial Board of Canvassers from making a canvass of the votes for provincial governor until the amended returns were properly before them. Proceedings in these cases (Nos. 4977and 4978) were suspended by a preliminary injunction issued by the Supreme Court. *Held*:

".....it appears as if the prohibition to introduce amendments or alterations without judicial authority refers only to the certificates of votes, under the terms of the last clause of article 465. But such an interpretation is inadmissible, because it tends to produce contradictory results in a law which is supposed to have been enacted as a harmonic whole, as will be seen by comparing the legal provision found in the clause under consideration, with other legal provisions of the same law relating to the canvass by the Provincial Board (article 469) and to the canvass by the Municipal Council (article 477)." "..... while the last two articles allow the correction or amendment of the returrn by the inspectors of election, article 465 prohibits doing the same thing if we limit ourselves to the letter of its final clause. There is no reason to believe that the Legislature had the intention

to produce such a result . It is our opinion, and we so declare, that it was the intention of the Legisature to allow the inspectors to make the necessary corrections or amendments in the return, with the previous authorization of the competent court. Black on Interpretation of Laws, pp. 325-331; Lewis, Suntherland, Statutory Construction, Vol. II, 2nd. Ed., p. 706; Pueblo contra Concepcion, 44 Jur. Fil. 131; Lichauco contra Apostol, 44 Jur. Fil. 145; Borromeo contra Mariano, 41 Jur. Fil. 343)."

"..... The exception contained in this legal provision (article 465) is permissive, and, as such it confers on the inspectors license or authority that they may or may not exercise as they may see fit. (Michol vs. Allen, 1 B & S. 934; Brockbank vs. Whitehaven R. Co., 7 H & I 834; Rockwell vs. Clark, 44 Conn. 534; see Lewis' Suntherland Statutory Construction, Vol. II, 2nd. Ed. p. 640; par. 335)." "If the inspectors are free to exercise or not the license to correct the return subject to authorization by the Court, it cannot be maintained that they have the ministerial duty to do so, and they cannot, therefore, be compelled to do so by mandamus proceedings." (The Case of Municipal Council of Las Piñas vs. Judge of First Instance of Rizal, 40 Jur. Fil. 296, is overruled.)

".... There is no doubt that in this jurisdiction, the Municipal Boards of Canvassers and similarly, the Board of Inspectors of Election before the approval of Act No. 3387, which is the Election Law, as lately amended, could be compelled by mandamus to correct their certificates of election in accordance with its own returns, because it was their ministerial duty to draft and make exact returns. But since the Act cited No. 3387, came into effect (December 3, 1927) the correction of returns and certificates of election by the said Boards of Inspectors and Municipal Boards of Canvassers ceased to be a mandatory legal provision to become a permissive one, under the terms of the last paragraph of article 465, which constitutes an amendment to the Election Law."

"From the time that the inspectors or some of them refuse to assent to the correction of the return the case becomes a contentious one, and as such it will require the presentation of evidence so that the Judge may have a basis on which to determine the granting or not of authority to amend the return in question."

"The court has jurisdiction over the inspectors, even after they have ceased their functions with the sending of return to the proper authorities, being subject, if not to an action in mandamus, to an ordinary action brought as in the present case, (No. 4976), to procure the correction of the statements of the results."

"The petitioner was one of the candidates to the position of provincial governor and as it appears that he has a special interest in the result of the matters object of the present action for the protection of his own personal right it seems evident that said petitioner has capacity to bring the present action. (High on Extraordinary Legal Remedies, 3rd Ed., Art. 431; Severino contra Gobernador General 16 Jur. Fil. 369.")

".... The Provincial Board of canvassers has no discretion to consider some of the returns only presented to them and to disregard the others, because if they did so, their canvass would not be complete. If the law imposes on the board the duty to examine all the returns before it, the action of prohibition does not lie to prevent it from complying with its duty, even if it is alleged that some of the returns are false, because if there are any

errors committed by the inspectors in the returns, the law allows their correction subject to judicial authorization, and the returns so corrected must be taken into account by the Provincial Board of Canvassers."

In the dispositive part of the decision, the Supreme Court declared:

(a) That the respondent judge has jurisdiction or power to give, as he did give, the Board of Inspector of the first precint of Biñan, the authorization asked by that board to correct an error made in the return of the count of votes cast in that precint for the office of provincial governor.

(b) That the return of the first precint of Biñan, amended with the authority of the court, must be taken into account by the Provincial Board of Canvassers, and not the earlier one which was incorrect.

(c) That the correction of the returns of the Boards of Inspectors of Election may be made, according to the last provision of article 465, not by means of mandamus proceedings but by an ordinary action or petition by the Board of Inspectors of Election or by an interested party, with the consent of said board

(d) That the respondent judge lacks jurisdiction to entertain the mandamus proceedings begun by the respondent Tomas Dizon against the Board of Inspectors of the first precint of Longos, and the said case No. 4977 should be dismissed, unless the parties to such cause agree to ask authority to amend the return of that precint.

(e) That the respondent judge lacks jurisdiction to entertain the prohibition proceedings against the Provincial Board of Canvassers started by the respondent Tomas Dizon and case No. 4978 of the Court of First Instance of Laguna must therefore be dismissed.

(f) That the injunction issued by the respondent judge against the Provincial Board of Canvassers is hereby dissolved; the preliminary injunction issued by this Court against the respondent judge with regards to case No. 4976 is left without effect, and with regards to cases Nos. 4977 and 4978 it is made with the exception made in the preceding paragraph (e) of this decision relative to case No. 4977 (In Banc, by Villamor, J.; Johnson, Street, Malcolm, Ostrand, Villareal, JJ. concurr.)

Avanceña, C. J. (dissenting, with whom concurs Romualdez, J.)

"It is the duty imposed by this article (465) on the inspectors of election of sending to the Provincial Treasurer a copy of the return as proclaimed, without any alteration or amendment which is not ordered by a competent tribunal. As the return must be sent to the Provincial Treasurer after the proclamation and as after the proclamation no alteration or amendment can be made in the return thus proclaimed, it seems logical to presume that it is the intention of the law to impose on the Board of Inspector of Election the duty to send to the Provincial Board, without any alterations or amendments, the return as it was proclaimed. If, therefore, against the express provision of the law, the Board of Inspectors sends to the Provincial Board, not the true return as proclaimed, but altered and amended after its proclamation without a judicial order to the effect, such board does not comply with its duty. In such a case as in the present cases, it cannot be doubted, that the inspectors of both precints, Biñan and Longos, can be compelled by mandamus to comply with a duty, that is clearly ministerial. If the inspectors of election refused to send to the provincial board the returns, I do not think it debatable, that they could be compelled by mandamus, to comply with this duty. I do not see any difference between

not sending the return and sending a return which is not the one which the law compels them to send and, least of all, one that the law prohibits them to send.

".... I cannot find any grounds for the theory that at present the correction of the returns is merely discretionary with the Board of Inspectors and that they cannot be compelled to make the corrections. The provision to which the majority refers to sustain this theory seems to be the following: "..... After such proclamation, the board of inspectors shall not make any alteration or amendment in said certificates of votes, unless it is so ordered by a competent court." Note that the law does not say *'unless it so authorized'* but *'unless it so ordered'* which involves the case in which the inspectors agree or ask, as well as the case in which they refuse to make the correction."

"Actually, and this is in my opinion the true point in dispute, the proceedings begun by the herein respondent Tomas Dizon in the Court of First Instance of Laguna are to compel the inspectors *not* to amend, rather than to amend. If in these proceedings it is asked that the inspectors be compelled to amend the return sent to the Provincial Treasurer it is because this return, against the express prohibition of the law, was altered without the order of the court, and to make the return sent be, without any alteration or amendment, the same as the one proclaimed."

"Besides, it is evident, that in granting the remedies asked for by the respondent Tomas Dizon the Judge of First Instance does not have to examine the ballots nor to make a new count. These proceedings only raise the question of fact as to which was the return proclaimed and which the return sent to the Provincial Treasurer."

"In my opinion, the Judge of First Instance of Laguna, had jurisdiction to entertain the proceedings started by the respondent Tomas Dizon against the inspectors of Biñan and Longos. If the judgments that the said judge shall render in these cases are to be of any value, I must also hold that he also has jurisdiction to entertain the action against the Provincial Board of Canvassers."—*Briefed by P. M. Syquia.*

PHILIPPINE LAW JOURNAL

VOL. VIII OCTOBER, 1928 No. 4

SUGGESTED REFORMS ON THE PHILIPPINE CORPORATION LAW

BY JUAN T. SANTOS[1]

CORPORATIONS IN THE PHILIPPINES

During the Spanish regime there were very few persons in the Islands that organized themselves into companies for the purpose of commercial enterprise. This is due to the social conditions existing at the time. In fact it was a period in which only a few had the capital to invest and, besides, industry and commerce were not as yet fully developed and the people were entertained by the Ministers of the Church to consider the benefits of the ultra-mundane life rather than the temporal material progress in the world. With the advent of the new sovereignty and the consequent spread of education, a new set of ideas cropped up. The Filipinos, disappointed with the old teachings of the religious magnates, began to realize the advantage of developing the natural resources of the country and they gradually began to take active part in commercial and industrial activities. The foreigners, on the other hand, looked upon the Islands, with her vast virgin and fertile lands, as an easy prey, as the promised land, for their personal aggrandizement; hence, the development of the country in all lines of human activities.

To properly respond to the new state of affairs, the Philippine Legislature passed act 1459, popularly known as the Corporation Law, and its amendments. The writer has had the privilege of carefully reading the corporation laws of quite many of the States of the Union and does not hesitate to say that our corporation law can be favorably compared with anyone of them. Said law, however, was passed in 1906, and as the writer is one of the believers that law is a cultural phenomenon and, therefore, must march with the progress of the country, keeping in view the hardships which it has inflicted during the time of its operation and having in mind that absolute perfection is not accomplished by any human labor, it is submitted that our corporation law should be improved along the lines suggested hereinbelow. Most of the amendments are the result of personal study based upon his experience as a member of the Philippine bar. No

1 LL.B. (Indiana) LL.M. (U. P.), member of the Philippine Bar, Professorial lecturer of the U. P. College of Law.

authoritative citations are made except in connection with those improvements started abroad that must be copied and incorporated in our law.

SUGGESTED AMENDMENTS TO THE CORPORATION LAW.

I.

The Director of the Bureau of Commerce and Industry shall not file the articles of incorporation of any stock corporation unless accompanied by a sworn statement of the treasurer elected by the subscribers showing that at least twenty per centum of the entire capital stock has been subscribed, and that at least twenty-five per centum of the subscription has been either paid to him in actual cash for the benefit and to the credit of the corporation, or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to twenty-five per centum of the subscription: Provided, That it shall be the duty of the Director of the Bureau of Commerce and Industry, immediately after the filing of the articles of incorporation of a corporation, to publish, at the expense of said corporation, the assets and liabilities of the same once in a newspaper of general circulation in the locality where the corporation is domiciled, if any, or in default thereof in a newspaper of general circulation in the city of Manila. (Sec. 9, Act 1459).

The above section should be amended so as to read that fifty (50%) per cent of the entire capital stock must be subscribed and that fifty (50%) per cent of the subscription must be paid in actual cash or property for the benefit and to the credit of the corporation. This is made necessary so that a corporation, instead of getting crippled in a few months for lack of capital to carry on its business objects, may have a greater probability of a longer existence for the benefit of its stockholders and the public. The intention of amending this section in accordance with the suggestion herein is to pave the way for the new corporation to have a good start to effect its undertakings. It is a well known fact that a business organization with just enough cash to meet its office expenses for two or three months, will soon suspend operation indefinitely, and the unfortunate stockholders and creditors may never know where to look for and locate the same. What is said in the case of original incorporation, must also be stated with reference to the increase of capital provided for in sec. 17 of act 1459.

II.

The board of directors or trustees of any stock corporation formed, organized, or existing under this Act may at any time declare due and payable to the corporation unpaid subscription to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscriptions as it may deem necessary. (Sec. 37, Act 1459).

A certain fixed period must be provided for the payment of subscribed capital stock, and not leave to the discretion of the directors. The writer has seen several corporations that have started business, by way of trial, securing simply the minimum portion of the capital stock required by law (20% subscribed and 25% of subscription paid), with the understanding that the stockholders will not pay in full their shares unless their preliminary ventures should become a success. Of course, said understanding is not put down in writing, for it is invalid, but if an early misfortune happens to come, the stockholders immediately dissolve the corporation; everybody washes his hands and the poor victims that have transacted with the company are helpless in trying to collect their dues. If the amendment in question becomes a law, the creditors of a corporation can, as preliminary step, compel by mandamus its Board of Directors to make a call for unpaid subscriptions. It can be clearly inferred from what is said, that the amendment is promotive of good results, in that it will make corporations worthy of the public's absolute trust.

The back pages of the history of England with respect to penalty imposed upon debtors unable to pay their debts, reveal to us a vicious and unfair discrimination in favor of creditors; but at the present day, it could be said that laws are altogether too liberal to debtors, and have increased "dead-beats." It should not be understood that we favor penalizing debtors, except that an exaction of paid up capital will act as a prevention, and creditors will also have a greater protection. A well established firm is also a credit and benefit to a comunity, and may help enrich its resources.

III.

> No corporation shall make or declare any stock or bond dividend or any dividend whatever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution: Provided, That banking, savings and loan, and trust corporations may receive deposits and issue certificates of deposit, checks, and bills of exchange and the like in the transaction of the ordinary business of banking, savings and loan, and trust corporations. (Sec. 16, last paragraph, Act 1459).

The law must require that every corporation, before declaring any dividend, shall carry ten per centum of its net profits to a surplus fund until the same shall amount to twenty per centum of the authorized capital stock. It has been the experience of so

many corporations that when a crisis comes, and their capital is all invested in their undertakings, their stock of goods is generally sold below their purchase price, and in most cases corporations are driven into bankruptcy and suspension of business. The reserved profit is to be used in replacing the capital lost during such a crisis.

There is now a tendency in same States of the Union to exact from the stockholder an additional liability, after the corporation funds are exhausted, to an amount equal to his shares. This, the writer thinks, is unjust and inequitable, in that it refrains honest men from becoming stockholders of a corporation. The plan suggested is a sort of compromise without inflicting any hardships either upon the stockholders or upon the corporation itself. We may rather say that far from injuring the corporation, it helps giving the latter a solid status and a good name to withstand the gossips of rivals.

IV.

> No corporation shall increase or diminish its capital stocks, or incur, create, or increase any bonded indebtedness unless, at a stockholders' meeting regularly called for the purpose, two-thirds of the entire capital stock subscribed shall favor the increase or diminution of the capital stock, or a majority of the subscribed capital stock shall favor the incurring, creating, or increasing of any bonded indebtedness. Written or printed notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness is to be addressed to each stockholder at his place of residence as shown by the books of the corporation and registered and deposited so addressed in the post-office with postage prepaid. (Sec. 17, Act 1459).

No corporation should be allowed to diminish its capital stock while doing business. They may increase but not diminish it. A corporation may be heavily indebted and, in order to defraud its creditors, proceeds to cut down its capital stock. Under the law, if the owners of two-thirds of the entire capital stock should favor the diminution, said step may be taken. The law does not require any judicial proceeding to be instituted with notice to the creditors in order to give the latter opportunity to be heard. The notice required is sent to the stockholders, and nothing is said about notifying the creditors. The law, as it stands, is unjust and unfair. The law must either entirely prohibit the stockholders to cut down the capital stock of the company or require them to submit the plan to a judicial trial, where the creditors are given a chance to present their views or objec-

tions. The law must keep in mind not only the interest of the stockholders, but the welfare of the creditors as well.

V.

> Unless otherwise provided in this act, the corporate powers of all corporations formed under this act shall be exercised, all business of such corporations conducted, and all property of such corporations controlled and held by a board of not less than five nor more than eleven directors to be elected from among the holders of stock, or, where there is no stock, from the members of the corporation. (Sec. 28, Act 1459).

The above provision fails to state expressly whether or not the Board of Directors is empowered to cancel a subscribed capital stock. A question arises, therefore, whether this section could be interpreted as giving power to them to cancel subscribed stocks. It looks, however, from the decision of our Supreme Court, that a stock subscription is a contract between the corporation on one side, and the subscriber on the other (Velasco v. Poizat, 37 Phil. 805), that the conclusion must be to the effect that there must be express consent of the stockholders to cancel a subscribed stock. From the view point of business, it is believed that the power to cancel any stock subscription should be placed entirely in the hands of the Board of Directors, in order to facilitate a prompt action, and avoid expense on the part of the corporation. Generally speaking the Board of Directors holds the entire responsibility for the activity of the corporation, whether for good or for evil, and, in many instances, it may be necessary to use these subscribed stocks for the promotion of its business undertaking by offering to persons able to pay, and who possess greater resources. The success of the corporation, therefore, is dependent upon the Board of Directors, and it is only right and just that the power to cancel subscribed stocks should be placed at their discretion and under their authority. The Board of Directors, it might be said, is the governing power, and personifies the entire body of stockholders. The law, therefore, must expressly provide that the Board of Directors is empowered to cancel subscribed capital stocks.

VI

> Every director must own in his own right at least one share of the capital stock of the stock corporation of which he is a director, which stock shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one share of the capital stock of a stock corporation of which he is a director shall thereby cease to be a director. Directors of all other corporations must be members thereof and at least two of the directors of all corporations organized under this Act must be residents of the Philippine Islands. (Sec. 50, Act 1459).

As previously stated, the Board of Directors is the governing body of the stockholders, and it is, therefore, advisable that a member thereof must have subscribed for an amount of shares of the value of at least Five Hundred (₱500.00) Pesos, and that fifty (50%) per cent thereof must be paid, instead of one share as provided in this section. In this way the Director is convinced that he has invested a worthwhile capital, and generally he will use every effort and exert all his ability to work for the best interest of the corporation. The law does not state what would be the value of each share for a corporation. Supposing that a corporation with a substantial capital happens to issue shares at One (₱1.00) Peso each, would such a Director, with a share of One (₱1.00) Peso, be putting his time and effort for the good of the corporation, knowing at the same time that Directors generally do not receive fixed salaries? The obvious answer would be "No." A remedy could be done by exacting each Director to put in a substantial capital, and logically, he will use his knowledge and ability for the good of said corporation. It may also be said, that every movement he makes will be for the best interest of the corporation, thus resulting in benefits to individual stockholders. The Board of Directors of every corporation should be composed of men possessing good reputation, and must at least be of good financial standing, so that stockholders can depend upon them. The above suggestion will also avoid fraudulent transactions, which are liable to be committed by members who are not financially responsible, and who would not care to lose a share. Besides, it will avoid the practice of incorporating a firm to be owned by one person alone, as in many cases, a man of wealth would just induce four persons to be incorporators, and thus takes advantage of running the same under his own wishes whether for good or for evil. The amendment in question will help a great deal in the stabilization of firms.

VII.

Immediately after election the directors of a corporation must organize by the election of a president, who must be one of their number, a secretary or clerk who shall be a resident of the Philippine Islands and a citizen of the Philippine Islands or of the United States, and such other officers as may be provided for in the by-laws. The directors and officers so elected shall perform the duties enjoined on them by law and by the by-laws of the corporation. A majority of the directors shall constitute a quorum for the transaction of corporate business, and every decision of a majority of the quorum duly assembled as a board shall be valid as a corporate Act. (Sec. 33, Act 1459).