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[G.R. No. 2137. October 09, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE VS. DOMINGO BALUYUT, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

In a fight with bolos between the defendant and Agustin Mercado, the latter lost the index finger of his right hand. The evidence is sufficient to prove the guilt of the defendant, and his claim that Mercado was the aggressor is not supported by the proof.

The court below held that the index finger of the right hand was a principal member of the body, and that the case, therefore, was within the provisions of article 416, par. 2, of the Penal Code. This view finds support in the testimony given by a doctor at the trial. We think, however, that a finger is not a principal member of the body, as that term is used in said article 416, paragraph. 2, but that it is rather a nonprincipal member, as that term is used in paragraph 3 of the same article. (4 Groizard, 552.)

This case arose in the Province of Pampanga, and was tried therein on the 11th, 12th, and 26th of January, 1904, by the judge of the Fourth Judicial District, in which that province is situated. The judgment in the case was writ- ten and signed by that judge in the Province of Tarlac, in the Fourth Judicial District, on the 20th day of February, 1904. It was sent by mail by the judge to the clerk of the court in Pampanga, and was by him received on the 23d of February, 1904, and on that day read and published in the court by him, in the presence of the accused. It is claimed by the appellant that the

judgment is void, because it was never properly rendered. At the time this decision was made sections 13 and 14 of Act No. 867 were in force, and undoubtedly the judge, in causing judgment to be entered in the way he did, relied upon them. These sections are as follows:

> "Sec. 13. *Judges in certain cases authorized to sign final judgment when out of territorial jurisdiction of court.*—Whenever a judge of a Court of First Instance, or a justice of the Supreme Court shall hold a session, special or regular, of the Court of First Instance of any province and shall thereafter leave the province in which the court was held without having entered judgment in all the cases which were heard at such session, it shall be lawful for him, if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province, to prepare his judgment after he has left the province and to send the same back properly signed to the clerk of the court, to be entered in the court as of the day when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the entry of the judgment: *Provided, however*, That no judgment shall be valid unless the same was signed by the judge while within the jurisdiction of the Philippine Islands. Whenever a judge shall prepare and sign his judgment beyond the jurisdiction of the court of which it is to be a judgment, he shall inclose ,the same in an envelope and direct it to the clerk of the proper court and send the same by registered mail.
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> "Sec. 14. *Time within which notice of appeal must be filed in cases under previous section.*—In every case in which judgment is entered in the Court of First Instance of a province by direction of a judge not in the province at the time, under the provisions of section thirteen hereof, it shall be the duty of the clerk of the court at once to notify the parties to the suit or their counsel of the nature of the judgment by personal notice in writing or registered mail, and in such case the time within which the parties shall be required to except to said judgment and to file notice of their desire to prosecute their bill of exceptions to the judgment

> shall be extended to twenty days from the date of receipt of the notice from the clerk."

This case presents for the first time in this court the question whether these sections are applicable to all cases, civil or criminal, or whether they are applicable only to civil cases. It presents, also, the further question whether, assuming that they are in terms applicable to criminal cases, the Commission had power to make them so applicable, in view of the provisions of the act of Congress of July 1,1902, section 5.

Under the Spanish law of criminal procedure in force prior to the American occupation the judgment of the court was always in writing. It contained a statement of the facts which appeared from the evidence, the conclusions of law which the judge drew from those facts, and the penalty imposed upon the defendant. These all were contained in one document. There were not two documents or two proceedings, one corresponding to the verdict rendered by the jury in the criminal procedure in the United States and the other corresponding to the imposition of the penalty by the judge. According to the former procedure it was not necessary that either the judge or the prisoner should be present in court when the judgment was entered. It was sufficient that the judgment, signed by the judge, was filed in the court and afterwards read to the prisoner.

General Orders, No. 58, which continued in force the Spanish criminal procedure, except as therein modified, provides, however, in section 41 that the defendant must be present in court when judgment is pronounced. It may be assumed that this section requires the judge to be also present at that time. The precise question raised upon this appeal is whether this act (No. 867) has modified said section 41 so as to dispense with the presence of the judge.

We understand that the power of the Commission to legislate upon this subject is limited only by the provisions of the, acts of Congress. The only provisions that have a bearing upon the question to

which our attention has been called are those contained in section 5 of the act of Congress of July 1,1902, which are as follows:

> "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.
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> "That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf."

It is doubtless, true by the common law in force in America that the defendant in a case of felony must be present at all stages of the proceedings. If the legislature of a State whose constitution contained provisions similar to those contained in said section 5, should pass a law saying distinctly that the prisoner in a case of felony should not be entitled to be present upon the hearing of a demurrer or a motion for a new trial, or when the verdict of the jury was pronounced, or when the penalty was declared by the judge, would such legislation be constitutional? The right of the prisoner to be present at any one of these stages is not in terms secured by any one of the provisions contained in said section 5, and the right to be so present does not seem to be an essential ingredient of that due process of law which is guaranteed by said constitutional and statutory provisions.

It is apparent that by this act (No. 867) the defendant is deprived of no essential nor substantial right. Section 13 provides that the judgment shall be entered in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the entry of the judgment. It is undoubted that when the judgment is promulgated in the presence of the defendant he has the right to do everything which he could do if the judge were personally present in court He can present a motion for a new trial, or

present any other motion which he desires to make. He can then, or within fifteen days thereafter, give notice of an appeal from the judgment. In fact, there is no right whatever which he can not exercise, if he could have exercised such right were the judge personally present.

In this particular case the application of this law has worked to the benefit of the defendant. He was confined in jail at the time judgment was rendered. He immediately gave notice of his appeal, and the appeal was prosecuted without the delay which would have been caused if it had been necessary to wait for the promulgation of the judgment until the judge should personally come again into that province, which would not have been until two months thereafter.

In two provinces in the Islands courts are held only once a year; in most of them only twice a year. The want of such a law as this would in many cases prolong the imprisonment of the defendant for six months, and in some cases a year. It is no answer to this to say that a judge should not leave the province until he has decided all the cases submitted to him. The judges at large of the Courts of First Instance, and the other judges of that court, are by law subject to the orders of the Secretary of Finance and Justice as to where and when they shall hold court, and their ability to stay in a province until all cases are decided does not depend on their own will. This act, in our opinion, so far from depriving the defendant of any right secured to him by said section 5, operates directly to his benefit, and is not prohibited by the act of Congress.

The remaining question is, Did the Commission intend to apply the law to criminal cases? There is one judge in the Islands for each district, each district being made up of several provinces. There are also judges at large* who are not assigned to any particular province or district, but who exercise jurisdiction in different places, according to the exigencies of the work. It may be and frequently is impossible for either the judge of the proper district or for a judge at large to dispose of all of the cases which he hears during the time when he is in the province. The demands of the service may require the

judge at large to leave not only the province but the island in which he has been trying cases, before he has entered judgment in all of them. Moreover, the means of communication between certain parts of the Islands are such that a delay in the departure of a judge from the province upon a certain day might necessitate his staying there for weeks afterwards, before another opportunity to leave would offer itself, to the detriment of the public service. Such considerations as these undoubtedly led the Commission to pass this law, and we do not see why they are not all as applicable to criminal cases as they are to civil cases.

If section 13 stood alone we do not think there could be doubt upon the subject. It is general in its terms, and distinctly says when a judge shall leave a province "without having entered judgment in all the cases which were heard at such session." There is nothing to indicate that criminal cases were to be excluded. But it is said that section 14 is applicable to civil cases, and indicates, therefore, that section 13 was to be applicable only to civil cases. We agree that section 14 relates exclusively to civil cases, but we do not agree with the deduction that therefore section 13 relates only to civil cases. We think that section 13 was intended to and did cover all cases, both civil and criminal; that it was seen that in some respects it was not full enough to provide for certain contingencies in connection with appeals in civil cases, and the preparation of bills of exceptions. Therefore, for the purpose of coversing the deficiencies of section 13 in this respect, section 14 was enacted, and it does not, in our opinion, cut down nor limit in any way the general terms contained in section 13.

There is nothing in the case of the United States *vs*. Karelsen[1](2 Off. Gaz., 170) which is in conflict with this opinion. That case was decided after Act No. 575 was passed, which act was similar to the provisions of sections 13 and 14, above cited, and which was repealed by Act No. 867, but the facts of that case did not bring it within the provisions of this law, for the judge who entered the judgment was in the province and in court at the time he did so, but had left the province before the judgment was promulgated. For this reason we held

that section 41 was applicable, and remanded the case for the judgment to be promulgated by the judge in the presence of the accused, but in this case we hold that sections 13 and 14 of said Act No. 867 are applicable to criminal cases, and so far repeal said section 41 of General Orders, No. 58, that in a case falling within the provisions of sections 13 and 14 it is not necessary that the judge should be present when the judgment is promulgated in the presence of the accused, but that the promulgation by the clerk has the same effect as if the judge himself were personally present.

The judgment of the court below is affirmed; with costs against the appellant, with a change of the penalty, however, to one year eight months and twenty-one days. The defendant is also entitled to an allowance of one-half of the time for which he has been imprisoned prior to the rendition of the judgment upon this appeal. So ordered.

Arellano, C. J., Torres, and *Mapa, JJ.*, concur.

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[1] 3 Phil. Rep., 223.

DISSENTING

CARSON, J., with whom concurs **JOHNSON, J.:**

I dissent. I do not think that the provisions of section 13, Act No. 867, repeal or were intended to repeal section 41 of General Orders, No. 58, which requires that the defendant "must be personally present at the time of pronouncing judgment, if the conviction is for a felony."

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