44 Phil. 387

[G.R. No. 17905. January 27, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN MORAN, FRUCTUOSO CANSINO, AND HILARIO ODA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARAULLO, C.J.:

On March 31, 1922, the decision of this court in the present case, affirming the judgment of the Court of First Instance of Pangasinan, was published, but the term of imprisonment imposed by the said court upon the accused, for a violation of the Election Law, defined and punished in section 2639 of the Administrative Code, was increased to six months from which judgment the present appeal was taken by the accused. The accused, after asking for a reconsideration of the said decision and a rehearing and pending the resolution on the said petition, filed a special motion on May 2d of this year, alleging that the crime complained of had prescribed under the provision of section 71 of Act No. 3030, enacted by the Legislature on March 9, 1922, and praying that they be absolved from the complaint. Upon this motion the Attorney-General was heard, having filed an answer and a supplemental answer, with the corresponding arguments, opposing the same, as well as the accused who filed their reply thereto and supplementary replies, both parties stating at length the reasons and legal grounds for their respective contentions.

While it is a rule of general application that unless the defense of prescription is pleaded in the trial court, it will be deemed to have been waived and cannot later be raised, yet this rule is not of absolute application in criminal cases, for if the prescription of the crime, as well as of the penalty whereby criminal responsibility is extinguished, may, as is the case here with regard to the former, be provided by statute after the termination of

all the proceedings in the trial court, as well as in the appellate court, and when the case has already been submitted for discussion and is awaiting only the final judgment; and if the prescription of the crime is but the extinguishment of the right of the State to prosecute and punish the culprit, it is beyond question that, once the State has lost or waived such right, the accused may, at any stage of the proceeding, ask and move that the same be dismissed and that he be absolved from the complaint. And not only that,—the right to prosecute and punish the criminal having been lost by the prescription of the crime expressly provided by the statute, the State itself, the Government through the proper court, is in duty bound to make a pronouncement to that effect. Therefore, as on March 9th of this year, 1922, when Act No. 3030 went into effect, providing in its section 71 that offenses resulting from the violations thereof shall prescribe one year after their commission, the accused and the Attorney-General had already filed their respective briefs in this court for the prosecution of the appeal taken from the judgment of the court below, and the hearing of the case had already been held, this court itself, without the necessity of any motion of the accused, or of the Attorney-General, should have declared the crime in question to have prescribed, in view of the provision of said section. Consequently, as this court had not up to that time made such pronouncement, the accused are perfectly justified in asking, as they have done in their motion of May 2d of this year, that the offense having prescribed, they be absolved from the complaint. This duty is imperative upon the courts of justice at any moment that the offense appears to have prescribed under the provision of the law. With particular reference to the present case, this conclusion is necessarily reached from the letter as well as the spirit of the provisions of the Penal Code relative to prescription, and from that of section 71 of the aforesaid Act No. 3030, for once the offense or the penalty has prescribed, the State has no right to prosecute the offender, or to punish him, and if he has already been punished, it has no right to continue holding him subject to its action by the imposition of the penalty. The plain precept contained in article 22 of the Penal Code, declaring the retroactivity of penal laws in so far as they are favorable to persons accused of a felony or misdemeanor, even if they may be serving sentence, would be useless and nugatory if the courts of justice were not under obligation to fulfill such duty, irrespective of whether or not the accused has applied for it, just as would also all provisions relating to the

prescription of the crime and the penalty.

That such is the duty of the courts of justice and has been so recognized by this court, is shown by the decision in the case of United States *vs*. Rama, R. G. No. 16247,[1] for the crime of murder of four persons, committed in the month of July, 1902, in the province of Cebu, in which one of the accused was sentenced by the Court of First Instance of the said province to death and the other two to life imprisonment. That case was brought to this court on appeal and, after the filing of the respective briefs of the accused and the Attorney-General a hearing was had. No allegation was made as to the prescription of the crime, yet this court rendered a decision (not yet published in the Official Gazette) wherein, after finding that two crimes of murder and two of homicide had been committed and that seventeen years had already elapsed from the commission of the latter to the institution of the judicial proceeding for the investigation and punishment thereof, that is, more than the fifteen years fixed by law for the prescription of the crime of homicide, this court held that the said two crimes of homicide had prescribed and the criminal responsibility of the three accused for the said crimes extinguished, convicting the accused only of the two crimes of murder. There is, therefore, no reason whatsoever why the allegation of prescription made by the accused in their motion of the 2nd of May of this year cannot legally be considered; on the contrary, said motion must be decided before the petition for the reconsideration of the decision published on the 31st of March of last year, and for a rehearing of the case, or, to be more exact, the said petition must be ignored, for the resolution of the aforesaid motion, if favorable to the accused, would put an end to the proceeding right at its present stage.

The first question to be decided, in connection with the contention of the accused, is whether or not the prescription provided in section 71 of Act No. 3030 refers only to that Act and not to any other, for said section 71 says: "Offenses resulting from violations of this Act shall prescribe one year after their commission," and section 72 adds: "This Act shall take effect on its approval."

It is enough to take into consideration the fact that Act No. 3030, is, as its title indicates, amendatory to several sections and parts of sections of chapter 18 of the Administrative Code, known as the Election Law, and of chapter

65 on penalties for the violation of various administrative laws, among them, those of the Election Law itself, included in said chapter 18 of the Administrative Code, in order to understand that when the Legislature used the words "This Act," that is, Act No. 3030, it referred, necessarily, to the Election Law included in various sections and provisions of the aforesaid two chapters of the above-mentioned Code, that is, the Election Law prior to Act No. 3030, under which the herein accused were convicted. One needs but examine one by one all the sections of said Act No. 3030, each of which declares the sense in which each of the sections included in said chapters is amended, in order to convince himself that said Act No. 3030 is similar to the law that preceded it, with the amendments and some additions thereto. If the Legislature had passed and enacted a new Election Law different from that contained in the above-mentioned chapters of the Administrative Code, then it may be said that the phrase "This Act" can in no way refer to the prior Election Law. Furthermore, if the offenses resulting from the violations of the Election Law, the provisions of which are contained in the aforesaid chapters of the Administrative Code, are the same offenses provided for in Act No. 3030, though with some modifications in the details as to some of them and with increase in the penalty, it cannot be denied that when the Legislature used the words "This Act" in section 71 of Act No. 3030, wherein it is provided that said offenses shall prescribe one year after their commission, it necessarily referred to offenses resulting from the violations of the former Election Law, as amended by said Act No. 3030. Besides, one of the objects of this Act, as its title indicates, is to make more effective the provisions and the purposes of the former Law contained in the Administrative Code; so that Act No. 3030 rather than being an integral part of the former election law is in conjunction with the latter the only Election Law in force; and any other interpretation to the contrary of the phrase "This Act" cannot, in our opinion, be accepted as good logic and in accordance with the principles of sound reasoning.

It is true that in the next section, 72, it is provided that said Act No. 3030 shall take effect on the date of its approval, which took place on March 9, 1922, but the meaning of such an expression in connection with prescription is that prescription can be invoked from that date, as was done by the accused, and not that such provision may have a retroactive effect from that same date.

In this connection, there arises the second question as to whether or not the

provision of article 22 of the Penal Code above cited, declaring the retroactivity of penal laws in so far as they are favorable to the defendant in a criminal action for a felony or misdemeanor, is applicable to crimes penalized by special laws, as does Act No. 3030, account being taken of the fact that, under article 7 of the Penal Code, offenses punishable under special laws are not subject to the provisions of the said code.

Several decisions have been rendered by this court on this question in which the distinguished members of this court hold opposite views. Among those may be cited the case of United States *vs*. Cuna (12 Phil., 241), which is cited in a later case, United States *vs*. Lao Lock Hing (14 Phil., 86), in which case this court did not lay down a definite rule, but expressly reserved its opinion as to whether or not article 22 of the Penal Code above referred to was applicable. And it was so recognized by the Supreme Court of the United State's, in an appeal taken by writ of error by the accused, Ong Chang Wing (40 Phil., 1046), said high court having limited itself to declaring that the accused, not having been convicted by this court of an offense which was not punishable when committed, and this court having held only that the right to impose the penalty prescribed by the Penal Code of the Philippines had not been lost by the subsequent statute, Act No. 1757, of the Philippine Commission, the accused had not been denied due process of law, for as the Supreme Court of the United States says in its decision, the duty of that court in that case was to determine whether or not the judgment of this court amounted to a denial of due process of law. Therefore, the decisions rendered in those two cases cannot be invoked in the one now before us.

In the cases of United States *vs*. Lao Lock Hing (14 Phil., 86) and United States *vs*. Calaguas (14 Phil., 739), cited also in support of the contrary opinion, as the offenses therein involved were penalized by special laws, that is, by the Opium Law, in the former, and by the Law of Police and Railroad Preservation, in the latter, this court held, as it could not have done otherwise, that, under article 7 of the Penal Code, the provisions of the said Code were not applicable to those offenses, inasmuch as said offenses were penalized by the said law which prescribed a special and definite penalty for said offenses, but in those cases said article 7 of the Penal Code was not interpreted in connection with the application of article 22 of the same Code, providing for the retroactivity of penal laws favorable to persons accused of a

felony or misdemeanor. Wherefore neither can the holding of this court in those cases have any application to the one now before us.

The case in which this court plainly and definitely decided the question under consideration is that of United States *vs*. Parrone (24 Phil., 29). There the said accused was charged with the crime of falsification of a cedula certificate, defined and punished in section 55 of Act No. 1189 of the Philippine Commission, but before the conviction of the accused, said Act was amended by Act No. 2126 of the Philippine Legislature, which prescribed a lesser penalty than the previous Act, and this court, after a careful perusal of all its decisions dealing with that question, as above indicated, and a luminous and exhaustive discussion on the interpretation of article 7 of the same Code in connection with the retroactivity of the penalty, in so far as it is favorable to the accused, held, upon the appeal taken by the said accused from the judgment of the court below, that, under the provisions of article 22 of the Penal Code, the penalty provided in Act No. 2126, which was later than Act No. 1189, was the proper penalty to be imposed upon the accused in that case. In the course of that decision, the court said:

"Considering the provisions of article 7 of the Penal Code, are the provisions of article 22 of the same Code applicable to the penal laws of the Philippine Islands other than the provisions of the Penal Code? Article 22 is found in chapter 1 of title 3 of the Penal Code. Said chapter is entitled '*Penalties in General*.' Article 21 of said title and chapter provides that 'no felony or misdemeanor shall be punishable by any penalty not *prescribed* by law prior to its commission.' This article is general in its provisions and *in effect prohibits the Government from punishing any person for any felony or misdemeanor with any penalty which has not been prescribed by the law*. It (art. 21), therefore, can have no application to any of the provisions of the Penal Code for the reason that for every felony or misdemeanor defined in the Penal Code a penalty has been prescribed.

"The provisions of article 21 can only be invoked, therefore, when a person is being tried for a *felony or a misdemeanor for which no penalty has been prescribed by law*. Article 21 is not a penal provision. It neither defines a crime nor provides a punishment for one. It has simply announced the policy of the Government with reference to the punishment of alleged criminal acts. It is

a guaranty to the citizen of the State that no *act* of his will be considered criminal until after the Government has made it so by *law* and has provided a penalty. It (art. 21) is a declaration that no person shall be subject to criminal prosecution for any act of his until after the State has *defined* the *misdemeanor* or *crime* and has *fixed a penalty therefor*. The doctrine announced by this section has been considered of so much importance to the citizens of a State that many of the States of the Union have been pleased to include its precepts in their constitutions or have so declared by express provision of law.

> "Article 22 provides that 'Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same.' This provision clearly has no direct application to the provisions of the Penal Code. Its (art. 22) application to the Penal Code can only be invoked where some former or subsequent law is under consideration.
> It must necessarily relate (1) to penal laws existing prior to the Penal Code, in which the penalty was less severe than those of the Penal Code; or (2) to laws enacted subsequent to the Penal Code, in which the penalty was more favorable to the accused. Rule 80, *Ley Provisional para la aplicacion de las disposiciones del Codigo Penal*. Under the provisions of said article 22, if a crime had been committed prior to the date of the Penal Code the punishment for which was more favorable to the accused than the provisions of the Penal Code, it is believed that the accused might invoke the provisions of said article (22) even though he was not placed upon trial until after the Penal Code went into effect. (U. S. *vs*. Cuna[1]). So also if by an amendment to the Penal Code or by a later special law the punishment for an act was made less severe than by the provisions of the Penal Code, then the accused person might invoke the provisions of said article. It appears to be clear, then, that article 22 of the Penal Code can only be invoked when the provisions of some other penal law than the provisions of the Penal Code are under consideration. In other words, the provisions of article 22 can only be invoked with reference to some other penal law. It has no application to the provisions of the Penal Code except in relation with some other law. It is not believed, therefore, that the Legislature in enacting article 7 of the Penal Code intended to provide that

article 22 should not be applicable to special laws."

There can be no doubt whatsoever that such was the intention of the legislator, in view of the doctrine laid down by the supreme court of Spain, whose authority as regards the application and interpretation of the provisions of the Penal Code of the Philippines is unquestionable, because said Code is the same as that of Spain. In two cases (decisions of July 13, 1889 and April 26, 1892), among others decided by that court, in which article 22 of the Penal Code was alleged to have been violated by the imposition of the penalty of *prision correccional* prescribed by the said Code, instead of *prision menor*, prescribed by article 168 of the Election Law of August 30, 1870, upon the accused therein, who were found guilty of a violation of the said Election Law, which, was therefore, a special law in force prior to the said Penal Code of that same year, the said Code having substituted the penalty of *prision correccional* for that of *prision menor*, said court held that the appeal was not well taken on the ground that the penalty of *prision correccional* had taken the place of that of *prision menor* prescribed by the said Election Law, and while the duration of both penalties was the same, the correctional penalty was lighter and more advantageous and favorable to the accused than *prision menor*, as it was of a less grave nature; so that in those two cases, the supreme court of Spain not only applied the provisions of the Penal Code to a special law, but also gave retroactive effect to said provisions on account of being more favorable to the therein accused, in accordance with the precept of article 22 of the Penal Code. And here we have a most complete, clear and satisfactory solution of whatever doubt might have arisen as to the interpretation of articles 7 and 22 of the Penal Code aforesaid.

It cannot be maintained that said article 22 of the Penal Code refers only to penalties and is not applicable to appeals and proceedings, because the prescription of the crime is intimately connected with that of the penalty, for the length of time fixed by the law for the prescription depends upon the gravity of the offense, as may be seen from Title VI of Book I of the Penal Code, containing, as its heading indicates, "General Provisions Regarding Felonies and Misdemeanors, the Persons Liable and the Penalties," without distinguishing between the penalties and the extinguishment of the criminal

responsibility dealt with in said Title VI of said Book, which title comes next to Title V, treating of the penalties incurred by those who evade service of sentence and those who, while serving sentence, or after having been convicted by a final judgment not yet served, commit some other crime. And aside from this intimate connection between the prescription of the crime and that of the penalty, a statute declaring the prescription of the crime has no other object and purpose than to prevent or annul the prosecution of the offender and, in the last analysis, the imposition of the penalty. Moreover, if the provisions relative to the prescription of ownership and to the prescription of actions in civil matters are part of the civil law, it cannot be denied that the provisions relative to the prescription of crimes and of penalties are penal laws or form part thereof.

With regard to the question whether prescription must be considered as a matter of procedural or formal law, or as a substantive law for the purpose of the retroactivity of laws, we must state, with reference to the present case, that the prescription provided in section 71 of Act No. 3030 is of the nature both of a substantive law, in so far as it gives a person accused of any of the crimes therein referred to, the right not to be prosecuted nor punished after the lapse of the period of one year from the commission of said crimes, within which the criminal action must be commenced, and of a procedural or adjective law in so far as it fixes the time within which such action must necessarily be commenced in order that the prosecution may be legal and the proper penalty may lawfully be imposed. But however said provision may be considered, the same must have a retroactive effect, as will be seen later on.

Therefore, as the instant case involves two special laws of the Philippine Legislature, to wit, the Election Law contained in the above-mentioned chapters of the Administrative Code, and Act No. 3030 which amended and modified the former, it is evident that the provision declaring that offenses resulting from the violations of said Act shall prescribe one year after their commission must have retroactive effect, the same being favorable to the accused.

This, however, is objected to, although it is based on a general principle frequently applied by many courts of the American Union, and in support of the objection, several decisions of the said courts and a doctrine concerning the matter found in Corpus Juris (volume 16, p. 222) and in Ruling Case Law are

cited, wherein it is established that laws fixing a period of prescription are not applicable to crimes previously committed, unless by their terms they are clearly retroactive or contain an express provision to that effect.

We need not discuss each and every one of the said cases, it being sufficient for our purpose to take up one of them, namely, that of Martin *vs*. State ([1859], 24 Tex., 62). There the Supreme Court of Texas held that as regards crimes and misdemeanors, prescription had no retroactive effect and that the Statute of Limitations enacted in 1854 could not have the effect of barring a criminal action instituted within two years after the enactment of said Act, provided that no period of prescription was fixed in a former law for the crime in question, that is to say, that prescription cannot be invoked as a bar to a criminal action for an offense like that of falsification involved in that case, where said action was commenced under a statute authorizing it and in the old law penalizing that crime no period was fixed for the prescription thereof. As can be seen from a reading of the context of the decision in the aforesaid case and the opinion of the writer thereof, said doctrine was announced without taking into account the difference between the rule governing prescription in criminal procedure and that applicable to civil actions, but, on the contrary, application was made only of the latter; hence the holding that a special provision as to prescription was necessary in the later statute to give it a retroactive effect.

It should be noted, however, that the Chief Justice of that Supreme Court voted vigorously against the said decision, stating in a well-reasoned dissenting opinion the following:

> "I * * * am of opinion, that the limitation prescribed to prosecutions applies as well to prosecutions for offenses, committed before the passage of the statute, as afterwards; and that, as the words of the statute plainly import, the limitation commences to run from the time of the 'commission of the offense,' whether that was before or after its passage. The statute makes no distinction, as respects the limitation; it makes no exception, from its provision, of offenses previously committed; and I know of no principle, or rule of construction, which will authorize the court to engraft an exception upon the statute. It is a statute relating to the remedy, and being enacted for the

benefit of persons accused, is not an *ex post facto* law. The constitutional inhibition of the enactment of retroactive laws, and laws impairing the obligation of contracts, has no application to penal statutes. Retroactive criminal laws, which are forbidden, are those which come under the denomination of *ex post facto* laws. There is nothing to prevent statutes, respecting crimes, from being retrospective, provided they do not come under that denomination.

"It is an acknowledged general rule, in the construction of statutes, that they will not be construed to have a retrospective operation so as to destroy or impair rights of property, or of action, unless the legislature have plainly expressed such to be their intention. But laws which affect the remedy merely are not held to be within the rule or the inhibition against retrospective laws, unless the remedy be entirely taken away, or so restricted, as to impair the right. Nor, as I conceive, do statutes relating to the punishment of offenses come within the rule of construction, or the constitutional inhibition, though their effect should be wholly to defeat a prosecution. On the contrary, laws respecting crimes, whether they relate to the remedy merely, or to the offense, are, I think, always construed to relate to past, as well as future offenses, where their operation is in any wise beneficial to the accused; unless the legislature have plainly declared that they are not to receive such a construction. To give such effect to laws respecting crimes and punishments, is not to render them retrospective, or retroactive laws, in the sense of the constitutional inhibition. These terms have no application to such laws, but relate exclusively to laws affecting civil rights. (De Cordova *vs*. City of Galveston, 4 Tex., 470.)

"I do not think the reservation contained in the 81st section of the act was intended to have, or should be construed to have, any effect upon the limitation contained in the 75th section. That section was intended only to prevent repeals by implication, and to enforce the observance of the rule, which would have applied on general principles, without its enactment, that where the act mitigates the punishment, the milder penalty should be imposed. To hold it to apply to the limitation prescribed for prosecutions by the act, would be to except all offenses committed before the passage of the act, from the operation of the periods of limitation therein contained, and to hold that those offenses would never become barred under its provisions. I cannot think that such was the

intention of the legislature.

"There may be differences of opinion, respecting the policy of prescribing so short periods of limitation, to prosecutions for high crimes. But that was a question for the law-making power; and I can see no reason why the legislature should have intended the limitation to apply to future, and not to past, offenses. The same reasons, and the same policy, which dictated that the prosecution should be commenced within a prescribed period, after the offense was committed, would seem to apply equally to offenses committed before, as to those committed after the passage of the statute.

"Entertaining these views, I could not give my assent to the imposition of the pains and penalties of the law, where the prosecution had not been commenced
until after the expiration of the time within which the legislature have positively enacted that the offense 'shall be prosecuted,' or be forever barred."

Furthermore, Mr. Wharton, cited in one paragraph of the said dissenting opinion, in his work entitled Criminal Pleading and Practice, 9th edition, 1889, says that, as a general rule, the laws of prescription of actions apply as well to crimes committed before the enactment, as afterwards, and speaking of the rule to be applied to the prescription of actions and the interpretation of the laws on that subject, he says in section 316, page 215, of said book the following:

"We should at first observe that a mistake is sometimes made in applying to statutes of limitation in criminal suits the construction that has been given to statutes of limitation in civil suits. The two classes of statutes, however, are essentially different. In civil suits the statute is interposed by the legislature as an impartial arbiter between two contending parties. In the construction of the statute, therefore, there is no intendment to be made in favor of either party. Neither grants the right to the other; there is therefore no grantor against whom the ordinary presumptions of construction are to be made. But it is otherwise when a statute of limitation is granted by the State. Here the State is the grantor, surrendering by act of grace its rights to

> prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offence; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should. be prompt, and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."

But even if the rule generally and frequently applied by many courts of the American Union and the doctrine laid down by them were those announced in the above-mentioned paragraphs of the Corpus Juris and the Ruling Case Law, the precept of article 22 of the Penal Code being clear and unmistakable, according to which, penal laws have retroactive effect in so far as they are favorable to persons accused of a felony or misdemeanor, the courts of justice of these Islands cannot, and must not, make any application of the said rule and doctrine, but must, on the contrary, abide by the said precept and comply with it and carry it into effect, as hereinbefore stated, although no petition to that effect is made by the accused that may be favored by those laws. And a provision for the retroactivity of penal laws having, as it has, been made in the said article in the terms already mentioned, it is evident that when the Philippine Legislature, the majority of whose members are also members of the Philippine Bar, and, therefore, were aware of this legal provision, drew section 71 of the Election Law, Act No. 3030, to the effect that the offenses resulting

from the violations of the said law prescribe one year after their commission, it ought to have known that it was not necessary for it to say that said provision was to have retroactive effect in so far as it was favorable to the accused, inasmuch as such provision had already expressly been made in article 22 of the Penal Code, which was applicable not only to the prescription therein provided when the same might be favorable to persons accused of those crimes, but also to every penal law the retroactivity of which might be favorable to persons accused of a felony or misdemeanor. And, this is the best and most conclusive proof that in making the provision in section 71 aforecited, the Legislature intended that same be given a retroactive effect, because the members thereof could not ignore the law. From all of which it also necessarily follows that, if that doctrine established by many courts of the metropolis is to be applied in the instant case, it must be by saying that the same is useless or that it was complied with in so far as the giving of a retroactive effect to the said prescription was concerned, because that provision regarding retroactivity has already been expressly made in article 22 of the Penal Code, and, therefore, it is of no importance that in the former Election Law, that is, the amended law, no provision was made regarding prescription to give immediate and full effect to the retroactivity provided in section 71 of Act No. 3030. The provision of article 22 of the Penal Code, declaring the retroactivity of laws favorable to persons accused of a felony or misdemeanor, is to be deemed as if also expressly made in any new law at the time of its enactment, when said law is a penal law, or one of a penal character, such as the prescription contained in section 71 of Act No. 3030 here in question, which is of that nature, as above stated, and there is no necessity of making in that law any provisions to that same effect. And this is the reason why in the case of Pardo de Tavera *vs*. Garcia Valdez, one of the first cases in the Philippine Jurisprudence (1 Phil., 468) in which, the question, among others, was raised whether the defendant, who was accused of grave insult defined and punished in paragraph 1, article 458, of the Penal Code, should be punished under said article, or under the provisions of Act No. 277, which is the Libel Law and went into effect after the publication of the libelous article and the institution of the criminal action, the court held, as stated in the syllabus, that:

> "The general rule that penal laws shall be retroactive in so far as they favor the accused has no application where the later law is expressly made

> inapplicable to pending actions or existing causes of action," which clearly means that in order for a penal statute favorable to the accused to have a retroactive effect, it is not necessary that it be so expressly provided in the statutes, or, to put it in another way, that the provision declaring the retroactivity be repeated therein, but that if the Legislature intends it not to have a retroactive effect, it should expressly so state in the same statute. And the reason for it is obvious. For it being the general rule, according to article 22 of the Penal Code, that penal laws have retroactive effect in so far as they favor the accused, said general rule applies to, all laws that may be enacted in the future, and if the Legislature intends to make an exception to the said rule, it should expressly say so.

Now, the eminent professor of International Law, Mr. Fiore, in his work on the Irretroactivity and Interpretation of Statutes, which is termed by various eminent jurists "a work full of juridical science," after recognizing as a rule universally accepted by the courts and expressly sanctioned by most of modern legislations that no penal law can have any retroactive effect, that is, that no action or omission shall be held to be a crime, nor its author punished, except by virtue of a law in force at the time the act was committed, advocates the retroactivity of a penal law favorable to the offender, not as a right of the latter, but founded on the very principles on which the right of the State to punish and the commination of the penalty are based, and regards it not as an exception based on political considerations, but as a rule founded on principles of strict justice.

The same author, on studying the questions that may arise in case the new law should have changed the rules regarding prescription, that is to say, the retroactivity of the law as to prescription, says:

> "The modifications as to prescription introduced by the new law may affect the penal action or the penalty itself. With respect to the former, it can be imagined that the new law has modified the rules as to the applicability or inapplicability of the prescription to a given crime, or the necessary conditions for its effectiveness, or, finally, the time and period when it will have effect.

"The authors who had studied this question have reached different conclusions, because some have considered prescription as a law of procedure or of form, while others have regarded it as a substantive law, thereby admitting, therefore, the principle of vested right on the part of the offender.

"Those who have considered the statutes of limitations as of a formal or remedial nature have maintained the opinion that the new law must always be applied in all cases of prescription where the period was already running at the time of the enactment of the new law on the ground that all procedural laws must be deemed retroactive by nature. Against this theory, however, it has been said that even admitting the principle enunciated, the truth is that the culprit cannot be placed in a worse situation, as would be the case if that theory is adopted, for although the prescription begun under the former law, fixing a shorter period, might have been completed, he would be subject to criminal action under the new law prescribing a longer term, even if the provisions of the latter, concerning the substance of the penal action, were not in force at the time of the commission of the crime. Again, setting aside the theory of vested right on the part of the accused, as we have already done (for we cannot admit any vested right on the part of a private individual as against that which is considered by the sovereign power as indispensable for maintaining the juridical order), it can, however, be maintained that the application of the new law about the prescription of the criminal action, when said law has extended the time of the prescription, is tantamount to giving that penal law a retroactive effect, as regards the very substance of punishment, thus prejudicing the offender and admitting, as to him, a right to punish, which, on account of the longer period fixed in the new law, cannot be considered as based on any law in force and already promulgated at the time of the commission of the crime.

"On the other hand, those who have considered prescription as a substantive law hold that the old law should always be applied, the principal reason adduced by them in support of this opinion being that the accused must at all events suffer the consequences of the situation created by himself by committing the crime. Against this opinion, it has been held, however, that the consideration of public policy, which naturally prevails in matters of prescription, constitutes an obstacle to the invariable application of the old law, for if the new law is less severe as regards prescription, the result would be that the

culprit would be subject to the more severe law, which has been modified in harmony with the more modern criteria sanctioned by the new law as more in consonance with justice.

* * * * *
* *

"To our mind, in accordance with the principles underlying all the foregoing theories regarding the retroactivity of a less severe penal law, it must be admitted that also when the question is one of prescription must the new law be considered retroactive if it is more favorable to the accused than the former law, and that contrariwise it should not be so considered, if it is found to be more prejudicial Although we are maintaining this opinion, we do not thereby accept the unjustified theory above set forth of those who believe that there must be admitted here the supposed vested right on the part of the offender, for we have already stated the reason why no such vested right can be recognized as against the penalty provided by law. On the contrary, we admit this theory, but founded on the principles of justice itself upon which the right to punish, considered as a supreme right of sovereignty, rests.

"In fact, where the new law has shortened the time of prescription or established easier conditions for its effectiveness with respect to a given crime, it is clear that the reduction of the period made in the new law implies an acknowledgment on the part of the sovereign power that the greater severity of the provision of the former statute relative to the substance of the criminal action is unjust.

"Consequently, if the sovereign power should enforce its right under the former law it would be guilty of an inconsistency in view of its implied admission that the old law was too severe and consequently unjust. The necessity therefore of applying the less severe new law rests upon the principle that the sovereign power cannot exercise its right to punish except only within those limits of justice which that sovereign power has established as being just and equitable at the time of exercising that right.

"On the other hand, when the latter statute of limitations of criminal actions is more severe than the former, either as to the applicability of the

prescription itself, or as to the requirements and duration of the action, the application of the said law to crimes committed before its enactment must be avoided not because the culprit has acquired any right to prevent said application, but for the reasons above set out. Indeed, on what ground can the culprit pretend to prevent the sovereign power from doing what it has the right to do for the purpose of maintaining the juridical order? There exists, therefore, no reason in support of the theory of vested right on the part of the culprit, but what must inevitably be admitted is that the sovereign power cannot, without doing an injustice, apply the more severe legal provision in the matter of prescription; and that that provision cannot justly be applied unless it was previously promulgated, as even the right itself to punish cannot come into existence except by virtue of a law duly promulgated and in force at the time that it was violated and the crime committed. The more severe law in matter of prescription extends the field of criminal action and affects the substance of the same, because it determines the basis and the sphere of the right to punish. Now, can the sovereign power do all this without any law? Can it, without committing an injustice, extend the effect of the new law to acts committed before its enactment? As the sovereign power cannot punish any act not
expressly penalized by a former law, nor punish with a more severe penalty any act performed before said penalty was prescribed and the law fixing it promulgated, so it cannot extend the criminal action (that is, its right to punish) by virtue of a later law by applying to acts completed before its promulgation the less favorable provisions therein made regarding prescription. In fact, in any case where reduction of the time of prescription formerly fixed is to be made under a new law, or where harder conditions are required by the said law for effectively taking advantage of the prescription, the sovereign power is exercising the right to punish acts committed prior to the promulgation of the new law, and it is evident that no such right can be recognized in the sovereign power.

“From all of the foregoing, we conclude that upon the very principles of justice, under which the less severe provisions of the new law must regulate all the elements of the criminal action, said less severe new law must also control the matter of prescription, provided that there is no final and irrevocable judgment, and this rule holds good even if the modifications of the statute have

> reference to the prescription of the penalty, because in substance the prescription of the penalty is equivalent to the prescription of the criminal action." (Fiore, pages 423-428.)

Wharton gives a clear explanation of the distinction to be made between the construction of prescription in criminal actions and that of prescription in civil cases in the paragraph above quoted from his book, and the grounds for the distinction are also clear and are not unknown to anybody, for, as Wharton says, they are inherent in the origin and nature itself of the law of prescription, which must be .liberally construed in favor of the accused for if prescription in criminal matters is, as said author says, a benefit, a grace granted by the State, and a waiver of its right to prosecute and an announcement that the crime is no longer the subject of prosecution, from the moment that the granting of that grace or benefit, or the making of such waiver, is known, the prosecution for the said crime and the punishment of the offender would be a juridical contradiction.

But the opinions discussed by Fiore in his book above-mentioned are more in point, for he refers precisely to the prescription provided in a later statute the subject of which is the criminal action or the penalty, that is, the prescription of the crime, as is the case now before us, or the prescription of the penalty, whether prescription be regarded as a law of procedure or of form, or as a substantive law.

After examining the different opinions of the writers on the matter, Fiore has come, as seen from the above quotation, to the conclusion that, whether the statutes relative to prescription be considered as of a procedural or formal, or substantive, nature, the new statute must be applied if it is less severe or more favorable to the accused, but not if it is more prejudicial, notwithstanding the general rule that all procedural laws are retroactive in regard to prescription. In view of the special motion filed by the accused on May 2, 1922, it does not matter and it is of no importance, so far as the question herein raised is concerned, whether the provision contained in section 71 of Act No. 3030 be considered as of a substantive, procedural, or adjective character, because applying the principles above enunciated, the result is the same, and the more severe law in the matter of prescription extends, as Fiore

says, the field of the criminal action and affects the very substance thereof, because it determines the basis and the sphere of the right to punish.

It may, perhaps, be argued that no term having been fixed in the Election Law prior to Act No. 3030 for the prescription of the offenses resulting from the violations thereof, and said Act No. 3030 having fixed at one year the period for the prescription, the former law is more lenient, less severe, and more favorable to the persons accused of those offenses than the latter. Such an argument, however, is absolutely erroneous and untenable, if it is borne in mind that no period of prescription having been fixed in the former law, those offenses were imprescriptible, and the offender could be prosecuted and punished at any time and indefinitely, even ten, twenty, or more years after the commission thereof, whereas the new law, that is, Act No. 3030 in providing the period of one year for the prescription, has, in effect, shortened the time of prescription fixed in the old law by virtue of the silence thereof, reducing it to one year and has established less difficult conditions for the application of the same as regards those offenses, which is evidently more favorable and lenient to the violators of the said former law, and, as Fiore says in one of the paragraphs above quoted from his book, the reduction made by the new law implies a recognition on the part of the sovereign power that the greater severity of the former law, as regards the substance of the criminal action, is unjust, and it would contradict itself if it would attempt to enforce its right under the conditions of the former law which has already been regarded by the conscientious public opinion as juridically burdensome, and, therefore, unjust, and the sovereign power cannot exercise the right to punish except within the limits regarded by it as just at the time of exercising it.

If, therefore, in reviewing the former Election Law contained in the two chapters of the Administrative Code herein before mentioned, for the purpose of amending and reforming it in accordance with the dictates of reason, justice and experience, the Legislature did amend and reform it by the enactment of Act No. 3030, which supplied the deficiency found in the old law with regard to the prescription of the crimes penalized therein, by providing in section 71 of Act No. 3030 that those crimes, which under the old law were imprescriptible, shall prescribe one year after their commission, because their imprescriptibility was considered by the conscientious public opinion as juridically burdensome, and, therefore, unjust, it is evident that the State, the Government and the courts

of justice representing it, cannot, without committing a gross injustice, exercise the right to prosecute and punish the violator of the old law under the conditions required by the law and outside of the limits now regarded by the sovereign power, that is to say, the Legislature, as just by the enactment of said Act No. 3030, which took effect on March 9, 1922. And such injustice would be more apparent still, if the violators of the old Election Law, which was amended by Act No. 3030, would be prosecuted and convicted five, ten, twenty, or more years after the said violations when the proof of their innocence may not have been kept by them, while the violators of Act No. 3030, who may not have been prosecuted within the one year fixed by section 71 aforesaid, would be free from being prosecuted and punished for the crimes committed by them. And this injustice, which is so contrary to conscientious public opinion and repugnant to humane sentiments, would necessarily result, if the provisions of section 71 of Act No. 3030, which is now in force, are not immediately applied right at this stage of the case in favor of the herein accused, by taking up first the special motion of the accused filed on May 2d of this year, before the petition for reconsideration and re-hearing hereinbefore mentioned, or, better, by ignoring the said petition and disposing of the case by deciding the motion of May 2d, wherein the accused invoked the prescription provided an the said section, for the reason that this action was commenced on December 20, 1920, one year and a half after the commission of the offense resulting from the violation of the Election Law with which they are charged.

In view of the foregoing, we find the said crime to have prescribed, and setting aside the decision of this court published on the 31st of March of this year, the present action is dismissed with all the costs *de oficio*, and the bond given by the accused for their provisional release is cancelled, which release is hereby declared final. So ordered.

Street, Avanceña,
Villamor, and *Romualdez, JJ.,* concur.

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[1] Promulgated March 28, 1921.

[1] 12 Phil., 241.

DISSENTING

MALCOLM, J., with whom concur **JOHNSON** and **JOHNS, JJ.:**

The high respect which I entertain for the authors of the majority opinions in the cases of People *vs*. Moran and People *vs*. Parel,[1] should not, of course, keep me silent when I am strongly of the opinion that judgments grounded in a mistaken view of the law are being handed down. My desire to state clearly and bluntly my dissent from the majority opinions is only bounded by the paucity of the English language in which to express myself. According to my view, as will hereafter be demonstrated, the majority decisions discuss questions which need no discussion, do violence to plain provisions of the law, take stands supported by no authority which can be discovered, and attain the result of effectuating a general jail delivery of criminals who had thwarted the people's will during the elections in 1919.

An introductory and pertinent inquiry can well be, what is the effect of the majority decisions?

Juan Moran, Fructuoso Cansino, and Hilario Oda, election inspectors of the first precinct of the municipality of Binalonan, Pangasinan, were found guilty by Judge of First Instance Nepomuceno and again on appeal by the Supreme Court, with the sole modification that the penalty was increased, of having falsified election returns.—But Moran, Cansino, and Oda will now never enter the portals of prison.

Raymundo Verceles, election inspector of the fifth precinct of the municipality of Binalonan, Pangasinan, was found guilty by Judge of First Instance Nepomuceno, and again on appeal by the Supreme Court, with the sole modification that the penalty was increased, of having falsified election returns, and is now serving his sentence.—Verceles will now be liberated.

Norberto Parel and Daniel Paz, election inspectors of the second precinct of the municipality of Bantay, Ilocos Sur, were found guilty by Judge of First Instance Jaranilla, of having unlawfully written the ballots of illiterate persons, with the result that following the trial in an election contest, the protestant was declared elected.—But though the two cases are on the calendar, the motion to dismiss being granted, the question of the guilt or innocence of Parel and Paz will never be determined by the appellate court.

Andres Imzon, chief of police of the municipality of San Pedro, Laguna, was charged in the Court of First Instance of Laguna, with having, unlawfully intervened in the elections of 1919, by soliciting votes in the election booths and exchanging ballots previously prepared by him with those received by the electors from the election board; Claudio de Leon and Alejandro Cailao, election inspectors of the second precinct of the municipality of Bay, Laguna, were charged with having seized and destroyed fifty official ballots already filled in by different persons; and Alejandro Cailao, election inspector of the second precinct of the municipality of Bay, Laguna, was charged with having abstracted four official ballots duly filled in from the ballot box and having delivered them to Julian Carrillo, a candidate for municipal president.—But Imzon, De Leon, Cailao, and Carrillo will never have these serious charges resolved by the courts of justice.

Francisco Hutalla, Jacinto Alfajora, and Hermogenes Orijuela, election inspectors in the first precinct of Macalelon, Tayabas, and Francisco Catarroja, election inspector in the second precinct of the same municipality, were charged with various unlawful acts intended to secure a victory for Demetrio Pandeño, their candidate for municipal president.—But Hutalla, Alfajora, Orijuela, and Catarroja, will now have this record stand without any judicial decision as to their guilt or innocence.

Mariano Quiloña, Bartolome Severo, and Matias Operario, election inspectors of the municipality of San Julian, Samar, were found guilty by Judge of First Instance Capistrano of having falsified the election returns.—But though the guilt of Quiloña, Severo, and Operario is clearly apparent, the appeal in this court cannot go forward and they are absolved from the criminal charges.

Liberato Exaltacion, municipal president of Meycawayan, Bulacan, was

convicted of having extracted ballots from the urn used in Meycawayan, and was sentenced by Judge of First Instance Jocson to three months' imprisonment, and to pay a fine of P125.—But Exaltacion, although thus found guilty by a judge of long experience, of a most serious crime, will now be exonerated.

Cesareo Navarrete, Ambrosio Diapo, Luciano Nabaira, Eugenio Nabor, Apolonio Castro, Mamerto Navarra, Estanislao Nabor, Tolomeo Segovia, Aproniano Navarrete, Hipolito Nalangan, Ricardo Nahil, and Severino Nalangan, residents of the municipality of Libacao, Capiz, were found guilty by Judge of First Instance Salas of having provoked such tumult and confusion in and about the second election precinct of the municipality of Libacao, that the election inspectors and policemen were prevented from performing their respective duties, and of having seized the ballot boxes and other election effects, thus frustrating the election in that precinct.—But all these twelve persons found guilty by the trial court, and guilty, also, as we read the record, will escape the penalties of the law.

Twelve (12) cases pending in this court relating to thirty (30) defendants are thus seen to involve the retroactivity of section 71 of Act No. 3030. According to the revised figures reported by the Attorney-General, the outcome of at least twenty (20) cases in courts of first instance relating to sixty-one (61) defendants likewise depend on our decision on this question. *All told, thirty-two (32) cases and ninety-one (91) defendants. Quite a respectable jail delivery.*

The point next in logical order, to which I would address attention, is whether the question of the retroactivity of Act No. 3030 is properly and legally before the court.

The status of the Moran case is of particular interest. Recall—Appeal perfected and four errors assigned, but naturally not including the point of prescription under Act No. 3030, for the very good reason that the Act was not yet on the statute books. Act No. 3030 enacted and effective on March 9, 1922. Case submitted, and judgment of Supreme Court rendered on March 31, 1922. Motion of reconsideration filed by the attorney for the appellants, within the regular fifteen-day period, based on two counts, but again not including the point of prescription, although Act No. 3030 was then in force. Not until May 2, 1922,

that is, *not until two months after judgment was rendered*, when a third motion, which the Chief Justice is pleased to call a "special motion," was presented, was the contention made that the alleged crime had prescribed in accordance with section 71 of Act No. 3030.

The Chief Justice finds no difficulty in surmounting these obstacles, although the constant practice of the court has been not to allow new and original questions to be presented for the first time on a motion for rehearing; although the court has consistently required that all arguments be advanced in one motion of reconsideration, and although the Rules of the Court are explicit and mandatory, when they provide that "judgment shall not be entered until ten days after * * * publication," that "five days after entry of judgment the clerk shall remand the case to the lower court," and that "*applications for a rehearing shall be * * * filed within fifteen days after the publication of the decision of the court*." (Note U. S. *vs*. Serapio [1912], 23 Phil., 584; Lucido and Lucido *vs*. Vita [1911], 20 Phil., 449; Espidol *vs*. Espidol and Espidol [1913], 25 Phil., 4; Rules of the Supreme Court of the Philippines, 33, 34, 35; 4 C. J., pp. 629, 642.)

Conceding, however, that as to all these preliminary matters the majority are right, and I am wrong, I am yet ready to meet them on their own ground and am prepared to prove that the provisions of section 71 of Act No. 3030 approved March 9, 1922, providing that "Offenses resulting from violations of this Act shall prescribe one year after their commission," should not, and cannot be given retroactive effect, if the law is to be followed and justice is to be done. The importance of the subject will serve as an apology for a lengthy and serious consideration of the question above stated.

Act No. 3030 of the Philippine Legislature is entitled, "An Act to amend certain sections and parts of sections of chapter eighteen, known as the Election Law, and chapter sixty-five, on penalties for violations of certain administrative laws, of Act Numbered Twenty-seven hundred and eleven, entitled 'An Act amending the Administrative Code,' to make more effective the provisions and purposes of said Election Law, and for other purposes." The first seventy sections of Act No. 3030 amend specifically named sections of the Administrative Code "to read as follows." Then follows section 71 above quoted. The Act concludes with section 72 reading: "*This Act* shall take effect on its

approval." The Act was approved on March 9, 1922.

The first duty of the courts is to apply the law. The last duty of the courts is to interpret or construe the law. When, therefore, the Philippine Legislature said that "Offenses resulting from violations of *this Act* shall prescribe one year after their commission," it meant exactly what it said, and the only duty of the court is to make effective the legislative language. "*This Act*" could mean only Act No. 3030. Judicial interpretation or construction are consequently impertinent and offensive in the face of the plain words used by the Legislature.

It has, however, been suggested, that "this Act" means "the Election Law as amended." Even if this proposition be conceded, yet it remains true that the amendatory Act will not be given a retrospective construction; the new provisions are to be understood as enacted at the time the amended act takes effect. (36 Cyc., 1223.) In this instance section 72 says that "*This Act* (No. 3030) shall take effect on its approval"—on March 9, 1922.

It should be observed in relation to what has just been said with regard to the appropriateness of merely applying the law, that *there is nothing in section 71, or in any other section of Act No. 3030, which would authorize a retrospective construction. Not one word which even squints at a retroactive effect can be found in Act No. 3030*. If the Philippine Legislature had intended that Act No. 3030 should apply to pending cases, it could easily have used language to this effect; as for example, "Offenses heretofore committed," etc. Not having done so, the courts cannot write such words into the law without usurping legislative prerogatives.

It is a cardinal rule of statutory construction, so elementary that I hesitate to repeat it, that if the courts find it impossible to apply the law, then their duty is to ascertain and give effect to the intention of the law-making body. Here, the intention of the Philippine Legislature is self-evident. The various sections of Act No. 3030 were carefully drafted to close up the loopholes in the old Election Law and to provide more severe penalties. The purpose of the Legislature, as announced in the title of the law, is, in part, "to make more effective the provisions and purposes of said Election Law." *It would be a strange interpretation indeed, which would*

attain the result, in a law of this character, of liberating criminals convicted at the time the law went into effect, when the Legislature intended to provide more effectively for cleaner elections.

With strong reluctance, therefore, am I led away from the firm ground on which my feet are planted, when we simply apply the law and effectuate legislative intention, to follow strange and treacherous bypaths. That I do so is because of the energy with which these arguments have been pressed by counsel and out of respect to the point of view of colleagues in the Court.

The majority say that "Both consistency and sound legal principles, * * * demand that we, in this case, seek our precedents in Latin rather than in American jurisprudence." I had thought that the Philippines was under American sovereignty and that the Election Law was an American importation. But apparently I have been mistaken. As, however, the majority with "consistency" cite Wharton, an American authority, possibly, also, I may be pardoned if I use the same authority and give some prominence to the American precedents.

Mr. Wharton, in his treatise on Criminal Pleading and Practice (9th ed., 1889) announces the following doctrine: "As a rule, statutes of limitation apply to offences perpetrated before the passage of the statute as well as to subsequent offences." (P. 219.) The cases cited in support of the text are found on examination to be early Federal cases relating to the 32d section of the Act of Congress of April 30, 1790. The contention there denied was "that an act of limitations to criminal prosecutions can only be used as a bar in cases declared by law to be criminal at the time the act of limitations was passed, unless there be express words extending it to crimes to be created in future." (*See* Adams *vs*. Woods [1805], 2 Cranch, 336.)

Corpus Juris (published in 1918), which the majority decisions avoid mentioning1, is authority for a different statement of the rule, under the subject "Limitation of Prosecutions in Criminal Cases," namely: "Such statutes are to be given a reasonably strict construction in favor of accused and against the prosecution. *By the weight of authority, however, they do not apply to crimes previously committed, unless clearly retrospective in their terms*." (16 C. J., 222.) The cases in support of the last sentence are the following: People *vs*. Lord ([1877], 12 Hun. [N. Y.], 282), and Martin *vs*.

State ([1859], 24 Tex., 62). *Contra*, Commonwealth *vs*. Hutchinson ([1850], 2 Pars. Eq. Cas. [Pa.], 453, 1 Phila., 77).

The New York case cited is not available in our library. In a standard treatise, Wood on Limitations, special reference is, however, made to it. It is said: "*In New York such statutes are held not to apply to crimes committed before the statute was changed, unless expressly included therein*, adopting the rule in that respect applicable in civil cases." (Wood on Limitations, 3d ed., p. 45.)

In the second case cited in the note to Corpus Juris, Martin *vs*. State, the Supreme Court of Texas held: "*Statutes of limitations for the prosecution of crimes and misdemeanors, do not have a retrospective operation*. * * * The statute of limitations passed in 1854 could not operate as a bar to a prosecution commenced within two years from the time that statute went into operation, there being no previous limitation to the prosecution of the offense in question." The Chief Justice rendered a dissenting" opinion, which is now made one of the props of the opinion of our Chief Justice.

The same result was obtained in decisions coming from Massachusetts. (Commonwealth *vs*. Boston and Worcester Railroad Corporation [1853], XI Cush. [Mass.], 512; and Commonwealth *vs*. Homer [1891], 153 Mass., 343.) In the first Massachusetts case it was held that an indictment against a railroad company under St. 1840, c. 80, for negligently causing the death of a passenger, is not within Rev. Sts. c 120, sec. 21, limiting actions and suits for any penalty, or forfeiture, to one year after the offense is committed, for the reason that St. 1853, c. 414, sec. 3, does not apply to indictments pending at the time of its passage. In the second Massachusetts case, it was held that the Statute of 1889, c. 100, providing that in a criminal prosecution on the Pub. Sts. c. 207, sec. 9, for attempting to procure a miscarriage, the dying declaration of the woman shall be admissible in evidence, if her death is alleged to have been the result thereof, is prospective only in its operation, and does not apply to an indictment found after its passage for such an offense theretofore committed. The court followed the language of another case, namely:

> *" 'The statute is equivocal and ambiguous in its terms, and might without doing violence to the words in which it is expressed be construed as retroactive. But such is by no means its necessary interpretation. On the contrary, it will have full meaning and effect, consistent with the fair import of its language, if it is held to be prospective only. The true rule of interpretation applicable to such enactments is well settled, and has been often recognized and affirmed by this court. It is, that all statutes are to be considered as prospective, and are not to be held to prejudice or affect the past transactions of the subject, unless such intention is clearly and unequivocally expressed*. (Whitman *vs*. Hapgood, 10 Mass., 439; King *vs*. Tirrell, 2 Gray, 331; Gerry *vs*. Stoneham, 1 Allen, 319, 323; Garfield *vs*. Bemis, 2 Allen, 446.) *No good reason can be given for excepting the statute under consideration from the operation of this wise and salutary rule.' There is no express intention to make the St. of 1889, c. 100, retroactive in its operation, and none can be implied from the subject-matter; it will have full effect if construed as prospective only, and, in the opinion of a majority of the court, it must be so construed*."

The following was the holding of the Supreme Court of Pennsylvania in the case of Commonwealth *vs*. Duffy [1880], 96 Pa. St., 506):

> *"An act of limitation is an act of grace purely on the part of the legislature, and especially is this the case in the matter of criminal prosecutions*. The state makes no contract with criminals, at the time of the passage of an act of limitations, that they shall have immunity from punishment if not prosecuted within the statutory period. Such enactments are measures of public policy only. They are entirely subject to the mere will of the legislative power, and may be changed or repealed altogether as that power may see fit to declare. When a right to acquittal has not been absolutely acquired by the completion of the period of limitation, that period is subject to enlargement or repeal without being obnoxious to the constitutional prohibition against *ex post facto* laws." (*See also* Thompson *vs*. State [1877], 74 Miss., 740, and Moore *vs*. State [1881], 43 N. J. L., 203.)

With the exception of the Philadelphia city case, which cannot be found in the Philippines, *all other courts which have given consideration to the subject have refused to give retroactive effect to statutes establishing limitations of actions in criminal cases*, and have, we think, with all propriety, adopted the rule in civil cases pertaining to limitations of actions.

A rule as old as law itself is that statutes ought to be construed to be prospective, and not retrospective, in operation. Laws look forward and not backward. *Nova constitutio futuris formam imponere debet, non praeteritis*. This rule is applicable to statutes of limitation, unless by express command, or by necessary and unavoidable implication, a different construction is required. It has been held that the rule for the construction of statutes of limitations, with respect to their operation as being retroactive or not, requires such statutes (whether new, reenacted or amended), to be given a wholly prospective effect, that is, to commence running with respect to a particular cause of action from the time when the cause is subjected to the operation of the act, so that the party may have the full period prescribed thereby, unless it clearly appears that the legislature intended the act to operate on existing causes, so as to commence running from the time any such cause accrued. (Thomas *vs*. Higgs & Calderwood [1910], 68 W. Va., 152, Ann. Cas., 1912A, 1039; Hathaway *vs*. Merchants' Loan and Trust Co. [1905], 218 Ill., 580; 4 Ann. Cas., 164; Moore *vs*. State [1881], 43 N. J. L., 203; Herrick *vs*. Boquillas Land & Cattle Co. [1906], 200 U. S., 96, 102; U. S. Fidelity etc. Co. *vs*. Struthers Wells Co., [1907], 209 U. S., 306.)

Ruling Case Law summarizes the principles governing the construction of limitation laws as follows:

> "One rule for the construction of laws is that *statutes of limitation are presumed to be prospective and not retrospective in their operation, in the absence of a clear legislative intent to the contrary,* and the presumption is against any intent on the part of the legislature to make such statute retroactive. It has been said that *words of a statute ought not to have a retrospective operation unless they are so clear, strong, and imperative that no*

other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. * * * Some courts take the view that *since limitation laws apply only to the remedy,* they are not within the principle that statutes should be given a prospective rather than a retrospective construction, and therefore that they should be construed as retrospective unless they contain no language clearly limiting their application to causes of action arising in the future. But it has also been pointed out that even statutes as to procedure are not necessarily retrospective in their operation and the courts are not compelled to construe as retrospective a limitation law dealing with procedure only." (17 R. C. L., 682-684.)

"While it is undoubtedly within the power of the legislature to pass a statute of limitations or to change the period of limitation previously fixed and to make such statute or changes applicable to existing causes of action, provided a reasonable time is given by the new law for the commencement of suit before the bar takes effect, yet such a statute is not to be readily construed as having a retroactive effect, but is generally deemed to apply merely to causes of action arising subsequent to its enactment, and the presumption is against any intent on the part of the legislature to make the statute retroactive. *The statute will only be given a retroactive effect when it was clearly the intention of the legislature that it should so operate*." (25 R. C. L., 792, 793.)

One of the cases cited in support of the general rule, and oft followed by other courts, is United States Fidelity etc. Company *vs*. Struthers Wells Co., *supra*. In the course of the opinion of the United States Supreme Court, it was said:

"There are certain principles which have been adhered to with great strictness by the courts in relation to the construction of statutes, as to whether they are or are not retroactive in their effect. *The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong, and imperative that no other meaning can be annexed to them or unless the*

intention of the legislature cannot be otherwise satisfied. (Dash *vs*. Van Kleeck, 7 Johns., 477, 499; Jackson ex dem Hicks *vs*. Van Zandt, 12 Johns, 169; United States *vs*. Heth, 3 Cranch, 399, 414; Southwestern Coal & Improv. Co. *vs*. McBride, 185 U. S., 499, 503; United States *vs*. American Sugar Ref. Co., 202 U. S., 563, 577.)

"The language of the amended act is prospective, as it provides 'that hereafter any person or persons entering into a formal contract with the United States,' etc. That language standing alone would leave little doubt as to the intention of Congress in the matter of the taking effect of the amendment.

"It is urged, however, that as the amendment in this respect but reiterates the language of the original act, the use of the word 'hereafter' in the commencement of the amendment ought not to have the significance which would
otherwise attach to it, because it is simply in this particular reenacting the law as it already stood.

"There is considerable force in the suggestion that the word 'hereafter' is not to receive the weight which in other circumstances it ought to have. The question is, however, one as to the intention of Congress, and when we come to look at the provisions of the statute, as amended, we are convinced that Congress did not intend that the amendment should apply to cases where the bond
had already been executed, the work done, the respective rights of the parties settled, and the cause of action already in existence. If Congress had intended otherwise, we think it would have still further amended the original act by providing in plain language that the amendment should apply to all cases, and not be confined to the future. * * *

"Viewing the whole section, we think Congress meant that only in future cases should the provisions of the amendment apply, although some trifling portion of those provisions might be regarded, technically, as in the nature of procedure. It is therefore wiser to hold the entire section governed by the usual rule and as applying only to the future."

It is, however, insisted with marked earnestness, that notwithstanding the

simple and plain provisions of section 71 of Act No. 3030, and the almost universal rule adopted by the American courts, we are in duty bound to apply the provisions of the Spanish Penal Code.

Article 7 of the Penal Code reads: "Offenses punishable under special laws are not subject to the provisions of this Code." In the decision of the Supreme Court of the Philippines, in which most elaborate consideration was given to article 7 of the Penal Code, the rule adopted was: "*That, when a crime is made punishable by a law other than by the provisions of the Penal Code, the provisions of said code do not apply*." Following Viada in his commentaries on the Penal Code (1 Viada, 84), it was also pointed out that among the special laws are election laws. (U. S. *vs*. Serapio [1912], 23 Phil., 584, 592, 593.) The majority decisions are strangely silent as to the decision last cited.

Paraphrasing article 7 of the Penal Code as construed by this court: As offenses are made punishable by Act No. 3030, a special law the provisions of the Penal Code do not apply. But it is said that article 7 should be interpreted with reference to other articles of the Penal Code, and I concede that this is a fair argument.

Article 22 of the Penal Code is found in Title III, which is headed, "*Penalties*." Chapter I of Title III is entitled "*Penalties in General*." Only passing reference is made to the epigraphy, in order to concede everything possible to the argument of the petitioner in this case. Coming then to a consideration of the substance of article 22 of the Penal Code, its effect can best be judged by setting it side by side with article 3 of the Civil Code, since both articles have been given indiscriminate application to criminal laws. These two provisions of Philippine law read as follows:

"ART. 22. *Penal laws* shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of *such laws* a final sentence has been pronounced and the convict is serving same."	"ART. 3. Laws shall not have a retroactive effect unless therein otherwise provided."

Article 3 of the Civil Code, given express application to criminal laws in the case of United States *vs*. Cuna ([1908], 12 Phil., 241), bears out the general doctrine previously announced. Article 22, on the other hand, is of an opposite tenor, and if given controlling effect, might lead to a contrary result. The first two words of article 22 are "Penal laws." What is meant by the term "Penal laws?" Is section 71 of Act No. 3030 a "penal law?"

I feel that I can, with all propriety, turn to the definition of "penal law" given by the American authorities, not only because there are numerous judicial definitions of the phrase available, but because the Election Law, establishing the Australian Ballot System, is primarily an American innovation, which was unknown in Spain when the Penal Code of 1870 was promulgated.

"Penal laws," all of the English and American decisions state, strictly and properly are those imposing punishment for an offense committed against the state, and which, by the English and American constitutions, the executive of the state has the power to pardon. In other words, a penal law denotes punishment imposed and enforced by the state for a crime or offense against its law. It would be palpably incongruous to call a statute penal which did not contain a definite and certain provision for punishment. On the other hand, a statute which gives a remedy for an injury belongs to the class of remedial statutes, and not to that of penal statutes. (Huntington *vs*. Attrill [1892], 146 U. S., 657; Whitman *vs*. National Bank of Oxford [1900], 176 U. S., 559; Shick *vs*. United States [1904], 195 U. S., 65; The Antelope [1825], 10 Wheat., 66, 123; United States *vs*. Reisinger [1888], 128 U. S., 398, 402; Davis *vs*. Mills [1903], 121 Fed., 703, 704; United States *vs*. Illinois Cent. R. Co. [1907], 156 Fed., 182, 185; United States *vs*. Four Hundred and Twenty Dollars [1908], 162 Fed., 803, 805; Ross *vs*. New England Mortg. Security Co. [1893], 101 Ala., 362; Nebraska Nat. Bank *vs*. Walsh [1900], 68 Ark., 433; Levy *vs*. Superior Court [1895], 105 Cal., 600; Plumb *vs*. Griffin [1901], 74 Conn., 132; Mitchell *vs*. Hotchkiss [1880], 48 Conn., 9, 19; Southern Ry. Co. *vs*. Melton [1909], 133 Ga., 277; Woolverton *vs*. Taylor [1890], 132 Ill., 197; Diversey *vs*. Smith [1882], 103 Ill., 378, 390; American Credit-Indemnity Co. *vs*. Ellis [1901], 156 Ind., 212; State *vs*. Hardman [1896], 16 Ind. App., 357; Lagler *vs*. Bye [1896], 42 Ind. App., 592; Sackett *vs*. Sackett [1829], 25 Mass., 309, 320; Cary *vs*. Schmeltz [1909],

141 Mo. App., 570; Casey *vs*. St. Louis Transit Co. [1905], 116 Mo. App., 235; State *ex rel*. Rodes *vs*. Warner [1906], 197 Mo., 650; Manhattan Trust Co. *vs*. Davis [1899], 23 Mont., 273; Globe Pub. Co. *vs*. State Bank [1894], 41 Neb., 175; Boice *vs*. Gibbons [1826], 8 N. J. Law, 324, 330; Hutchinson *vs*. Young [1903], 80 N. Y. S., 259; People *vs*. Wells [1900], 65 N. Y. S., 319; Smith *vs*. Colson [1912], 31 Okl., 703; Kilton *vs*. Providence Tool Co. [1905], 22 R. I., 605; Aylsworth *vs*. Curtis [1896], 19 R. I., 517; Whitlow *vs*. Nashville, C. & St. L. R. Co. [1904], 114 Tenn., 344; Drew *vs*. Russel [1875], 47 Vt., 250, 253; Norfolk & W. R. Co. *vs*. Hall [1897], 44 W. Va., 36.)

Escriche, *Diccionario Razonado de Legislacion y Jurisprudencia* (vol. III, p. 898), defines "ley penal," the Spanish equivalent of "penal law," as follows: "Ley penal es la que tiene por objeto algun delito y la pena con que ha de castigarse." *Diccionario Enciclopedico de la Lengua Castellana* defines "penal" thus: "Perteneciente o relativo a la pena o que la incluye;"—and "pena" thus: "Castigo impuesto por superior legitimo al que ha cometido un delito o falta."

The first instance in which our Supreme Court gave consideration to article 22 of the Penal Code, was in the case of Pardo de Tavera *vs*. Garcia Valdez ([1902], 1 Phil., 468). The Chief Justice, in his decision, relies on the syllabus which, of course, is the statement of the reporter and not of the court. I prefer to go to the opinion, wherein it was said:

> "Section 13 of the same act provides as follows: 'All laws and parts of laws now in force, so far as the same may be in conflict herewith, are hereby repealed: *Provided,* That nothing herein contained shall operate as a repeal of existing laws' in so far as they are applicable to pending actions or existing causes of action, but as to such causes of action or pending actions existing laws shall remain in full force and effect.' This act went into effect October 24, 1901, subsequent to the publication of the article in question, and during the pendency of the prosecution. By article 22 of the Penal Code 'Penal laws shall have a retroactive effect in so far as they favor the person guilty of a crime or misdemeanor,' etc. The court below in fixing the punishment

> proceeded upon the theory that by the operation of this general rule the *penalty* prescribed in the Penal Code for the offense in question was necessarily modified and could not be inflicted in its full extension. In so doing we think the court overlooked or improperly construed the proviso in the section of Act No. 277, above cited, by virtue of which the previously existing law on the subject covered by the act is left intact in all its parts as respects pending actions or existing causes of action. The language is general and embraces, we think, all actions, whether civil, criminal, or of a mixed character. In this view of the case we have no occasion to consider the question argued by counsel for the private prosecutor as to whether the provisions of Act No. 277 respecting the penalty are more favorable to the accused than those of the former law or otherwise. The punishment must be determined exclusively by the provisions of the former law."

The case of United States *vs*. Hocbo ([1908], 12 Phil., 304) oft mentioned by Mr. Justice Ostrand, merely holds that (I now quote from the body of the decision), "All amendments of the law (meaning the Penal Code) which are beneficial to the defendant, shall be given a retroactive effect, in so far as they favor the person charged with the crime or misdemeanor. * * * We find nothing in Act No. 1773 which is more favorable to the defendant than the provisions of the Penal Code."

The case of United States *vs*. Parrone ([1913], 24 Phil., 29), gave special attention to the relative effect of articles 7 and 22 of the Penal Code. It was said that "Article 22 must necessarily relate (1) to penal laws existing prior to the Penal Code, in which the *penalty* was less severe than those of the Penal Code; or (2) to laws enacted subsequent to the Penal Code, in which the *penalty was more favorable to the accused*. Rule 80, *Ley Provisional para la aplicacion de las disposiciones del Codigo Penal*. Under the provisions of said article 22, if a crime had been committed prior to the date of the Penal Code the *punishment* for which was more favorable to the accused than the provisions of the Penal Code, it is believed that the accused might invoke the provisions of said article (22) even though he was not placed upon trial until after the Penal Code went into effect. (U. S. *vs*. Cuna [1908], 12 Phil., 241.) So also if by an amendment to the Penal Code or by a later special law *the punishment for an act was made less severe than by the*

provisions of the Penal Code, then the accused person might invoke the provisions of said article." We gather from this language that the phrase "penal laws" used in article 22 relates to laws enacted subsequent to the Penal Code, in which the *penalty* is more favorable to the accused or the *punishment* for the act is made less severe.

Statutes of limitation, it is well settled, relate to the remedy and not to the right; relate to procedure and not to the crime. (Moore *vs*. State, *supra*; Commonwealth *vs*. Duffy, *supra*; 17 R. C. L., 703, citing Mulvey *vs*. Boston [1908], 197 Mass., 178; U. S. *vs*. Serapio, *supra*.) Viada, in his commentaries on the Penal Code (vol. I, p. 570, 4th ed.), makes the following observations: "Prescription of the crime only means the termination of the right or power to prosecute or punish the offender, after the lapse of a definite period from the commission of the offense, or if this is not known, from the day of its discovery and the beginning of the judicial proceedings for investigation and punishment." The supreme court of Spain, in a decision of January 22, 1872, held that when the law speaks of the prescription of an offense, it cannot be understood to mean other than that of the action to prosecute the same.

This construction is the more apparent, when it is remembered that the Penal Code, although it does contain some provisions concerning procedure, is, generally speaking, substantive law. As such substantive law, it is but reasonable to suppose that it would only reach special laws of a similar nature. It must also be recalled that the criminal actions in the case before us and in all other cases on appeal to the court, were instituted before the time Act No. 3030 took effect, and that these courts of first instance had jurisdiction of the cases at that time.

What, therefore, is the condition of the much vaunted Latin law and jurisprudence on the question under discussion? First, article 7 of the Penal Code and our decisions make Act No. 3030 not subject to the provisions of the Penal Code; second, article 22 is found in a title and a chapter of the Code relating to "Penalties," and the article itself specifies "Penal laws;" third, section 71 of Act No. 3030 does not concern "penalties," and is not a "penal law," but is a procedural law.

Not a single authority, Latin or American, supports the position of the majority.

So much for our opinion on the principal question. I note, however, that the majority decision of Mr. Justice Ostrand argues the facts. I had been told that a legal question was to be resolved. But somehow or other, although none of us have read the record or the briefs in that particular case, it may be a matter which strengthens his position. And if this is true, and if the argument at least serves as a smokescreen to obscure the real question, who can object?

The majority decisions also essay to sanctify and deify prescription laws. What this has to do with the question in issue I do not know. I had thought that the Supreme Court was a judicial body, but apparently I have misconceived our functions.

The majority further say that "a strong appeal has been made to our emotions by describing in rather vivid colors, the disastrous consequences which will result from the dismissal of actions," etc., etc. I can find no such plea in any of the briefs. But the statement brings to mind a point on which I would gladly comment. What then are the consequences which would result from holding that section 71 of Act No. 3030 has retrospective effect?

One consequence I have already noted. At least thirty-two cases dismissed, and the crimes of ninety-one accused condoned. "A clear legislative intent, by a repeal of the act imposing it, or some other expressed purpose, is required to take away a penalty or condone a crime by a retroactive law. This is especially to be guarded against in legislation designed to favor individuals at the expense of the public." (State *vs*. Startup [1877], 39 N. J. Law, 423.)

In the next place, such a holding would mean that we would make of Act No. 3030 an *ex post facto* law, something which is not claimed for it by petitioner, and a pitfall which the courts invariably avoid. And, lastly, I would recall another well-known principle of statutory construction: "If the language is clear, and the intent manifest, there is, of course, no room for presumptions. But if, on the other hand, the language is not clear, and it is obvious that by a particular construction in a doubtful case great public

interests would be endangered or sacrificed, the court ought not to presume that such construction was intended by the makers of the law. A statute will not be so construed as to work public mischief, unless required by clear, unequivocal words, especially if the statute be chiefly to subserve individual interests." (25 R. C. L., 1027.)

Having, then, in view the disastrous consequences of one holding, as contrasted with the reasonable consequences of another, I can properly recall that in every instance in which this court has considered the subject, it has avoided the condonation of crime. For example, when the United States Supreme Court in its decision in the Weems case ([1910], 217 U. S., 349), held article 300 of the Penal Code void, it was incumbent upon the Supreme Court of the Philippine Islands to apply and construe the decision of the higher tribunal. In the case of United States *vs*. Pico ([1911], 18 Phil., 386), in which this court discussed the subject, it was found that according to the official report of the Director of Prisons there were serving sentences of analogous crimes four hundred and eighty-five accused, and that should this court be bound thereby to liberate them, "it * * * would result in a general jail delivery of all those heretofore convicted of many of the gravest and most heinous offenses denned and penalized by law; and would be substantially equivalent to a proclamation of amnesty in favor of all those who have heretofore committed such crimes and have not yet been brought to trial, or who may commit them hereafter until such time as the Legislature may be able to reform the Penal Code." The court continued: "Confronted as we are with the knowledge that consequences so far-reaching and disastrous must result from a holding favorable to the contention of counsel on this motion, it is manifestly our duty rigidly to restrict the application of the doctrine laid down in the Weems case to cases wherein the *ratio decidendi* in that case is clearly applicable and to decline to be bound by inferences drawn from observations and comments contained in the opinion in that case which appear to be based upon a misapprehension of facts, or upon assumed facts which do not accord with the facts in the cases brought before us." (Note also Ong Chang Wing *vs*. U. S. [1910], 218 U. S., 272.)

Before closing, I would like to disencumber myself of the miscellaneous authorities which I have discussed, and would again prefer to get back to the fundamentals of ascertaining and giving effect to legislative intent. On the one hand, by applying the simple phraseology of section 71, it appears to me that we

effectuate legislative intention and avoid indescribable harm. On the other hand, if we give to the language of the Legislature an unusual meaning, we nullify legislative intention and turn away from prison persons who are guilty of violations of the Election Law.

Not many years ago, the public was edified by executive pardons of criminals who had violated the Election Law during the elections of 1913 and 1916. A judicial veto of legislative intent, and judicial legislation now effects a blanket pardon of persons who audaciously thwarted the people's will during the elections of 1919.

It is incomprehensible that members of the Philippine Legislature convened for the avowed purpose of enacting "a more effective Election Law," to use their own language, and cognizant as many of the members must have been, of pending cases in the Courts of First Instance and in the Supreme Court,—that these same members of the Legislature would insert provisions tantamount to a legislative pardon of persons who had committed crimes during the elections in 1919, but whose causes had tardily been brought before the courts. It would, indeed, be a serious charge against the integrity of the members of the Philippine Legislature to ascribe to them the purpose of inserting in the new Election Law a section to effectuate a general jail delivery of convicted criminals, and the Supreme Court of the Philippine Islands is indeed assuming a grave responsibility when it distorts legislative language with the result which I have described. Believing, however, that the Philippine Legislature acted in a patriotic manner to advance the general public interests, and that no lurking design hides behind the meaning of its legislative product to advance private interests, we should enforce the law of an independent branch of the Government as we find it—as it is our duty to do.

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[1] Page 437, *post*.

Date created: September 25, 2018