

CIPRIANO P. PRIMICIAS, PETITIONER, VS. FELICISIMO OCAMPO, AS JUDGE-AT-LARGE PRESIDING OVER BRANCH C OF THE COURT OF FIRST INSTANCE OF MANILA AND EUGENIO ANGELES, AS CITY FISCAL ...*G. R. No. L-6120. June 30, 1953*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/8a2aeb49ba21/>**BAUTISTA ANGELO, J.:**

This is a petition which seeks to prohibit respondent Judge from proceeding with the trial of two criminal cases which were then pending against petitioner without the assistance of assessors in accordance with the provisions of section 49 of Republic Act No. 409 in relation to section 154 of Act No. 190, and as an auxiliary remedy, to have a writ of preliminary injunction issued so that the trial may be held pending until further orders of this court.

This petition was originally filed with the Court of Appeals, but was later certified to this court on the ground that the main basis of the petition is section 49 of Republic Act No. 409, otherwise known as Revised Charter of the City of Manila, approved on June 18, 1949, and respondents assail the constitutionality of said section in that it contravenes the constitutional provision that the rules of court "shall be uniform for all courts of the same grade * * *." (Section 13, Article VIII of the Constitution.)

Petitioner was charged before the Court of First Instance of Manila with two statutory offenses, namely, (1) with a violation of Commonwealth Act No. 606, which was docketed as criminal case No. 18374, in that he knowingly chartered a vessel of Philippine registry to an alien without the approval of the President of the Philippines and (2) with a violation of section 129 in relation to section 2713 of the Revised Administrative Code, which was docketed as Criminal Case No. 18375, in that he failed to submit to the Collector of Customs the manifests and certain authenticated documents for the vessel "Antarctic" and failed to obtain the necessary clearance from the Bureau of Customs prior to the departure of said vessel for a foreign port.

On April 23, 1952, before the trial of said criminal cases, petitioner filed a motion praying that assessors be appointed to assist the court in considering the questions of fact involved in said cases as authorized by section 49 of Republic Act No. 409, otherwise known as Revised Charter of the City of Manila, which provides that "the aid of assessors in the trial of any civil or criminal action in the Municipal Court, or the Court of First Instance, within the City, may be invoked in the manner provided in the Code of Civil Procedure." This motion was opposed by the City Fiscal who appeared for the People of the Philippines.

On April 28, 1952, the court issued an order denying the motion holding in effect that with the promulgation of the Rules of Court by the Supreme Court, which became effective on July 1, 1940, all rules concerning pleading, practice and procedure in all courts of the Philippines previously existing were not only superseded but expressly repealed, that the Supreme Court, having been vested with the rule-making power, expressly omitted the portions of the Code of Civil Procedure regarding assessors in said Rules of Court, and that the reference to said statute by section 49 of Republic Act No. 409 on the provisions regarding assessors should be deemed as a mere surplusage.

Believing that this order is erroneous, petitioner now comes to this court imputing abuse of discretion to the respondent Judge.

The issues now posed by petitioner are:

"I. The right of the petitioner to a trial with the aid of assessors is an absolute substantive right, and the duty of the court to provide assessors is mandatory.

"II. The right to trial with the aid of assessors, being a substantive right, cannot be impaired by this court in the exercise of its rule-making power.

"III. Section 154 of the Code of Civil Procedure and Section 2477 of the Old Charter of Manila, creating the right to trial with the aid of assessors, are substantive law and were not repealed by Rules of Court.

"IV. Granting without admitting that the provisions on assessors of the Code of Civil Procedure and the old Charter of Manila were impliedly repealed, nevertheless, the same provisions were later reenacted by reference in section 49 of the Revised Charter of Manila which is now the source of the right to trial with the aid of assessors and which refers to the Code of Civil Procedure merely to indicate the procedure for appointing assessors.

"V. Section 49 of the Revised Charter of Manila is not invalid class legislation and does not violate the constitutional provision that the rules of pleading, practice and procedure 'shall be uniform for all courts of the same grade.' "

A brief summary of the historical background of the legislation regarding trial with the aid of assessors in the Philippines may be of help in the determination of the issues posed by petitioner. The first provision which allowed trial with the aid of assessors in civil cases, in inferior courts and Courts of First Instance is contained in Act No. 190 of the Philippine Commission; otherwise known as the Code of Civil Procedure, which took effect on October 1, 1901 (Sections 58-62; 154-161). Almost simultaneously, or on October 17, 1901, the trial with the aid of assessors both in civil and criminal cases was allowed in the Manila courts upon the enactment of Act No. 267, amending Act No. 183, the original Charter of Manila. In 1914, the trial by assessors was allowed in criminal cases in the courts of first instance in the provinces with the enactment of Act No. 2369. And in 1915, Act No. 2520 was passed extending the same trial by assessors to the courts of first instance and justice of the peace courts in the Department of Mindanao and Sulu.

In connection with the use of assessors in Manila, section 44 of Act No. 183, the original Charter of Manila, as amended by section 13 of Act No. 267, was reenacted as section 2449 of the Administrative Code 1916, Act No. 2657. Section 2449 of the Administrative Code of 1916 became section 2477 of Act No. 2711, otherwise known as the Revised Administrative Code of 1917. And section 2477 in turn became section 49 of the Republic Act No. 409, which is the present Charter of the City of Manila. This section 49 is the law now invoked by petitioner in support of his claim to a trial with the aid of assessors in the two criminal cases now pending against him. Its pertinent provisions are quoted hereunder for ready reference:

"SEC. 49. Assessors in the courts in the city.—The aid of assessors in the trial of any civil or criminal action in the municipal court, or the Court of First Instance, within the city, may be invoked in the manner provided in the Code of Civil Procedure. It shall be the duty of the Municipal Board to prepare one list of the names of twenty-five residents of the City best fitted by education, natural ability and reputation for probity to sit as assessors in the trial of actions in the municipal court and a like list of persons to sit as assessors in the trial of the action in the Court of First Instance. The Board may at any time strike any name from the list so prepared, by reason of the death, permanent disability, or unfitness of the person named; and in case names are so stricken out, other names shall be added in their place, to be selected as in this section provided. Parties desiring to avail themselves of the use of assessors in the municipal or Court of First Instance shall proceed as

provided for by law or rules of court; and the method of summoning assessors, enforcing their attendance, excusing them from attendance, their compensation, oath duties and effect of dissent from the opinion of the judges shall be as provided in those laws or rules."

A careful analysis of the above provisions is interesting. Their most salient features are: The aid of assessors in the trial of any civil or criminal action in the Municipal Court or the Court of First Instance may be invoked in the manner provided in the Code of Civil Procedure. The parties desiring to avail themselves of the use of assessors "shall proceed as provided for by law or rules of court", and "the method of summoning assessors, enforcing their attendance, excusing them from attendance, their compensation, oath, duties, and effect of the dissent from the opinion of the judge shall be as provided in those laws or rules." If we are to be guided merely by these provisions, the right to trial with the aid of assessor would seem to be beyond dispute. These provision are simple and clear and appear to be mandatory. But where the difficulty arises, is in their relation or bearing on the directive of the Constitution which provides that "the existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared rules of courts subject to the power of the Supreme Court to alter and modify the same." Pursuant to this rule-making power, the Supreme Court promulgated the present Rules of Court, which became effective on July 1, 1940, but because it failed to incorporate therein the provisions of the Code of Civil Procedure on assessors, respondents now contend that the right to trial with the aid of assessors, with all its concomitant provisions, cannot now be invoked because, being procedural in nature, the same must be deemed to have been impliedly eliminated.

This claim would be correct if we were to hold that the right to trial with the aid of assessors is not substantive but procedural or adjective in nature. If it were merely procedural, not having been incorporated in the Rules of Court, the logical conclusion is that the rule-making power has deemed wise to eliminate it. But no such presumption, nor conclusion, can be drawn for the reason that the right to a trial by assessors is substantive in the sense that it must be created and defined by express enactment as opposed to a mere remedy devised to enforce such right or obtain redress therefor. "Rules of procedure should be distinguished from substantive law. A substantive law creates, defines or regulates rights concerning life, liberty or property, or the powers of agencies or instrumentalities for the administration of public affairs, whereas rules of procedure are provisions prescribing the method by which substantive rights may be enforced in courts of justice." (Moran, Comments on the Rules of Court, Vol. I, 1952 ed., p. 4.)

In *Bustos vs. Lucero*,[*] (46 Off. Gaz., January Supp., pp. 445, 448), this Court cited with approval the following definitions of substantive law:

"Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights in a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. (60 C. J. 980.)

"Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions (36 C. J. 27; 52 C. J. S. 1026)."

The trial with the aid of assessors as granted by section 154 of the Code of Civil Procedure and section 2477 of the old Charter of Manila are parts of substantive law and as such are not embraced by the rule-making power of the Supreme Court. This is so because in said section 154 this matter is referred to as a right given by law to a party litigant. Section 2477 of the Administrative Code of 1917 is couched in such a manner that a similar right is implied when invoked by a party litigant. It says that the aid may be invoked in the manner provided in the Code of Civil Procedure. And this right has been declared absolute and substantial by this Court in several cases where

the aid of assessors had been invoked (*Berbari vs. Concepcion, et al.*, 40 Phil., 320; *Colegio de San Jose vs. Sison*, 54 Phil., 344). Thus, it was there said that these provisions "necessarily lead to the conclusion that the intervention of the assessors is not an empty formality which may be disregarded without violating either the letter or the spirit of the law. It is another security given by the law to the litigants, and as such, it is a substantial right of which they cannot be deprived without vitiating all the proceedings. Were we to agree that for one reason or another the trial by assessors, may be done away with, the same line of reasoning would force us to admit that the parties litigant may be deprived of their right to be represented by counsel, to appear and be present at the hearings, and so on, to the extent of omitting the trial in a civil case, and thus set at naught the essential rights granted by the law to the parties, with consequent nullity of the proceedings." (*Colegio de San Jose vs. Sison*, 54 Phil., 344, 349.)

Being substantive in nature, it is not difficult to see why the provisions concerning trial by assessors embodied in the Code of Civil Procedure have not been incorporated by the Supreme Court in the present Rules of Court. To have done so, it would have been a travesty of its rule-making power which, by direct mandate of the Constitution, is limited to matters referring to pleading, practice and procedure. The application that the respondents draw from the failure to incorporate these provisions in the present Rules of Court to the effect that the intention was to eliminate them or repeal them all together cannot, therefore, stand in the light of the observations and authorities we have above adverted to.

There is a point in the claim that the provisions concerning trial by assessors embodied in the Code of Civil Procedure are not wholly substantive but portions thereof are remedial such as those which refer to the method of summoning assessors, enforcing their attendance, excusing them from attendance, their compensation, oath, duties and effect of dissent from the opinion of the judge, as to which no cogent reason is seen for their non-incorporation if the intent is not to eliminate them from the Rules of Court. This is true; but it is likewise true that because said remedial provisions are inextricably interwoven with the substantive part, it must have been deemed wise and proper to leave them as they were for reasons of coordination and expediency, it being a truism that the one cannot be detached from the other. *Ubi jus ibi remedium*. Remedial measures are but implementary in character and they must be appended to the portion of the law to which they belong. Mention should be made here that not all of the provisions appearing in the Code of Civil Procedure are remedial in nature, such as those pertaining to prescription, the requisites for making a will, and the succession of the estate of an adopted child, which are admittedly substantive in character and for that reason were not incorporated in the Rules of Court. To this group belong the provisions under consideration.

Granting *arguendo* that the provisions on assessors of the Code of Civil Procedure and even in the old Charter of Manila are purely remedial in nature and because of the failure to incorporate them in the Rules of Court they are deemed to have been impliedly repealed as claimed by respondents, we are of the opinion that they can still be invoked by a litigant upon the theory that they had been reaffirmed and reenacted by Republic Act No. 409, which was approved in 1949, or nine years after the Rules of Court became effective. As already stated, section 49 of said Act states that the aid of assessors may, be invoked in the manner provided in the Code of Civil Procedure. It likewise states that the parties desiring to avail themselves of the use of assessors shall proceed as provided for by law. The mention made of the Code of Civil Procedure in said section indicates in itself a re-enactment or incorporation by reference of the provisions concerning assessors contained in said law. Congress, whose members were mostly lawyers, must be presumed to know that at the time said Act was approved the Rules of Court had already been promulgated without incorporating therein the provisions concerning the aid to assessors, and fully cognizant of this situation, and not desiring to omit this right granted to a litigant, they must have deemed it wise and proper to re-enact them by reference in said section 49. This Congress can do, for, while our Constitution has given the power to adopt rules of procedure to the Supreme Court, such grant did not preclude Congress from enacting any procedural law or altering, amending, or supplementing any of the rules that may be

promulgated by the Supreme Court (Section 13, Article VIII, Philippine Constitution).

The practice of making such reference has long been sanctioned. Our Congress did this not only in connection with courts in the City of Manila. It also did it in connection with courts in Quezon City (Republic Act No. 537). Statutes which refer to other statutes and make them applicable to the subject for legislation are called "reference statutes". These statutes are frequently used "to avoid encumbering the statute books by unnecessary repetition, and they have frequently been recognized as an approved method of legislation, in the absence of constitutional restrictions." [50 Am. Jur. 57; Gruen vs. Tax Commission, 211 P. (2d) (1949) 651, 666.]

Again, it has been held that "The adoption of an earlier statute by reference makes it as much a part of the latter act as though it had been incorporated at full length. This is true of a legislative act which refers to another act for the procedure to be taken." (50 Am. Jur. 58.) The reference in Republic Act No. 409 to the provisions on assessors must be deemed, therefore, to have incorporated therein the pertinent provisions on the matter contained in the Code of Civil Procedure in much the same manner as if the whole provisions had been reproduced. Consistent with this theory, we cannot but hold that the observations made by respondents to the effect that the reference made to said provisions in section 49 is a mere surplusage, or was due to a mere oversight, has no legal basis, as such innuendo would be tantamount to imputing lack of foresight, if not brazen negligence, to our legislative body.

It is finally contended that section 49 of Republic Act No. 409 is unconstitutional because it violates the constitutional provisions that procedural rules "shall be uniform for all courts of the same grade" and, therefore, it is a class legislation. This contention cannot be entertained; firstly, because it is raised for the first time in this instance, a procedural defect which would bar any further discussion on the matter following well-known precedents^[1] and, secondly, because it is not correct that at present only in Manila trial with the aid of assessors may be invoked if we will sustain the theory that the promulgation of the Rules of Court did not have the effect of repealing the provisions on assessors embodied in the Code of Civil Procedure.

The contention of respondents—we reckon—is predicated on the assumption that the provisions on assessors of the Code of Civil Procedure had been impliedly repealed. Such is not the case. We have already pointed out that the basic provisions on the matter partake of the nature of substantive law and as such they were left intact by the Supreme Court. The corollary to this conclusion is that this remedy may be invoked out only in Manila but in all other places where it existed prior to the promulgation of the Rules of Court. This is true in civil cases. With regard to criminal cases, we have seen that they are allowed by Act No. 2369; and we have already said that the same remedy may be invoked in the cities of Cebu, Iloilo and Quezon, with the particularity that their charters make express reference, either directly or indirectly, to the provisions of the code of Civil Procedure. With this historical background, the claim that under the theory we have entertained the trial with the aid of assessors can only be invoked in the City of Manila is certainly without merit.

In view of the foregoing, we hold that the provisions on assessors embodied in the Code of Civil Procedure are still in force and that the same may still be invoked in the light of the provisions of section 49 of Republic Act No. 409. It is therefore our opinion that the respondent Judge acted with abuse of discretion in denying petitioner his right to the aid of assessors in the trial of the two criminal cases now pending in the Court of First Instance of Manila.

Wherefore, petition is hereby granted, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo and Labrador, JJ., concur.

REYES, J., concurring:

In view of section 49 of Republic Act No. 409, approved June 18, 1949, authorizing the use of assessors in the trial of civil and criminal cases in the city of Manila, I concur in the result.

[*] 81 Phil. 640.

[1] De Leon vs. Santiago Syjuco, Inc., 90 Phil. 311; McGirr vs. Hamilton and Abreu, 30 Phil. 563; Yangco vs. Board of Public Utility Commissioners, 36 Phil. 116; Watler E. Olsen & Co. vs. Aldanese and Trinidad, 43 Phil. 259; Macondray & Co. vs. Benito and Ocampo, 62 Phil. 137; Go Chiong vs. Dinglasan, 45 Off. Gaz., 703, 79 Phil. 122; Willoughby, Vol. 1, p. 19; People vs. Vera, 65 Phil. 56.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.