

SEGUNDA SANTIAGO AND VALERIO FLORES, PLAINTIFFS AND APPELLANTS, VS. PABLO VALENZUELA AND MOISES PARDO, PROVINCIAL SHERIFFS OF CAMARINES SUR, DEFENDANTS AND APPELLEES.

G.R. No. L-670. April 30, 1947

Ponente: FERIA, J.

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FERIA, J.:

Defendants and appellees filed in the Court of First Instance of Camarines Sur a motion to dismiss the complaint of the plaintiffs-appellants on the ground, among others, that the plaintiffs' cause of action is barred by a prior judgment of the Justice of the Peace of Minalabac in another case between the same parties and for the same cause.

The Court, considering the allegations in the complaint, wherein the said judgment of the Justice of the Peace of Minalabac is quoted and alleged to have been fraudulently obtained, and the answer of the defendants, dismissed the complaint on the ground "that the allegation that the said judgment has been fraudulently obtained is unfounded and without merits, as shown by cursory reading of the text thereof," and therefore the plaintiff's cause of action is barred by said prior judgment of the Justice of the Peace, or *res judicata*.

The attorney for the plaintiffs received notice of the order dismissing the complaint on April 2, 1946, according to the registry return card attached to the record; and on May 3, 1946, the appellants filed a motion for new trial on the ground that "the evidence was insufficient to justify the order dismissing the complaint and that it is openly contrary to law."

The lower court, in its order of May 11, denied the motion for new trial for the reason that it did not comply with the requirements of Section 2, Rule 37, and a copy of said order was sent on May 14 by ordinary mail to the attorney for the appellants. On May 18 the plaintiffs-appellants filed the notice of appeal and record on appeal, and a petition to appeal as pauper which was granted, and the Court, in its order of May 28, approved the record on appeal saying, among others, that "The record on appeal having been filed within the period fixed by law, it is thereby approved."

The defendants-appellees have not objected to the approval of the record on appeal on May 18 by the trial court on the ground that the appeal has not been taken and perfected on time, and have not filed with the appellate court a motion to dismiss the appeal on said ground until after the appellants had presented their brief. And the question for us to resolve now is that raised in the appellees' motion to dismiss the appellants' appeal.

The right to appeal is not a natural right, but statutory. The appellate jurisdiction of the courts are conferred by law, and may be exercised only in the manner and in accordance with the provisions thereof. But although appellate courts are vested with appellate jurisdiction to affirm, modify or reverse the judgments of the inferior courts, they can not exercise it in a particular case unless and until each and every one of the steps or requirements

prescribed by law for the perfection of the appeal have been complied with. If a party does not take or perfect his appeal within the time prescribed by law, the appellate court can not acquire appellate jurisdiction, and for that reason the compliance with said requirements is jurisdictional, according to this Court in the cases of Layda vs. Legazpi (39 Phil., 83) and Pampolina and Vistal vs. Suiza and Osuna (12 Phil., 99). Unlike the original jurisdiction over a particular case which is acquired by the filing of a complaint that alleges a cause of action which is within the power of the court to try and decide, and by the service of the summon upon, or voluntary appearance of, the defendant, the appellate jurisdiction is acquired by the appellate court over the subject matter and parties by the perfection of the appeal. By the perfection of the appeal, the jurisdiction over the subject matter and the parties of the court exercising original jurisdiction is transferred to the appellate court. Before that the jurisdiction over the case remains in the trial court.

Section 13 of Rule 41, of the Rules of Court provides that "where the notice of appeal, appeal bond, or record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed." This provision refers evidently to a motion to dismiss the appeal or objection to the approval thereof, filed in the Court of First Instance or the trial court. After the appeal has been approved or allowed, and the record on appeal transmitted to the appellate court, the law applicable is Section 1, Rule 52, which provides, among others, that "an appeal may be dismissed by the Court of Appeals (or Supreme Court under Section 1, Rule 58), on its own motion or on that of the appellee, on the following grounds: (a) Failure to file, within the period prescribed by these rules, the notice of appeal, appeal bond or record on appeal. * * *"

Section 3, Rule 41, requires the filing with the trial court of a notice of appeal, an appeal bond, and a record on appeal within the period of thirty days from notice of order or judgment (deducting therefrom the time during which a motion to set aside has been pending) for the perfection of the appeal. This Court has liberally construed this provision in the light of that of Section 2, Rule 1, and held, in the cases of Alvero vs. De la Rosa (76 Phil., 428); Moya vs. Barton (76 Phil., 831); Lopez vs. Lopez (77 Phil., 133), and Peralta vs. Solon (77 Phil., 610), that the court may extend the time or allow the perfection of the appeal beyond the prescribed period if it be satisfactorily shown that there is a justifiable reason, such as fraud, accident, mistake or excusable negligence, or similar supervening casualty, without fault of the appellant, which the court may deem sufficient reason for relieving him from the consequences of his failure to comply strictly with the law. In such case the appeal is deemed taken and perfected on time, and the appellate court acquires appellate jurisdiction.

The reason why Section 1, Rule 52, uses the subjunctive "may", and not the imperative "shall" employed in Section 13 of Rule 41, is that if the appellee had objected to the appeal or moved for the dismissal thereof on account of the matter of time in the lower court, the motion to dismiss the appeal filed by the appellee with the appellate court has the effect of an appeal from the order of the trial court denying his motion, and the appellate court may deny the motion to dismiss ratifying thereby the order of the trial court, or grant said motion, reversing in effect the action taken by the court below on the matter, if it appears that the appeal has not been perfected within the prescribed time.

If no objection or motion to dismiss the appeal has been filed with the court below, the appellate court may dismiss the appeal if the record shows that the appeal has not been taken and perfected on time, for although parties are obliged to watch the dockets of the courts and inform themselves of the entry of decrees and orders, nevertheless circumstances may arise which, if they do not absolve the parties from that duty, operate to relieve the appellee of the consequences of such failure; or it may deny the motion to dismiss the appeal if it appears from the record that the approval of the appeal by the trial court after the expiration of the prescribed time was for sufficient reason or cause, or that had the appellee objected to it in the trial court the appellant might have satisfactorily shown that there was justifiable reason for relieving the appellant from the consequences of his

failure to perfect the appeal on time.

And if the motion to dismiss the appeal on the ground under consideration is filed for the first time with the appellate court after the appellant had paid the docketing fee and the cost of printing the record on appeal, and specially after he had filed his brief, the appellate court should deny the motion, for the appellee may be considered in estoppel or estopped from filing said motion, because he would have, by his silence or failure to object in time, led the appellant to believe that the appellee was also satisfied that the delay, if any, was due to justifiable cause, and to incur those necessary expenses. This is not a new theory; it has already been adopted by this Supreme Court in the case of *Luengo and Martinez vs. Herrero* (17 Phil., 29), as well as in *Slade Perkins vs. Perkins* (57 Phil., 223-225)[1], in which this Court said:

"Appellant claims that appellee is estopped from any right to the motion to dismiss, by allowing the bill of exceptions to be approved, by allowing the appellant to go to the expense of printing the bill of exceptions and the expense and trouble of preparing and printing his brief, which was filed on August 31, 1931, and on account of not raising the question as to the right to appeal until October 27, 1931, when appellee's brief was filed.

"Appellant relies on 3 Corpus Juris, p. 689, where it is said:

" 'Waiver of Objections to Right of Appeal.—The right to object to the taking of an appeal or the issuance of a writ of error may be waived by appellee or defendant in error whenever the objection is founded upon some act or omission on the part of appellant or plaintiff in error, which may be pleaded by his opponent as an estoppel to the right of review. This waiver may arise from express stipulation, or it may be implied from some act on the part of appellee or defendant in error, such as joining issue on the appeal or writ of error, or from some other act showing acquiescence or evincing an intention to treat the appeal or writ of error as valid.' (Citing numerous decisions.)

"Thus, in *Luengo & Martinez vs. Herrero* (17 Phil., 29), wherein the appellees made a motion in their brief, to dismiss the appeal, this court ruled that the motion came too late, saying:

" 'These questions were presented to this court for the first time on the hearing of the case upon its merits. They should have been raised and determined by motion before the case was called for hearing. Before the hearing of the case upon its merits all preliminary questions should be disposed of, and when such questions as these are raised for the first time upon the hearing of the case on its merits they come too late.'

"We believe this point of appellant well taken, and will therefore consider the appeal on its merits."

In view of the foregoing, the appellees' motion to dismiss the appellants' appeal is denied, and the appellees are allowed to file their brief within the prescribed period from notice of this resolution. So ordered.

Moran, C.J., Pablo, Briones, Padilla, and Tuason, JJ., concur.

[1] The Court of Appeals has also applied it in the case of *Apilado vs. Apilado* in which that court held that "The presentation of a motion to dismiss the appeal for the first time in the brief of the appellee, after the bill of exceptions and the brief for appellants have been printed, based on the alleged presentation of the exception and notice of intention to appeal one or two days after the prescribed period, is too late and party will be deemed to have abandoned the same and to be estopped from raising that question." (*Apilado vs. Apilado*, Appellate Court Reports, Vol. I, p. 76.)

CONCURRING

PERFECTO, J.:

Our decision is to support the majority resolution in this case.

We cannot but recognize the force behind the vigorous dissenting opinion of Mr. Justice Bengzon, but we feel that the conclusions arrived at by the majority of this Court appears to better serve the interests of substantial justice.

The present controversy in this case seems to hinge on a conflict of legal ideologies. While there are strong technical grounds in support of the minority position, the majority's stand is based on the idea that in conflicts between legal technicalities and substantial justice, the latter should always have the upper hand.

The latter proposition conforms with our legal philosophy which, although slowly, is gaining ground everyday in the actuations of this Supreme Court.

In the case of Tacayanga vs. Jacob (G. R. No. L-1197), there were reasons to dismiss the appeal as strong, if not stronger, than those in the present case. Adopting a liberal attitude, invoking strong reasons of equity, this Court, by unanimous resolution decided on March 12, 1947, not only to set aside the resolution dismissing the appeal, but to grant the appellant further opportunity to proceed with his appeal in this Court. Many more resolutions could be cited to show that this Court has been adopting a more liberal attitude in the construction and application of the time provisions of the rules, although the majority of the attorneys cannot avail themselves of the opportunity to invoke said resolutions, because they remain unpublished in the Official Gazette.

DISSENTING

PARAS, J.:

I dissent because, as stated by Mr. Justice Bengzon, the order of the Court of First Instance dismissing the complaint has become final. Besides, said order is without prejudice. The Court expressly reserved the right of the plaintiffs to raise the question of ownership in a land registration case which said party contemplates to file or has already filed in same Court.

DISSENTING

BENGZON, J.:

I have smothered more than once a prankish itch to dissent even from minor rulings or incidental issues, or "to bring coal to Newcastle" with concurring opinions, that, contributing nothing substantial to the court's deliverance will only serve to increase the bulk of the already bulky volumes of reported decisions. Vanity (I suspect) urged me to have my say, if only to assert individuality and independence of criterion. But those times I yielded to the sober second thought that, generally, the more the eyes, the clearer the view.

There are occasions though, when keeping one's peace may border on dereliction of duty. This is one of them. With all due respect for the majority opinion, I must register a dissenting vote.

It is admitted that the appeal was perfected out of time. It should therefore be dismissed. (Lim vs. Singian and Soler, 37 Phil., 817; Layda vs. Legazpi, 39 Phil., 83; Pampolina and Vistal vs. Suiza and Osuna, 42 Phil., 99.) Adherence to precedent, or stare decisis is not new in this jurisdiction. (Zarate vs. Director of Lands, 39 Phil.,

747; Lichauco vs. Tan Pho, 51 Phil., 862.)

Besides overruling three previous decisions of this Court squarely on the point, the majority opinion involves three assumptions which, sorry to say, I can not share: (a) appellate jurisdiction may be conferred by the consent of the parties; (b) a person may be estopped by facts not proven to be within his knowledge; and (c) the appellee has the obligation to see to it that appellant does not waste his substance in prosecuting a tardy appeal.

In the Layda, Pampolina and Lim cases, after both parties had filed their briefs, we dismissed the appeal, because it had been submitted out of time. In the Layda litigation the appellee did not even raise the question; but we said:

"Upon an examination of the record, it was discovered that the decision of the lower court had become final before the appeal had been perfected. That being true, this court acquired no jurisdiction by virtue of the appeal; and not having jurisdiction to consider the case upon its merits, it must be dismissed.

"Appellate courts have a right to examine the record for the purpose of determining whether they have jurisdiction or not, even though that question has not been raised. Jurisdiction of appellate courts is not conferred by consent of the parties. The right to appeal is statutory.

"Judgments in ordinary civil actions become final and may be executed the moment the time for perfecting an appeal has elapsed. If the appellant allows that time to elapse, his right to an appeal is lost. A failure to perfect the appeal within the time prescribed is jurisdictional and the certification of a bill of exceptions thereafter cannot restore the jurisdiction which is lost." (Italics ours.)

We reiterated the same doctrine in Pampolina and Vistal vs. Suiza and Osuna, *supra*. In Lim vs. Singian and Soler, *supra*, through Mr. Justice Fisher, we explained at length why the appellate court acquires no jurisdiction when the appeal is untimely; i. e., because the judgment of the lower court had become executory before the interposition of the appeal. Those three decisions, so far as I know, have not been directly overruled. None, necessarily incompatible with the same, can be cited.

Moreover,—and this ought to be conclusive—this Court with its post-war composition, repeated without a single dissent (March, 1946) the same jurisdictional nature of the period for perfecting the appeal—which was the ratio decidendi of the Layda and kindred decisions.

"Failure to perfect the appeal, within the time prescribed by the rules of court, will cause the judgment to become final, and the certification of the record on appeal thereafter, cannot restore the jurisdiction which has been lost. (Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623; Estate of Cordoba and Zarate vs. Alabado, 34 Phil., 920; and Bermudez vs. Director of Lands, 36 Phil., 744.)" (Alvero vs. De la Rosa, 76 Phil., 428, 433.)

Luengo & Martinez vs. Herrero (17 Phil., 29) (invoked by the majority) was not a case wherein the appeal had been perfected out of time. Slade Perkins vs. Perkins (57 Phil., 223), (also cited by the majority) did not involve the question whether the appeal had been seasonable. The issue therein, which the Court refused to entertain, because of estoppel, was whether the disputed order was not appealable because interlocutory—a point entirely different from the timeliness of the appeal. True, this Supreme Court cited therein with approval a passage from Corpus Juris relating to "Waiver of objections to right of appeal". But that statement obviously referred to objections that were not based on jurisdictional grounds, because the same volume of Corpus Juris in another part admits the unwaivable nature of jurisdiction:

"As we have seen, where the appellate court has no jurisdiction under the law, consent of parties cannot confer jurisdiction, and therefore the want of jurisdiction cannot be waived by the parties by appearance or otherwise, but may be taken advantage of at any time." (3 C. J., 371.)

"Since appellate tribunals derive their jurisdiction over any cause from the law, no mere consent, agreement, or stipulation of the parties or waiver of objection, can confer jurisdiction upon an appellate court where it has none by law over the subject matter of the cause or appeal; and this rule applies * * * where the time limited by law within which the appeal must be taken and perfected has expired." (3 C. J., 369, 370.) (Italics ours.)

(a) The majority decision implies that the appellees by their consent or inaction, may confer appellate jurisdiction upon this Court. When it holds that appellees are estopped to question our jurisdiction to entertain the appeal, it virtually says that the appellees, by their consent, may confer upon this Court appellate jurisdiction. I must say that this flies in the teeth of our previous pronouncements, (and American precedents), that "jurisdiction of appellate courts is not conferred by consent of the parties". (Layda vs. Legazpi, *supra*; Pampolina and Vistal vs. Suiza and Osuna, *supra*.) (See also *Corpus Juris*, *supra*.)

(b) The majority holds appellees in estoppel, because they failed to raise the point before appellants had submitted their brief; yet it is not demonstrated that appellees knew, before that time, that the appeal was late. It is quite probable that, upon examining the records here to prepare their brief, appellees came to know the dates through the post-office return cards, and by simple computation reached their conclusion. It may be conceded, that had they perused the records in the lower court, the appellees could have ascertained the untimeliness of the appeal. Nevertheless, let me ask, are they duty bound to make that investigation, and to enlighten their opponents? Did not the latter know the facts? Are not the appellees justified in assuming that appellants would be careful of their own affairs, would try to appeal in due time, and would not waste money pursuing a will-o'-the-wisp? Could not the appellees rely upon the three previous commitments of this Court—which appellants knew or ought to have known—holding that if it is discovered here that the appeal was tardy it would be dismissed? Furthermore, having received a copy of the trial court's order of May 28, stating that "the record on appeal was filed within the period fixed by law," are appellees responsible for acting upon such finding—until the moment they discovered it was wrong?

Let us not forget further that estoppel does not lie "where the party invoking it had knowledge equal or superior to that possessed by his adversary." (31 C. J. S., 375.)

(c) The majority ruling would actually compel the victorious litigant, for the benefit of the loser, to check up on the latter, scrutinize the return cards to ascertain the dates of receipt of the court orders in relation to the days of actual submission of papers to the court,—even make trips and spend money—hurried trips, perhaps, to object on time to the approval of the record on appeal, etc. The winning attorney may easily imagine the inconvenience and expenditure, if not injustice, this ruling would entail. And yet, why should he be charged with such obligations? Why should he watch so that his opponent will make no mistake in the presentation of his appeal? Of course, a diligent attorney, residing in the same place where the court sits, will find it convenient and advantageous to scrutinize his adversary's steps, block the appeal and get execution at the earliest moment. But it often happens that the lawyer in a Manila case resides outside of the city, for example in Iloilo. Are we going to require this lawyer to come to Manila, when the adverse party moves for new trial, to examine the post-office card in the expediente, and note the day of receipt of the decision, for the purpose of counting the thirty-day period? And if he comes, and discovers it was within that period—a useless trip—do we again expect him to make another trip—maybe useless again—for verification purposes, when the notice of appeal is filed, after denial of the motion for new trial?

I might agree to the application of estoppel in a similar case if the record on appeal, of which copy is furnished the adverse party, had shown by concrete dates that the appeal was beyond the deadline. Estoppel in that instance would not be premised on an obligation unfairly imposed on appellee, no expense being required of him for the benefit of his adversary. Yet that is not the situation here.

Withal, even if the appellees are estopped to raise the question, we are not estopped, and according to the three decisions hereinbefore cited (Layda et al.) we should dismiss the appeal.

Expounding their theory, the majority make these observations:

"* * * it may deny the motion to dismiss the appeal if it appears from the record that the approval of the appeal by the trial court after expiration of the prescribed time was for sufficient reason or cause, or that had the appellee objected to it in the trial court the appellant might have satisfactorily shown that there was justifiable reason for relieving the appellant from the consequences of his failure to perfect the appeal on time.

"And if the motion to dismiss the appeal on the ground under consideration is filed for the first time with the appellate court after the appellant had paid the docketing fee and the cost of printing the record on appeal, and specially after he had filed his brief, the appellate court should deny the motion, for the appellee may be considered in estoppel or estopped from filing said motion, because he would have, by his silence or failure to object in time, lead the appellant to believe that the appellee was also satisfied that the delay, if any, was due to justifiable cause, and to incur those necessary expenses. * * *"

My remark is that the appellants themselves never submitted nor invoked "any justifiable reason" for relieving them from the consequences of their failure to perfect the appeal on time. Equitable estoppel, in my opinion, must be based on actual facts, not on generalities nor suppositions.

I do not forget that under Rule 52, section 1, the appeal in this case "may" be dismissed. But I remember that according to rules of interpretation "may" often means "shall",^[1] and in view of the doctrine we have previously announced, sustaining the jurisdictional nature of the time to appeal, there is no alternative but to say that "may" signifies "shall". To interpret the Rules as conferring appellate "jurisdiction" upon us even if the appeal was untimely and the lower court's decision has become final, would be to ascribe to that body of procedural regulations a scope that neither its framers nor the Constitution intended. The Rules of procedure we are authorized to promulgate (under section 13, Article VIII of the Constitution) should not embrace provisions apportioning jurisdiction to the courts, because these are considered to be of substantive—not procedural—nature.

Furthermore, if one who has answered the complaint and has gone to trial without raising the question of jurisdiction of the subject-matter is not estopped to raise it later, (Section 10, Rule 9), no reason exists why the same estoppel will operate against herein appellees, who have not heretofore filed in this forum any pleading renouncing that all-important issue.

Lastly conceding arguendo that the Court is now persuaded that the rulings in the Layda and allied cases should be abandoned, and that the principle of estoppel should henceforth govern through equity's demands, I respectfully submit that equity itself requires that the application of the new theory should be deferred to other future litigations—not to herein appellees whose act or omission occurred at a time when Layda vs. Legazpi and others were controlling. My concrete proposition is: when a ruling of this Court is overruled and a different view adopted, the new doctrine should not be immediately applicable, should not be applied to parties who had relied on the old doctrine and acted according to it, specially if it concerns procedure, as in this instance. The revised principle should affect future litigants only. Although not new to American jurisprudence, this aspect has not, so far as I know, been explored in this jurisdiction.

The system of precedents or case law is here for good. Based on the maxim *stare decisis et non quieta movere* (stand by the decisions and disturb not what is settled), it is universally endorsed by American courts, specially the Federal Supreme Court.

The theory implies no more than the courts' duty to apply their previous rulings to subsequent controversies involving the same issues. It should be the foundation rock of the administration of justice, for if a *ratio decidendi*

was good in a litigation between A and B it should likewise be good in another identical litigation between C and D, in the absence of intervening statutory modifications.

But the principle has its limitations; for instance, it should not serve to perpetuate error (15 C. J., 960; 21 C. J. S., 326), courts of last resort having exercised, at times, the inherent power to overrule their decisions. (Douglass vs. Pike County, 101 U. S., 677; Hertz vs. Woodman, 218 U. S., 205.) Recent opinions bespeak a conservative attitude. As Mr. Justice Douglas wrote for the Supreme Court of the United States:

"But beyond that is the problem of stare decisis. The construction given Section 20 (of the Criminal Code) in the Classic Case (supra note 128, No. 11) formulated a rule of law which has become the basis of federal enforcement in this important field. The rule adopted in that case was formulated after mature consideration. It should be good for more than one day only. We do not have a situation here comparable to *Mahnich vs. Southern S.S. Co.*, 321 U.S., 96; 88 Law. ed., 561; 64 Sup. Ct., 455 (1944) (supra note 128, No. 19) where we overruled a decision demonstrated to be a sport in the law and inconsistent with what preceded and what followed. The Classic case was not the product of hasty action or inadvertence * * *. We add only to the instability and uncertainty of the law if we revise the meaning of Section 20 to meet the exigencies of each case coming before us." (*Screws vs. United States*, 325 U. S., 112.)

Nevertheless the reserved right to upset previous decisions is likewise qualified by the proposition that such upsetting shall have prospective—not retroactive—effect.

In *Douglass vs. Pike County* (101 U. S., 677) at p. 687, it was declared: "The true rule (of stare decisis) is, to give a change of judicial construction * * * the same effect in its operation on contracts" as to "a legislative amendment, i. e., make it prospective, but not retroactive."

And in *Great Northern R. Co. vs. Sunburst Oil & Ref. Co.*, 287 U.S., 358, the Supreme Court, through Mr. Justice Cardozo, said:

"A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may say that decisions of its highest court, though later overruled, are law none the less for intermediate transactions. Indeed there are cases intimating, too broadly (cf. *Tidal Oil Co. vs. Flanagan*, 263 U. S., 444; 68 Law. ed., 382; 44 Sup. Ct., 197, supra), that it must give them that effect; but never has doubt been expressed that it may so treat them if it pleases, whenever injustice or hardship will thereby be averted. *Gelpcke vs. Dubuque*, 1 Wall., 175; 17 Law. ed., 250; *Douglass vs. Pike County*, 101 U. S., 677, 687; 25 Law. ed., 968, 971; *Loeb vs. Columbia Twp.*, 179 U. S., 472, 492; 45 Law. ed., 280, 290; 21 Sup. Ct., 174, etc."

This view is not unanimous, I know. However, inasmuch as one of the principal arguments of the opposing school of thought is that it makes the overruling decision a mere "declaratory judgment," and since that objection is untenable in this jurisdiction where declaratory relief is permitted (Rule 66), the view herein advocated—future operation only—should all the more be acceptable to our system of jurisprudence. More about this in the future, if I should happen to agree to an overruling of previous decisions and the question should hinge on its backward or forward application. For the present, enough to note some of the abundant literature on the point.[2]

HILADO, J.:

I concur in this dissent of Mr. Justice Bengzon.

[1] *Greb vs. Hansen* (243 N. W., 278); *Van Dyke vs. School Dist.* (86 Pac., 402); *James vs. Dexter* (112 Ill., 489); and many other cases.

[2] Moschzisker, Stare Decisis in Courts of Last Resort, 39 Harvard Law Review, 409; Freeman, Retroactive Operation of Decisions, 18, Col. Law Review, 230; Kocourek Retrospective Decisions and Stare Decisis, 17 A. B. A. Journal, 180; Effect of Overruled and Overruling Decisions on Intervening Decisions, 47 Harvard Law Review, 1403; Retroactive Effect of an Overruling Decision, 42 Yale L. J., 779; Retrospective Operation of Overruling Decisions, 35 Ill. Law Review, 121; Precedent in Legal System, Mich. Law Review, Vol. 44, p. 955, et. seq.

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