

**DEE SEE CHOON, PLAINTIFF AND APPELLANT, VS. J. S. STANLEY,
INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.**

G.R. No. 13384. April 10, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

Attorneys for appellant, on behalf of her husband, ask leave to withdraw the appeal. The Attorney-General, on behalf of the appellee, joins with appellant in requesting that the appeal be dismissed. The status of the case is this: Appeal has been perfected; briefs and memoranda on behalf of appellant and the Government have been presented ; the case has been placed on the calendar and submitted; judgment has been voted, but not promulgated. There is no rule of the court controlling the practice in relation to the dismissal or withdrawal of appeals to this court, except only on information as to the death of either party. Believing, therefore, that as has been done in other appellate jurisdictions, we should announce a rule in consonance with the better modern practice, we proceed to do so as follows:

After a case has been submitted, appellants, in order to withdraw their appeals, must obtain the consent of the adverse party or parties or show that such consent is being withheld for insufficient reasons, must make proper motion in this court, and must obtain the leave of the court.

Motions granted. So ordered.

Arellano, C. J., Carson, Araullo, Street, Avanceña, and Fisher, JJ., concur.

CONCURRING OPINION

TORRES, J., concurring:

If this resolution refers to the appellant's withdrawal of the appeal he filed in civil proceedings during its course in the second instance before the case was heard and ready for the pronouncement of judgment, provision covering the matter will be found in the law itself, and there is no need for any rule whatever, because the legal principles covering the matter in question have customarily been applied in practice.

With regard to the appellant's withdrawal of the appeal interposed after the case was heard and decided by this Court, no special rule can be laid down, inasmuch as there is no proceeding whatever to be had beyond promulgating the decision adopted by the court.

It is seldom that during the time intervening between the day when the original cause or the civil case is voted upon and decided by this court and the date of the promulgation of the judgment or decision signed by the Justices, any of the parties will present a petition withdrawing or desisting from the appeal filed and maintained in the second instance, and in the very few cases where such has occurred this Court has deemed it proper to rule upon the petition for withdrawal, in accordance with the demands of justice. In the rules established for the

procedural course of criminal causes and civil cases within the jurisdiction of this Court, in the status of appeal, none whatever covering the withdrawal of appeals has been laid down, for the reason indicated, to wit, that between the final hearing and decision of a criminal cause or civil case and the promulgation of the decision or judgment therein rendered, no proceeding whatever has been provided for. Therefore, in the extremely rare cases where the defendant or any of the parties has withdrawn or desisted from his appeal, this Court has decreed the resolution that it deemed proper and in conformity with the law, always believing that the different cases that may arise can be resolved in accordance with law and the wellknown principles of justice. If there is no modern or recent law making provision for the various cases that may arise in connection with the withdrawal of an appeal before the promulgation of a decision, no rule whatever should be established; for rules presuppose the existence of laws whose precepts they are intended amply to develop in detail.

Of course, in civil cases the consent of the adverse party is required for the withdrawal of the appeal presented by the appellant before the decision rendered in the case should be promulgated.

In criminal causes, if the decision voted upon and not promulgated is absolutory, it is neither proper nor just to grant the defendant's petition for the withdrawal of the appeal filed from a judgment of conviction rendered by the lower court, even though the Attorney-General should oppose.

In conclusion it may be affirmed that this court should decide each case in accordance with the law and principles of justice, and its procedure cannot be adjusted to any rule of general character that does not exist or which can not be summarily established.

For the reasons above stated, let the appeal filed in this case be withdrawn, with costs.

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