

**IN RE WILL OF SILVESTRA BARON. VIVENCIO CUYUGAN,
PETITIONER AND APPELLANT, VS. FAUSTINA BARON ET AL.,
OPPOSITORS AND APPELLEES.***G. R. No. 41947. December 29, 1936*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-41947/>

The decision in this case, affirming that of the lower court, was rendered in favor of the appellees on January 16, 1936,[1] by a majority of six with four dissenting votes. Under the rules of this court the appellant had fifteen days to apply for a reconsideration of this decision, the last day of said period being the 31st of said month. On the 24th of said month the appellant asked for an extension of said period by seven days, alleging that he would file an alternative petition for; reconsideration of the decision rendered therein or for a new trial and that, due to the length of the printed pleadings to be filed by him to this effect, it would be impossible for him to do so within the period fixed by law. This petition was denied. On the 31st of said month, at 4 o'clock p. m., the appellant filed his alternative petition for reconsideration or for a new trial supported by a printed brief consisting of 109 pages and an appendix of 28 pages. On said date, at 7 o'clock in the evening, the court denied said petition for reconsideration with the same division of votes, minus that of one of the dissenting justices who was absent. One of the attorneys for the appellant received notice of said resolution on February 3rd. It does not appear that the other attorneys for the appellant received said notice earlier and it is reasonable to suppose that they received it at the same time, particularly taking into consideration the fact that it could not have been prepared or sent until February 1st on which there was office for only a half day, being Saturday, and could not have been received in the ordinary course until Monday, February 3d, as the following day, the second of said month, was Sunday.

It is inferred from section 39 of the Rules of this court that after a motion for reconsideration is denied, one may still apply for leave to file a second motion for said purpose.

On February 4th, the clerk of court remanded the case to the lower court for execution. On said date, after the case had been remanded to the lower court, the appellant filed his petition for leave to file a second motion for reconsideration or new trial alleging that the court did not have sufficient time to consider the first motion. On February 6th the appellant asked for the recall of the case from the lower court and the retention thereof in this court until his petition for leave to file a second motion for reconsideration or new trial is decided. On March 21st the court granted to the appellant the permission applied for and requested the trial court to return the record to the office of the clerk of this court.

After the parties had argued the second motion for reconsideration or new trial, the appellees, on October 6, 1936, presented an affidavit of Zacarias Nuguid, the appellant's principal witness, retracting his first testimony, in order that it may be taken into consideration by the court in deciding the second motion for reconsideration or new trial.

On October 31st the court unanimously ordered the new trial of this case pursuant to sections 496 and 505 of the Code of Civil Procedure. The appellees excepted to and filed a motion for reconsideration of this last resolution, which is the incident now under consideration by this court.

The appellees allege that this court had no jurisdiction to render its resolution of October 31st on the ground that it had already lost it on February 3d. This court finds this contention to be unfounded. When the appellant applied for leave to file a second motion for reconsideration or new trial on February 4th, this court still had jurisdiction over the case and retained it by virtue of said application. If, according to the rule, a party may yet apply for leave to file a second motion for reconsideration after a motion for reconsideration is denied, the court must retain its jurisdiction to grant or deny the motion. In the case at bar this court granted the motion. The rule fixes no time for the filing of said application for leave to file a second motion for reconsideration. Of course a certain period of time must be allowed for the filing thereof because, otherwise, said provision of the rule would be without any purpose. Without referring to other probable cases, it is evident that in the case at bar, as the application was filed on the day following the receipt of notice of the denial of the motion for reconsideration, which is the first day available for said purpose (sec. 4, Code of Civil Procedure), it was filed in due time. This being so, the material fact that the case was remanded to the trial court a few hours after the filing of the application, without said court's having taken action by virtue of said remand, and, undoubtedly, before receipt of the record, cannot affect the jurisdiction still had by this court.

On the other hand, it cannot be stated that the petition for leave to file a second motion for reconsideration must be presented within the same period of fifteen days for the filing of the first motion for reconsideration, because the rule does not so state and because, if it were so, it would be impossible to file the petition in question where, as in the present case, the first petition, for justifiable reasons, could not be presented until the last day of said period.

Furthermore, the question whether or not, after a case is remanded to the trial court for execution of the judgment rendered on appeal, this court may still resume jurisdiction over said case and recall the record, has precedents in the affirmative in our jurisprudence (*People vs. Santiago*, G. R. No. 38677, May 14, 1934 and Nov. 1, 1934 [60 Phil., 1006, 1056]; and *Ingson vs. Olaybar*, 52 Phil., 396). There are likewise precedents to that effect in American jurisprudence, particularly of the Supreme Court of New York, according to the following note 90 (a) in 4 Corpus Juris, 1245, which reads:

"(a) New York rule.—It is often erroneously assumed that after the filing of the remittitur in the court below, and order entered thereon, this court is deprived of all jurisdiction in the cause. In *Sweet vs. Mowry* (138 N. Y., 650; 34 N. E., 388), a motion for reargument was granted, and a return of the remittitur requested. These acts of the court were held to be in resumption of jurisdiction. In *Lawrence vs. Church* (128 N. Y., 324; 28 N. E., 499), a motion to amend the remittitur was granted, and the order entered requested the return of the remittitur by the court below, and when so returned it was ordered to be amended. In *Moffett vs. Elmendorf* (153 N. Y., 674; 48 N. E., 1105), a motion to amend remittitur was granted, and order entered that the remittitur be recalled for that purpose. A like motion was granted in *Buchanan vs. Little* (155 N. Y., 635; 49 N. E., 1094). This later practice of the court is not necessarily inconsistent with the earlier cases, which hold that this court has no jurisdiction to grant a reargument or an amendment of the remittitur after the remittitur is filed and acted upon in the court below. (*People vs. Nelliston*, 79 N. Y., 638; *Jones vs. Anderson*, 71 N. Y., 599; *Cushman vs. Hadfield*, 15 Abb. Pr. NS [N. Y.], 109; *Wilmerdings vs. Fowler*, 15 Abb. Pr. NS. [N. Y.], 86.) It is competent for this court to determine whether it will resume jurisdiction¹ for any purpose, and, having decided to do so, it then requests the court below to return the remittitur so that the reargument can be had or the remittitur amended, as the case may be. It is technically true that this court must be repossessed of the remittitur before an order made in the cause is effectual, but there is no objection to the return of the remittitur following the determination of this court to resume jurisdiction.' (*Franklin Bank Note Co. vs. Mackey*, supra.)

It must furthermore be taken into consideration that when this court, in its order of the 31st of October last, ordered the new trial of the case, it did so for the benefit of not only the appellant but also of the appellees. As already stated, the appellees, on October 6th, presented an affidavit of Zacarias Nuguid, principal witness for the

appellant, retracting his former testimony, to be taken into consideration by this court in deciding the second motion for reconsideration or new trial filed by the appellant. The court, however, can not take into consideration said retraction if it is not presented in the case by means of a new trial or, unless it be for the purpose of ordering a new trial. For this reason the court, in decreeing a new trial in its order of October 31st, in the broadest sense provided therein, had in mind to give opportunity not only to the appellant to present his new evidence but also to the appellees to present the retraction of the witness Nuguid,

This court is aware of the fact that the new trial will cause delay in the termination of the case but if this is necessary in order to administer justice or to correct a judicial error, the delay would be justified. However, if the parties, after three days from the receipt of notice of this resolution, signify their desire to waive the presentation of said new evidence and to submit the case upon its merits, this court would be willing to do so.

In the meantime, the reconsideration sought by the appellees is denied and the order issued on October 31st of this year stands. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Concepcion, JJ..

[1] 62 Phil., 859.

DISSENTING

HORRILLEN, J.:

This is a motion submitted by the appellees for the reconsideration of the resolution of this court rendered on October 31st of this year, ordering the case remanded to the trial court for a new trial.

The appellees contend that this court no longer had jurisdiction over the case when it rendered its resolution of October 31st.

The facts pertinent to the question raised, which appear of record and are not disputed by the parties are as follows: (1) On January 16th of this year, the decision of this court, affirming that of the trial court, was promulgated; (2) after the parties had been notified of the court's decision, the appellant, on the 31st of said month of January, filed an alternative motion for reconsideration and new trial of the case; (3) on said date, January 31st, this court sitting in banc, denied the appellant's alternative motion; (4) on February 3d the clerk of this court rendered final judgment; (5) on the 4th of said month the record was remanded to the trial court and a pleading was filed by the appellant asking for leave to present a second motion for reconsideration and a period of 5 days to do so; (6) after this petition had been discussed, this court, in its resolution of March 24th, granted the petition, said appellant presenting his second motion for reconsideration on the 23d of said month of March; (7) on the 28th of said month of March, the appellees were granted a period of ten days to answer the second motion for reconsideration, upon the presentation of which and after the parties had been heard, the court, on October 31st, granting the second motion for reconsideration, ordered the case remanded to the lower court for a new trial; and (8) on November 4th the oppositors-appellees filed a motion praying: (1) that the resolution of this court dated October 31st be reconsidered; (2) that the second motion for reconsideration be denied, and (3) that the record be remanded to the court of origin for the execution of the judgment, which motion is the one now under consideration by this court.

As already stated, the attorney for the appellees Faustina Baron et al., contends that this court no longer had jurisdiction over the case when it rendered its said resolution of October 31st.

Therefore, the fundamental question to be decided is whether or not this court had jurisdiction over the case when it rendered its resolution of October 31st.

It is a principle of sound public interest that a day, a moment, must be fixed when the decisions and resolutions of the courts become final and conclusive for the parties. In no country with a fairly civilized government are the parties to a suit placed in a situation of continuous uncertainty and unending anxiety by the non-establishment of a fixed period after which the judgments of the courts thereof become final and indisputable. Social and economic life would become barrenly stagnant if the rights in litigation, once they are declared and once the last instant it is yet possible and permissible to discuss them has elapsed, did not become definitely established, and the parties to a case would thereby be subjected to Sisyphus' cruel torment of which the mythologies of old tell us. There must, therefore, be moment when the resolutions and decisions of the courts become final in character once and for all. Our codes and laws, in response to the advance of civilization and a necessity of public interest, prescribe in their provisions the moment when suits in our courts become definitely decided. Now then, when do the decisions of this court become final and conclusive? Sections 37 and 38 of the Rules of the Supreme Court—which are law—provide that " * * * 15 days after the promulgation of a decision counted from the date of such promulgation, the clerk of the court shall enter judgment and immediately thereafter remand the case to the lower court, unless notice is given, pursuant to Rule 46 of intention to petition the Supreme Court of the United States for a writ of certiorari, in which event the mittimus shall be stayed pending action by this court upon such notice." In this case, as may be noted, the judgment of this court was promulgated on January 16, 1936, and copies thereof were sent to the parties. The appellant filed his first motion for reconsideration only on January 31st of said year, on which date this court, sitting in banc, denied it. On February 3d of the same year, the clerk of court, acting pursuant to sections 37 and 38 of the Rules in question, entered final judgment, and on the following day, that is, on the 4th of said month, he remanded the record to the trial court. In view of these facts, we are of the opinion that this court lost its jurisdiction over the case from February 4, 1936, when the record was remanded to the trial court after final judgment had been entered by the clerk of court on the 3d of said month. (See *People vs. De la Cruz*, G. R. Nos. 42304, 42305, March 19, 1935 [61 Phil., 1030]; *Frank and Gohn vs. Benito*, 51 Phil., 712, and *People vs. Isleta and Topacio Nueno*, 61 Phil., 332.) Therefore, the judgment the consideration of which is sought became final and conclusive on said date, February 4, 1936.

It is contended, however, that as a second motion for reconsideration could be presented with the court's permission, in accordance with section 39 of the Rules, this court still retained its jurisdiction over the case, a petition for leave to file a second motion for reconsideration having been presented on February 4, 1936.

It must be taken into consideration that the appellant was notified of the court's resolution of January 31, 1936, denying the first motion for reconsideration, on the 3d of said month of February which fell on Monday and was an available day because it was not an official holiday. However, said appellant let the whole day, February 3d, on which final judgment was rendered, pass, and did not present his application for leave to file a second motion for reconsideration until the 4th of said month of February, after the clerk of court had already remanded the record of the case to the trial court. Section 39 of the Rules fixes no period for the filing of a second motion for reconsideration, thereby inducing us to believe, and as we are of the opinion, after having studied the Rules, particularly sections 37, 38 and 89 thereof, that motions for reconsideration, be they first or second ones, must be filed within fifteen days from the date of the promulgation of the judgment, because once said period of fifteen days has elapsed with no motion for reconsideration of any kind or notice of intention to petition the Supreme Court of the United States for a writ of certiorari having been presented, the clerk of the court is, by provision of law and by ministerial duty, bound to enter a definite judgment which, after having been entered and the record remanded to the court of origin, becomes final in character. Furthermore, the very fact that no period is fixed in the Rules for the filing of a second motion for reconsideration is a circumstance strongly in support of our claim.

In fact, the Rules have been prepared by this same court whose distinguished members are all jurists with wide professional experience and vast legal knowledge. It must therefore be assumed that they are aware of the questions and conflicts often arising among lawyers in determining the length and limits of the periods already fixed by the laws. This being so, it cannot be assumed that the intention of this court in making its rules was to grant another period outside the fifteen days from the date of the promulgation of the judgment, for the presentation of second motions for reconsideration, because had such been the intention of this court, it would have fixed 'said period in the rules to avoid multiplicity of questions, many of which are annoying, on the length or limit of the periods fixed by the laws. To think otherwise would be to attribute lack of foresight to the members of this court and deny them their experience and legal knowledge well accredited and recognized by their own countrymen and foreigners, which would be absurd. We are, therefore, of the opinion that the first as well as the second motions for reconsideration must be filed within the period of fifteen days from the date of the promulgation of the decision.

We are aware of the doctrines filed in other jurisdictions on the matter, but we maintain that even adopting said doctrines, we should apply them only to cases to which they refer, that is, to those of inadvertence or fraud (See 4 C. J., 1244, section 3303). In the present case neither inadvertence nor fraud is alleged. Much less does it appear that such irregularities have been committed by any official of this court. The cases of *People vs. Santiago* (G. R. No. 38677, May 14, 1934 and Nov. 1, 1934 [60 Phil. 1006, 1056]), and *Ingson vs. Olaybar* (52 Phil., 395), are not applicable to the case at bar. With respect to the *Santiago* case, the question of jurisdiction has not been raised therein and, furthermore, it is a criminal case involving, as it is known, the honor and liberty of an individual. The same justices who subscribed the judgment against the accused took part in deciding the motion for reconsideration presented by the defense" in said case. With respect to the case of *Ingson vs. Olaybar*, the point disputed therein involved clerical errors, while the present case involves neither the honor nor the liberty of an individual nor the correction of a mere clerical error but, on the contrary, it is sought to reverse a majority opinion of this court when it was yet composed of 11 Justices, four of whom, to wit: Justices Malcolm, Hull, Vickers and Butte who subscribed the majority opinion, ceased to be so on February 1st of this year; and Justice Recto, who likewise subscribed the decision, ceased to be a member of this court on November 1, 1936. It is evident, therefore, that there is no similarity between the cases of *People vs. Santiago*, and *Ingson vs. Olaybar*, *supra*, and the case at bar.

We submit, therefore, that this court had already lost its jurisdiction when it took cognizance of and passed upon the second motion for reconsideration.

If this second motion for reconsideration has been filed out of time, the blame is on the appellant himself who, having had the opportunity—because the contrary does not appear—to file it within said period of fifteen days, failed to take advantage thereof in presenting it on the last day of said period, that is, on January 31, 1936; and if the appellant neither wished to file his second motion for reconsideration on February 3d when final judgment was rendered and when the record was still in the office of the clerk of this court, nobody but himself is to blame for it. The clerk of this court committed no error or inadvertence in entering final judgment and in remanding the case to the trial court. He not only did not commit any inadvertence or error, but on the contrary, acted in compliance with a ministerial duty prescribed by sections 17 and 18 of the Rules of this court.

Let us now discuss the questions from another angle. In other words, granting that this court still had jurisdiction over the case, was its resolution ordering the new trial of the case correct? It appears from the motion for reconsideration of the appellees, and it is not denied by the appellant, that " * * * the medical certificates subscribed by Drs. Teopaco and Ordonez, respectively, are dated February 3, 1933, that is, two days after the filing of the petition for the probate of the will in question in the Court of First Instance of the Province of

Pampanga. Dr. Teopaco is a nephew of Pedro Teopaco, father-in-law of the Honorable and distinguished Justice Jose Abad Santos, brother of Quirino Abad Santos, alleged author of the will and principal witness and attorney for the petitioner Vivencio Cuyugan. Dr. Ordonez is likewise related to Vivencio Cuyugan. The trial of this case lasted several months and was decided on April 26, 1934. The record was received in the Supreme Court on June 12, 1934, and the appeal was decided on January 16, 1936, * * *." Now then, in view of these circumstances, is it reasonable to maintain that the appellant or his attorneys were not aware of these facts? We are of the opinion that it is not reasonable to do so. The reasonable thing is to assume that both the appellant and his attorneys had knowledge of such facts. Inasmuch as Drs. Teopaco and Ordonez had not been presented as witnesses for the appellant at the trial of the case in the first instance, said appellant cannot now allege that the facts stated in the medical certificates of said doctors are newly discovered facts. In the case of *United States vs. Luzon* (4 Phil., 343), this court said:

"NEW TRIAL, MOTION FOR BASED UPON NEWLY DISCOVERED EVIDENCE.—A motion for a new trial, based upon newly discovered evidence, will not be granted unless the following conditions exist: (1) The evidence must have been discovered since the trial; (2) it must be such that with the use of reasonable diligence on the part of the defendant it could not have been secured on the former trial; (3) it must be material and not merely collateral or cumulative or corroborative or impeaching; (4) it must be such as ought to produce a different result on the merits on another trial; (5) it must go to the merits and not rest on a merely technical defense."

Now then, as the new evidence sought to be presented by the appellant is not of said nature, his motion for a new trial should have been denied. Therefore, the resolution of this court to the effect of granting a new trial of the case should be reconsidered and declared ineffectual. It is clear, therefore, that under whatever legal point of view the incident now before this court may be considered, the motion for reconsideration of the appellees must be granted.

After discussing the case in all its legal aspects, permit us to consider it in its moral aspect. We maintain that even looking at it from this point of view, the petition of the appellant should not be granted. Morally and legally, the preponderance of the evidence on the existence or non-existence of an obligation is not binding. Morally, certainties alone are binding. Thus, to illustrate: A is not certain of being indebted to B. A, doubting whether he is indebted or not, is not morally bound to pay the debt, although the preponderance of the probability was that he might have contracted it. The reason for this is that, because it may happen, as in fact it does happen, that between two probabilities the greater might be incorrect or erroneous and the lesser the correct and true one, A could lawfully act either way, that is, choose between not complying with the doubtful obligation and complying therewith. He would be morally free to follow one course or another under the moral principle that in case of doubt, freedom of action (*In dubiis libertas*). In this connection, Henry Davis, S. J., Professor of Moral and Pastoral Theology of Heythrop College, in his book "Moral and Pastoral Theology" (vol. 1, page 93) says:

"DEGREES IN OPINION.—Among men of all classes, some opinions are held to be morally certain, some are held as very probably true so that the contrary opinion is thought to be very improbable, others are held to be more probably true than their contrary, others, in fine, are merely probable, because they are motivated by good reasons, although the contrary opinion has better and more numerous reasons in its favour. In every case, either of the two contrary opinions may be the true one.

"When the truth of an opinion or the sufficiency of available evidence is debatable, one can never say that either the affirmation or the negation of it is certainly true. The greater probability of one opinion does not and cannot destroy the probability of its contrary. Therefore, it must be admitted that in the conflict of two opposite probable opinions, since either may be false, it is not paradoxical to say that the less probable opinion may be the true one."

Now then, by applying this principle to the case at bar in its moral aspect, the distinguished Justices, who voted against the majority of this court when said majority affirmed the appealed judgment, denying the probate of the will in this case, they, the distinguished Justices who voted against the majority opinion, are not morally obliged to correct what they did believe and do believe to be an error of the majority, unless it be claimed that they were or are absolutely certain that the majority openly and evidently acted equivocally and erroneously. We do not wish to assume and we cannot assume that the present majority of this court hold such claim. These are the reasons why the undersigned dissents from the majority opinion in this case.

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