

ATILANO G. MERCADO, PETITIONER, VS. ALFONSO SANTOS, JUDGE OF FIRST INSTANCE OF PAMPANGA, AND IÑIGO S. DAZA, PROVINCIAL FISCAL OF PAMPANGA, RESPONDENTS. ROSARIO BASA DE LEON ET A...

G.R. No. 45629. September 22, 1938

Ponente: LAUREL, J.

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LAUREL, J.:

On May 28, 1931, the petitioner herein filed in the Court of First Instance of Pampanga a petition for the probate of the will of his deceased wife, Ines Basa. Without any opposition, and upon the testimony of Benigno F. Gabino, one of the attesting witnesses, the probate court, on June 27, 1931, admitted the will to probate. Almost three years later, on April 11, 1934, the five intervenors herein moved ex parte to reopen the proceedings, alleging lack of jurisdiction of the court to probate the will and to close the proceedings. Because filed ex parte, the motion was denied. The same motion was filed a second time, but with notice to the adverse party. The motion was nevertheless denied by the probate court on May 24, 1934. On appeal to this court, the order of denial was affirmed on July 26, 1935. (Basa vs. Mercado, 33 Off. Gaz., 2521.)

It appears that on October 27, 1932, i. e., sixteen months after the probate of the will of Ines Basa, intervenor Rosario Basa de Leon filed with the justice of the peace court of San Fernando, Pampanga, a complaint against the petitioner herein, for falsification or forgery of the will probated as above indicated. The petitioner was arrested. He put up a bond in the sum of P4,000 and engaged the services of an attorney to undertake his defense. Preliminary investigation of the case was continued twice upon petition of the complainant. The complaint was finally dismissed, at the instance of the complainant herself, in an order dated December 8, 1932. Three months later, or on March 2, 1933, the same intervenor charged the petitioner for the second time with the same offense, presenting the complaint this time in the justice of the peace court of Mexico, Pampanga. The petitioner was again arrested, again put up a bond in the sum of P4,000, and engaged the services of counsel to defend him. This second complaint, after investigation, was also dismissed, again at the instance of the complainant herself who alleged that the petitioner was in poor health. That was on April 27, 1933. Some nine months later, on February 2, 1934, to be exact, the same intervenor accused the same petitioner for the third time of the same offense. The information was filed by the provincial fiscal of Pampanga in the justice of the peace court of Mexico. The petitioner was again arrested, again put up a bond of P4,000, and engaged the services of defense counsel. The case was dismissed on April 24, 1934, after due investigation, on the ground that the will alleged to have been falsified had already been probated and there was no evidence that the petitioner had forged the signature of the testatrix appearing thereon, but that, on the contrary, the evidence satisfactorily established the authenticity of the signature aforesaid. Dissatisfied with the result, the provincial fiscal, on May 9, 1934, moved in the Court of First Instance of Pampanga for reinvestigation of the case. The motion was granted on May 23, 1934, and, for the fourth time, the petitioner was arrested, filed a bond and engaged the services of counsel to handle his defense. The reinvestigation dragged on for almost a year until February 18, 1934, when the Court of First Instance

ordered that the case be tried on the merits. The petitioner interposed a demurrer on November 25, 1935, on the ground that the will alleged to have been forged had already been probated. This demurrer was overruled on December 24, 1935, whereupon an exception was taken and a motion for reconsideration and notice of appeal were filed. The motion for reconsideration and the proposed appeal were denied on January 14, 1936. The case proceeded to trial, and forthwith petitioner moved to dismiss the case claiming again that the will alleged to have been forged had already been probated and, further, that the order probating the will is conclusive as to the authenticity and due execution thereof. The motion was overruled and the petitioner filed with the Court of Appeals a petition for certiorari with preliminary injunction to enjoin the trial court from further proceedings in the matter. The injunction was issued and thereafter, on June 19, 1937, the Court of Appeals denied the petition for certiorari, and dissolved the writ of preliminary injunction. Three justices dissented in a separate opinion. The case is now before this court for review on certiorari.

Petitioner contends: (1) that the probate of the will of his deceased wife is a bar to his criminal prosecution for the alleged forgery of the said will; and, (2) that he has been denied the constitutional right to a speedy trial.

- Section 306 of our Code of Civil Procedure provides as to the effect of judgments:

"Sec. 306. Effect of judgment.—The effect of a judgment or final order in an action or special proceeding before a court or judge of the Philippine Islands or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows:

"1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the person: Provided, That the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate:

* * * * *

(Underscoring ours.)

Section 625 of the same Code is more explicit as to the conclusiveness of the due execution of a probated will. It says:

"Sec. 625. Allowance Necessary, and Conclusive as to Execution.—No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution." (Underscoring ours.)

In *Manahan vs. Manahan* (58 Phil., 448, 451), we held: "* * * The decree of probate is conclusive with respect to the due execution thereof and it cannot be impugned on any of the grounds authorized by law, except that of fraud, in any separate or independent action or proceeding. (Sec. 625, Code of Civil Procedure; *Castaneda vs. Alemany*, 3 Phil., 426; *Pimentel vs. Palanca*, 5 Phil., 436; *Sahagun vs. De Gorostiza*, 7 Phil., 347; *Limjoco vs. Ganara*, 11 Phil., 393; *Montañano vs. Suesa*, 14 Phil., 676; *In re Estate of Johnson*, 39 Phil., 156; *Riera vs. Palmaron*, 40 Phil., 105; *Austria vs. Ventenilla*, 21 Phil., 180; *Ramirez vs. Gmur*, 42Phil., 855; and *Chiong Joc-soy vs. Vano*, 8 Phil., 119."

In 28 R. C. L., p. 377, section 378, it is said:

"The probate of a will by the probate court having jurisdiction thereof is usually considered as conclusive as to its due execution and validity, and is also conclusive that the testator was of sound and disposing mind at the time when he executed the will, and was not acting under duress, menace, fraud, or undue influence, and that the will is genuine and not a forgery." (Underscoring ours.)

As our law on wills, particularly section 625 of our Code of Civil Procedure aforequoted, was taken almost bodily from the Statutes of Vermont, the decisions of the Supreme Court of that State relative to the effect of the probate of a will are of persuasive authority in this jurisdiction. The Vermont statute as to the conclusiveness of the due execution of a probated will reads as follows:

"Sec. 2356. No will shall pass either real or personal estate, unless it is proved and allowed in the probate court, or by appeal in the county or supreme court; and the probate of a will of real or personal estate shall be conclusive as to its due execution." (Vermont Statutes, p. 451.)

Said the Supreme Court of Vermont in the case of *Missionary Society vs. Eells* (68 Vt., 497, 504): "The probate of a will by the probate court having jurisdiction thereof, upon the due notice, is conclusive as to its due execution against the whole world. (Vt. St., sec. 2336; *Foster's Exrs. vs. Dickerson*, 64 Vt., 233.)"

The probate of a will in this jurisdiction is a proceeding in rem. The provision of notice by publication as a prerequisite to the allowance of a will is constructive notice to the whole world, and when probate is granted, the judgment of the court is binding upon everybody, even against the State. This court held in the case of *Manalo vs. Paredes and Philippine Food Co.* (47 Phil., 938):

"The proceeding for the probate of a will is one in rem (40 Cyc., 1265), and the court acquires jurisdiction over all the persons interested, through the publication of the notice prescribed by section 630 of the Code of Civil Procedure, and any order that may be entered therein is binding against all of them.

"Through the publication of the petition for the probate of the will, the court acquires jurisdiction over all such persons as are interested in said will; and any judgment that may be rendered after said proceeding is binding against the whole world."

In *Everett vs. Wing* (103 Vt., 488, 492), the Supreme Court of Vermont held:

"In this State the probate of a will is a proceeding in rem, being in form and substance upon the will itself to determine its validity. The judgment determines the status of the instrument, whether it is or is not the will of the testator. When the proper steps required by law have been taken the judgment is binding upon everybody, and makes the instrument as to all the world just what the judgment declares it to be. (*Woodruff vs. Taylor*, 20 Vt., 65, 73; *Burbeck vs. Little*, 50 Vt., 713, 715; *Missionary Society vs. Eells*, 68 Vt., 497, 504; 35 Atl., 453.) The proceedings before the probate court are statutory and are not governed by common-law rules as to parties or causes of action. (*Holdrige vs. Holdrige's Estate*, 53 Vt., 546, 550; *Purdy vs. Estate of Purdy*, 67 Vt. 50, 55; 30 Atl., 695.) No process is issued against anyone in such proceedings, but all persons interested in determining the state or conditions of the instrument are constructively notified by the publication of notice as required by G. L. 3219. (*Woodruff vs. Taylor*, supra; *In re Warner's Estate* 98 Vt., 254; 271; 127 Atl., 362.)"

Section 333, paragraph 4, of the Code of Civil Procedure establishes an incontrovertible presumption in favor of judgments declared by it to be conclusive:

"Sec. 333. Conclusive Presumptions.—The following presumptions or deductions, which the law expressly directs to be made from particular facts, are deemed conclusive:

"* * * * *

"4. The judgment or order of a court, when declared by this code to be conclusive."

Conclusive presumptions are inferences which the law makes so peremptory that it will not allow them to be overturned by any contrary proof however strong. (*Brant vs. Morning Journal Ass'n.*, 80 N. Y. S., 1002, 1004; 81 App. Div., 183; see, also, *Joslyn vs. Puloer*, 59 Hun., 129, 140; 13 N. Y. S., 311.) The will in question having been probated by a competent court, the law will not admit any proof to overthrow the legal presumption that it is genuine and not a forgery.

The majority decision of the Court of Appeals cites English decisions to bolster up its conclusion that "the judgment admitting the will to probate is binding upon the whole world as to the due execution and genuineness of the will insofar as civil rights and liabilities are concerned, but not for the purpose of punishment of a crime." The cases of *Dominus Rex vs. Vincent*, 93 English Reports, Full Reprint, 648 and *Dominus Rex vs. Rhodes*, 93 English Reports, Full Reprint, 795, the first case being decided in 1721, were cited to illustrate the earlier English decisions to the effect that upon indictment for forging a will, the probating of the same is conclusive evidence in the defendant's favor of its genuine character. Reference is made, however, to the cases of *Rex vs. Gibson*, 168 English Reports, Full Reprint, 836, footnote (a), decided in 1802, and *Rex vs. Buttery and Macnamarra*, 168 English Reports, Full Reprint, 836, decided in 1818, which establish a contrary rule. Citing these later cases, we find the following quotation from *Black on Judgments*, Vol. II, page 764:

"A judgment admitting a will to probate cannot be attacked collaterally although the will was forged; and a payment to the executor named therein of a debt due the decedent will discharge the same, notwithstanding the spurious character of the instrument probated. It has also been held that, upon an indictment for forging a will, the probate of the paper in question is conclusive evidence in the defendant's favor of its genuine character. But this particular point has lately been ruled otherwise."

It was the case of *Rex vs. Buttery*, *supra*, which induced the Supreme Court of Massachusetts in the case of *Waters vs. Stickney* (12 Allen 1; 90 Am. Dec, 122) also cited by the majority opinion, to hold that "according to later and sounder decisions, the probate, though conclusive until set aside of the disposition of the property, does not protect the forger from punishment." This was reproduced in 23 R. C. L., p. 376, and quoted in *Barry vs. Walker* (103 Fla., 533; 137 So., 711, 715), and *Thompson vs. Freeman* (149 So., 740, 742), also cited in support of the majority opinion of the Court of Appeals. The dissenting opinion of the Court of Appeals in the instant case under review makes a cursory study of the statutes obtaining in England, Massachusetts and Florida, and comes to the conclusion that the decisions cited in the majority opinion do not appear to "have been promulgated in the face of statutes similar to ours." The dissenting opinion cites Wharton's *Criminal Evidence* (11th ed., sec. 831), to show that the probate of a will in England is only *prima facie* proof of the validity of the will (Op. Cit. quoting *Marriot vs. Marriot*, 93 English Reprint, 770); and 21 L. R. A. (pp. 686-689 and note), to show that in Massachusetts there is no statute making the probate of a will conclusive, and that in Florida the statute (sec. 1810, Revised Statutes) makes the probate conclusive evidence as to the validity of the will with regard to personal, and *prima facie* as to real estate. The cases decided by the Supreme Court of Florida cited by the majority opinion, *supra*, refer to wills of both personal and real estate.

The petitioner cites the case of *State vs. McGlynn* (20 Cal., 233, decided in 1862), in which Justice Norton of the Supreme Court of California, makes the following review of the nature of probate proceedings in England with respect to wills personal and real property:

"In England, the probate of wills of personal estate belongs to the Ecclesiastical Courts. No probate of a will relating to real estate is there necessary. The real estate, upon the death of the party seized, passes immediately to the devisee under the will if there be one; or if there be no will, to the heir at law. The person who thus becomes entitled takes possession. If one person claims to be the owner under a will, and another denies the validity of the will and claims to be the owner as heir at law, an action of ejectment is brought against the party who may be in possession by the adverse claimant; and on the trial of such an action, the validity of the will is contested, and evidence may be given by the respective parties as to the capacity of the testator to make a will, or as to any fraud practiced upon him, or as to the actual execution of it, or as to any other circumstance affecting its character as a valid devise of the real estate in dispute. The decision upon the validity of the will in such action becomes *res adjudicata*, and is binding and conclusive upon the parties to that action and upon any person who may

subsequently acquire the title from either of those parties; but the decision has no effect upon other parties, and does not settle what may be called the status or character of the will, leaving it subject to be enforced as a valid will, or defeated as invalid, whenever other parties may have a contest depending upon it. A probate of a will of personal property, on the contrary, is a judicial determination of the character of the will itself. It does not necessarily or ordinarily arise from any controversy between adverse claimants, but is necessary in order to authorize a disposition of the personal estate in pursuance of its provisions. In case of any controversy between adverse claimants of the personal estate, the probate is given in evidence and is binding upon the parties, who are not at liberty to introduce any other evidence as to the validity of the will."

The intervenors, on the other hand, attempt to show that the English law on wills is different from that stated in the case of *State vs. McGlynn*, supra, citing the following statutes:

- The Wills Act, 1837 (7 Will. 4 E 1 Vict. c. 26).
- The Court of Probate Act, 1857 (20 & 21 Vict. c. 77).
- The Judicature Act, 1873 (36 & 37 Vict. c. 66).

The Wills Act of 1837 provides that probate may be granted of "every instrument purporting to be testamentary and executed in accordance with the statutory requirements * * * if it disposes of property, whether personal or real." The Ecclesiastical Courts which took charge of testamentary causes (Ewell's *Blackstone* [1910], p. 460), were determined by the Court of Probate Act of 1857, and the Court of Probate in turn was, together with other courts, incorporated into the Supreme Court of Judicature, and transformed into the Probate Division thereof, by the Judicature Act of 1873. (Lord Halsbury, *The Laws of England* [1910], pp. 151-156.) The intervenors overlook the fact, however, that the case of *Rex vs. Buttery and Macnamarra*, supra, upon which they rely in support of their theory that the probate of a forged will does not protect the forger from punishment, was decided long before the foregoing amendatory statutes to the English law on wills were enacted. The case of *State vs. McGlynn* may be considered, therefore, as more or less authoritative on the law of England at the time of the promulgation of the decision in the case of *Rex vs. Buttery and Macnamarra*.

In the case of *State vs. McGlynn*, the Attorney-General of California filed an information to set aside the probate of the will of one Broderick, after the lapse of one year provided by the law of California for the review of an order probating a will, in order that the estate may be escheated to the State of California, on the ground that the probated will was forged and that Broderick therefore died intestate, leaving no heirs, representatives or devisees capable of inheriting his estate. Upon these facts, the Supreme Court of California held:

"The fact that a will purporting to be the genuine will of Broderick, devising his estate to a devisee capable of inheriting and holding it, has been admitted to probate and established as a genuine will by the decree of a Probate Court having jurisdiction of the case, renders it necessary to decide whether that decree, and the will established by it, or either of them, can be set aside and vacated by the judgment of any other court. If it shall be found that the decree of the Probate Court, not reversed by the appellate court, is final and conclusive, and not liable to be vacated or questioned by any other court, either incidentally or by any direct proceeding, for the purpose of impeaching it, and that so long as the probate stands the will must be recognized and admitted in all courts to be valid, then it will be immaterial and useless to inquire whether the will in question was in fact genuine or forged." (*State vs. McGlynn*, 20 Cal., 233; 81 Am. Dec, 118, 121.)

Although in the foregoing case the information filed by the State was to set aside the decree of probate on the ground that the will was forged, we see no difference in principle between that case and the case at bar. A subtle distinction could perhaps be drawn between setting aside a decree of probate, and declaring a probated will to be a

forgery. It is clear, however, that a duly probated will cannot be declared to be a forgery without disturbing in a way the decree allowing said will to probate. It is at least anomalous that a will should be regarded as genuine for one purpose and spurious for another.

The American and English cases show a conflict of authorities on the question as to whether or not the probate of a will bars criminal prosecution of the alleged forger of the probated will. We have examined some important cases and have come to the conclusion that no fixed standard may be adopted or drawn therefrom, in view of the conflict no less than of diversity of statutory provisions obtaining in different jurisdictions. It behooves us, therefore, as the court of last resort, to choose that rule most consistent with our statutory law, having in view the needed stability of property rights and the public interest in general. To be sure, we have seriously reflected upon the dangers of evasion from punishment of culprits deserving of the severity of the law in cases where, as here, forgery is discovered after the probate of the will and the prosecution is had before the prescription of the offense. By and large, however, the balance seems inclined in favor of the view that we have taken. Not only does the law surround the execution of the will with the necessary formalities and require probate to be made after an elaborate judicial proceeding, but section 113, not to speak of section 513, of our Code of Civil Procedure provides for an adequate remedy to any party who might have been adversely affected by the probate of a forged will, much in the same way as other parties against whom a judgment is rendered under the same or similar circumstances. (*Pecson vs. Coronel*, 43 Phil., 358.) The aggrieved party may file an application for relief with the proper court within a reasonable time, but in no case exceeding six months after said court has rendered the judgment or probate, on the ground of mistake, inadvertence, surprise or excusable neglect. An appeal lies to review the action of a court of first instance when that court refuses to grant relief. (*Banco Español-Filipino vs. Palanca*, 37 Phil., 921; *Philippine Manufacturing Co. vs. Imperial*, 47 Phil., 810; *Samia vs. Medina*, 56 Phil., 613.) After a judgment allowing a will to be probated has become final and unappealable, and after the period fixed by section 113 of the Code of Civil Procedure has expired, the law as an expression of the legislative wisdom goes no further and the case ends there.

"* * * The court of chancery has no capacity, as the authorities have settled, to judge or decide whether a will is or is not a forgery; and hence there would be an incongruity in its assuming to set aside a probate decree establishing a will, on the ground that the decree was procured by fraud, when it can only arrive at the fact of such fraud by first deciding that the will was a forgery. There seems, therefore, to be a substantial reason, so long as a court of chancery is not allowed to judge of the validity of a will, except as shown by the probate, for the exception of probate decrees from the jurisdiction which courts of chancery exercise in setting aside other judgments obtained by fraud. But whether the exception be founded in good reason or otherwise, it has become too firmly established to be disregarded. At the present day, it would not be a greater assumption to deny the general rule that courts of chancery may set aside judgments procured by fraud, than to deny the exception to that rule in the case of probate decrees. We must acquiesce in the principle established by the authorities, if we are unable to approve of the reason. Judge Story was a staunch advocate for the most enlarged jurisdiction of courts of chancery, and was reluctant to allow the exception in cases of wills, but was compelled to yield to the weight of authority. He says: 'No other excepted case is known to exist; and it is not easy to discover the grounds upon which this exception stands, in point of reason or principle, although it is clearly settled by authority.' (1 Story's Eq. Jur. sec. 440.)" (*State vs. McGlynn*, 20 Cal., 233; 81 Am. Dec. 118, 129. See, also, *Tracy vs. Muir*, 121 American State Reports, 118, 125.)

We hold, therefore, that in view of the provisions of sections 306, 333 and 625 of our Code of Civil Procedure, criminal action will not lie in this jurisdiction against the forger of a will which had been duly, admitted to probate by a court of competent jurisdiction.

The resolution of the foregoing legal question is sufficient to dispose of the case. However, the other legal question with reference to the denial to the accused of his right to a speedy trial having been squarely raised and submitted, we shall proceed to consider the same in the light of cases already adjudicated by this court.

- The Constitution of the Philippines provides that "In all criminal prosecutions the accused * * * shall enjoy the right * * * to have a speedy * * * trial * * * (Art. III, sec. 1, par. 17. See, also, G. O. No. 58, sec. 15, No. 7.) Similar provisions are to be found in the President's Instructions to the Second Philippine Commission (par. 11), the Philippine Bill of July 1, 1902 (sec. 5, par. 2) and the Jones Act of August 29, 1916 (sec. 3, par. 2). The provisions in the foregoing organic acts appear to have been taken from similar provisions in the Constitution of the United States (6th Amendment) and those of the various states of the American Union. A similar injunction is contained in the Malolos Constitution (art. 8, Title IV), not to speak of other constitutions. More than once this court had occasion to set aside the proceedings in criminal cases to give effect to the constitutional injunction of speedy trial. (*Conde vs. Judge of First Instance and Fiscal of Tayabas* 1.1923], 45 Phil., 173; *Conde vs. Rivera and Unson* [1924], 45 Phil., 650; *People vs. Castañeda and Fernandez* [1936]), 35 Off. Gaz., 1269; *Kalaw vs. Apostol*, Oct. 15, 1937, G. R. No. 45591; *Esguerra vs. De la Costa*, Aug. 30, 1938, G. R. No. 46039.)

In *Conde vs. Rivera and Unson*, supra, decided before the adoption of our Constitution, we said:

"Philippine organic and statutory law expressly guarantee that in all criminal prosecutions the accused shall enjoy the right to have a speedy trial. Aurelia Conde, like all other accused persons, has a right to a speedy trial in order that if innocent she may go free, and she has been deprived of that right in defiance of law. Dismissed from her humble position, and compelled to dance attendance on courts while investigations and trials are arbitrarily postponed without her consent, is palpably and openly unjust to her and a detriment to the public. By the use of reasonable diligence, the prosecution could have settled upon the appropriate information, could have attended to the formal preliminary examination, and could have prepared the case for a trial free from vexatious, capricious, and oppressive delays."

In *People vs. Castañeda and Fernandez*, supra, this court found that the accused had not been given a fair and impartial trial. The case was to have been remanded to the court a quo for a new trial before an impartial judge. This step, however, was found unnecessary. A review of the evidence convinced this court that a judgment of conviction for theft, as charged, could not be sustained and, having in view the right to a speedy trial guaranteed by the Constitution to every person accused of crime, entered a judgment acquitting the accused, with costs de oficio. We said:

"* * * The Constitution, Article III, section 1, paragraph 17, guarantees to every accused person the right to a speedy trial. This criminal proceeding has been dragging on for almost five years now. The accused have twice appealed to this court for redress from the wrong that they have suffered at the hands of the trial court. At least one of them, namely Pedro Fernandez alias Piro, had been confined in prison from July 20, 1932 to November 27, 1934, for inability to post the required bond of P3,000 which was finally reduced to P1500. The Government should be the last to set an example of delay and oppression in the administration of justice and it is the moral and legal obligation of this court to see that the criminal proceedings against the accused come to an end and that they be immediately discharged from the custody of the law. (*Conde vs. Rivera and Unson*, 45 Phil., 651.)"

In *Kalaw vs. Apostol*, supra, the petitioner invoked and this court applied and gave effect to the doctrines stated in the second *Conde* case, supra. In granting the writs prayed for, this court, after referring to the constitutional and statutory provisions guaranteeing to persons accused of crime the right to a speedy trial, said:

"Se infiere de los preceptos legates transcritos que todo acusado en causa criminal tiene derecho a ser juzgado pronta y publicamente. Juicio rapido significa un juicio que se celebra de acuerdo con la ley de procedimiento

criminal y los reglamentos, libre de dilaciones vejatorias, caprichosas y opresivas (Burnett vs. State, 76 Ark., 295; 88 S. W., 956; 113 AMSR, 94; Stewart vs. State, 13 Ark., 720; Peo. vs. Shufelt, 61 Mich., 237; 28 N. W., 79; Nixon vs. State, 10 Miss., 497; 41 AMD., 601; State vs. Cole, 4 Okl. Cr., 25; 109 P., 736; State vs. Caruthers, 1 Okl. Cr., 428; 98 P., 474; State vs. Keefe, 17 Wyo., 227, 98 p., 122; 22 IRANS, 896; 17 Ann. Cas., 161). Segun los hechos admitidos resulta que al recurrente se le concedio vista parcial del asunto, en el Juzgado de Primera Instancia de Samar, so1o despues de haber transcurrido ya mas de un año y medio desde la presentacion de la primera querella y desde la recepcion de la causa en dicho Juzgado, y despues de haberse transferido dos veces la vista del asunto sin su consentimiento. A esto debe añadirse que la primera transferencia de vista era claramente injustificada porque el motivo que se alego consistio unicamente en la conveniencia personal del ofendido y su abogado, no habiendose probado suficientemente la alegacion del primero de que se hallaba enfermo. Es cierto que el recurrente habia pedido que, en vez de señalarse a vista el asunto para el mayo de 1936, lo fuera para el noviembre del mismo añ; pero, aparte de que la razon que alego era bastante fuerte porque su abogado se oponia a comparecer por compromisos urgentes contraidos con anterioridad y en tal circunstancia hubiera quedado indefenso si hubiese sido obligado a entrar en juicio, aparece que la vista se pospuso por el Juzgado a motu proprio, por haber cancelado todo el calendario judicial preparado por el Escribano para el mes de junio. Declaramos, con visto de estos hechos, que al recurrente se le privo de su derecho fundamental de ser juzgado prontamente."

Esguerra vs. De la Costa, supra, was a petition for mandamus to compel the respondent judge of the Court of First Instance of Rizal to dismiss the complaint filed in a criminal case against the petitioner, to cancel the bond put up by the said petitioner and to declare the costs de oficio. In accepting the contention that the petitioner had been denied speedy trial, this court said:

"Consta que en menos de un año el recurrente fue procesado criminalmente por el alegado delito de abusos deshonestos, en el Juzgado de Paz del Municipio de Cainta, Rizal. Como consecuencia de las denuncias que contra el se presentaron fue arrestado tres veces y para gozar de libertad provisional, en espera de los juicios, se vio obligado a prestar tres fianzas por la suma de P1,000 cada una. Si no se da fin al proceso que ultimamente se ha incoado contra el recurrente la incertidumbre continuara cerniendose sobre el y las consiguientes molestias y preocupaciones continuaran igualmente abrumandole. El Titulo III, articulo 1, No. 17, de la Constitucion preceptua que en todo proceso criminal el acusado tiene derecho de ser juzgado pronta y publicamente. El Articulo 15, No. 7, de la Orden General No. 58 dispone asimismo que en las causas criminales el acusado tendra derecho a ser juzgado pronta y publicamente. Si el recurrente era realmente culpable del delito que se le imputo, tenia de todos modos derechos a que fuera juzgado pronta y publicamente y sin dilaciones arbitrarias y vejatorias. Hemos declarado reiteradamente que existe un remedio positivo para los casos en que se viola el derecho constitucional del acusado de ser juzgado prontamente. El acusado que es privado de su derecho fundamental de ser enjuiciado rapidamente tiene derecho a pedir que se le ponga en libertad, si estuviese detenido, o a que la causa que pende contra el sea sobreseida definitivamente. (Conde contra Rivera y Unson, 45 Jur. Fil., 682; In the matter of Ford [1911], 160 Cal., 334; U. S. vs. Fox [1880], 3 Mont, 512; Kalaw contra Apostol, R. G. No. 45591, Oct. 15, 1937; Pueblo contra Castañeda y Fernandez, 35 Gac. Of., 1357.)"

We are again called upon to vindicate the fundamental right to a speedy trial. The facts of the present case may be at variance with those of the cases hereinabove referred to. Nevertheless, we are of the opinion that, under the circumstances, we should consider the substance of the right instead of indulging in more or less academic or undue factual differentiations. The petitioner herein has been arrested four times, has put up a bond in the sum of P4,000 and has engaged the services of counsel to undertake his defense an equal number of times. The first arrest was made upon a complaint filed by one of the intervenors herein for alleged falsification of a will which; sixteen months before, had been probated in court. This complaint, after investigation, was dismissed at the complainant's own request. The second arrest was made upon a complaint charging the same offense and this complaint, too, was dismissed at the behest of the complainant herself who alleged the quite startling ground that the petitioner was in poor health. The third arrest was made following the filing of an information

by the provincial fiscal of Pampanga, which information was dismissed, after due investigation, because of insufficiency of the evidence. The fourth arrest was made when the provincial fiscal secured a reinvestigation of the case against the petitioner on the pretext that he had additional evidence to present, although such evidence does not appear to have ever been presented.

It is true that the provincial fiscal did not intervene in the case until February 2, 1934, when he presented an information charging the petitioner, for the third time, of the offense of falsification. This, however, does not matter. The prosecution of offenses is a matter of public interest and it is the duty of the government or those acting in its behalf to prosecute all cases to their termination without oppressive, capricious and vexatious delay. The Constitution does not say that the right to a speedy trial may be availed of only where the prosecution for crime is commenced and undertaken by the fiscal. It does not exclude from its operation cases commenced by private individuals. Where once a person is prosecuted criminally; he is entitled to a speedy trial, irrespective of the nature of the offense or the manner in which it is authorized to be commenced. In any event, even the actuations of the fiscal himself in this case is not entirely free from criticism. From October 27, 1932, when the first complaint was filed in the justice of the peace court of San Fernando, to February 2, 1934, when the provincial fiscal filed his information with the justice of the peace of Mexico, one year, three months and six days transpired; and from April 27, 1933, when the second criminal complaint was dismissed by the justice of the peace of Mexico, to February 2, 1934, nine months and six days elapsed. The investigation following the fourth arrest, made after the fiscal had secured a reinvestigation of the case, appears also to have dragged on for about a year. There obviously has been a delay, and considering the antecedent facts and circumstances within the knowledge of the fiscal, the delay may not at all be regarded as permissible. In *Kalaw vs. Apostol*, supra, we observed that the prosecuting officer is in charge of and has under his direction and control all prosecutions for public offenses (secs. 1681 and 2465 of the Rev. Adm. Code), and that it is his duty to see that criminal cases are heard without vexatious, capricious and oppressive delays so that the courts of justice may dispose of them on the merits and determine whether the accused is guilty or not. This is as clear an admonition as could be made. An accused person is entitled to a trial at the earliest opportunity. (Sutherland on the Constitution, p. 664; *United States vs. Fox*, 3 Mont., 512.) He cannot be oppressed by delaying the commencement of trial for an unreasonable length of time. If the proceedings pending trial are deferred, the trial itself is necessarily delayed. It is not to be supposed, of course, that the Constitution intends to remove from the prosecution every reasonable opportunity to prepare for trial. Impossibilities cannot be expected or extraordinary efforts required on the part of the prosecutor or the court. As stated by the Supreme Court of the United States, "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." (*Beavers vs. Haubert* [1905], 198 U. S., 86; 25 S. Ct., 573; 49 Law. ed., 950, 954.)

It may be true, as seems admitted by counsel for the intervenors, in paragraph 8, page 3 of his brief, that the delay was due to "the efforts towards reaching an amicable extrajudicial compromise," but this fact, we think, casts doubt instead upon the motive which led the intervenors to bring criminal action against the petitioner. The petitioner claims that the intention of the intervenors was to press upon settlement, with the continuous threat of criminal prosecution, notwithstanding the probate of the will alleged to have been falsified. Argument of counsel for the petitioner in this regard is not without justification. Thus after the filing of the second complaint with the justice of the peace court of Mexico, complainant herself, as we have seen, asked for dismissal of the complaint, on the ground that "el acusado tenia la salud bastante delicada," and, apparently because of failure to arrive at any settlement, she decided to renew her complaint.

Counsel for the intervenors contend—and the contention is sustained by the Court of Appeals—that the petitioner did not complain heretofore of the denial of his constitutional right to a speedy trial. This is a mistake. When the petitioner, for the fourth time, was ordered arrested by the Court of First Instance of Pampanga, he moved for reconsideration of the order of arrest, alleging, among other things, "Que por estas continuas acusaciones e investigaciones, el acusado compareciente no obstante su mal estado de salud desde el año 1932 en que tuvo que ser operado por padecer de tuberculosis ha tenido que sostener litigios y ha sufrido la mar de humillaciones

y zozobras y ha incurrido en enormes gastos y molestias y ha desatendido su quebrantada salud." The foregoing allegation was inserted on page 6 of the amended petition for certiorari presented to the Court of Appeals. The constitutional issue also appears to have been actually raised and considered in the Court of Appeals. In the majority opinion of that court, it is stated:

"Upon the foregoing facts, counsel for the petitioner submits for the consideration of this court the following questions of law: First, that the respondent court acted arbitrarily and with abuse of its authority, with serious damage and prejudice to the rights and interests of the petitioner, in allowing that the latter be prosecuted and arrested for the fourth time, and that he be subjected, also for the fourth time, to a preliminary investigation for the same offense, thereby converting the court into an instrument of oppression and vengeance on the part of the alleged offended parties, Rosario Basa et al.; * * *."

And in the dissenting opinion, we find the following opening paragraph:

"We cannot join in a decision declining to stop a prosecution that has dragged for about five years and caused the arrest on four different occasions of a law abiding citizen for the alleged offense of falsifying a will that years before, had been declared genuine and valid by a court of competent jurisdiction."

From the view we take of the instant case, the petitioner is entitled to have the criminal proceedings against him quashed. The judgment of the Court of Appeals is hereby reversed, without pronouncement regarding costs. So ordered.

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

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