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RECENT DECISIONS OF THE SUPREME COURT REVIEWED

1. MURDER—SELF-DEFENSE.—*P.P.I. vs. Vicente Cantero, et al.*, G. R. No. 27170, August 1, 1927. *Facts*: Murder. It appears that early in the evening of December 2, 1925, the deceased Bruno Cabero and the accused Vicente Cantero had a verbal altercation. They were, however, pacified by Plácido Coliflores. The deceased then told his daughter, Cesárea, that he would sleep in the beach that evening. Accordingly, Césarea brought a mat and a pillow to the beach for his father to sleep on. Later on that same evening, Bruno Cabero was killed and his body found in the "azotea" of the house of Vicente Cantero. The latter admitted that he had killed the deceased but alleged that it was done through self-defense. According to Cantero's testimony, the deceased between 10 and 11 o'clock that evening went up to the "azotea" of his house and challenged him into a fight; that the deceased tried to strike him with a piece of wood but that he succeeded in evading the blow; and that finally, he was able to take the piece of wood from the deceased and as the latter was still advancing towards him, he (Cantero) struck him with the piece of wood and continued to do so until the deceased fell down. From the testimony, however, of the daughter of the deceased, who saw the commission of the crime from the window of a neighbor's house, it was proved to the satisfaction of the court below that while Vicente Cantero had her father under control, the other defendant, Simón Cudala, beat her father with a piece of wood until the latter died. Her testimony was corroborated by the fact that fresh blood was found on the steps of the house of Vicente Cantero by the authorities that very evening when the murder occurred. This, according to the court, shows that a bleeding human body was brought up to the house of the accused Cantero that evening and destroyed his pretension that the killing was done through self-defense. *Held*: Affirmed on the facts and the accused sentenced to 17 years, 4 months and 1 day of "cadena temporal," with the accessory penalties, to indemnify the heirs of the deceased in the

sum of ₱1,000 and to pay the costs. (In Banc, per C. J. Avanceña). *Briefed by A. Sólidum.*

2. CONTRACT FOR SERVICE—QUANTUM MERUIT—REFEREES.—*Paul A. Weems v. Anastacia Shaboturoff in Padovani and Amzi B. Kelly*, R. G. No. 26878, August 2, 1927. *Facts:* Action for the recovery of ₱14,612.50, "alleged to be due to the plaintiff for services rendered by him as commissioner in an action instituted" by Shaboturoff against one Carpi. "The defendant Kelly is alleged to have made himself jointly and severally liable with his codefendant by entering into a conspiracy with her to prevent the plaintiff from obtaining the compensation to which he supposed himself to be entitled." There was an agreement in writing with regard to plaintiff's fees as auditor, which agreement was signed by Shaboturoff. The appointment of plaintiff as commissioner "was apparently made at the instance of plaintiff (in the action against Carpi—Reporter), and with the understanding that the fees of the commissioner were to be paid by her." A writing was interposed by Kelly, in his own behalf and as attorney for his co-defendant, which writing was declared by the lower court to be in legal effect a demurrer, which was sustained. The complaint was dismissed upon the plaintiff electing not to amend further. HELD: "The judgment of the trial court, dismissing the complaint in the present case on demurrer, proceeds upon the idea that the contract, Exhibit "A", is void, and that no action can be maintained by the plaintiff thereon. In this connection attention is directed to section 8 of the Code of Civil Procedure which, among other things, declares that no referee shall sit in any cause in which he is pecuniarily interested; and it is said that the contract must be illegal, because, if valid, it would disqualify the referee. This of course assumes that the plaintiff was a mere referee appointed under section 135 of the Code of Civil Procedure, but this assumption is not correct. The plaintiff sues for services in the character of an auditor rendered by procurance and at the request of the plaintiff, and for those services he ought to be paid. Really, in performing this work as auditor, the plaintiff was apparently merely qualifying himself as an expert accountant and witness for the plaintiff; and it was not within the power of the court to confer upon him the judicial functions with which a referee is clothed when appointed, with the written consent of the litigant parties, under section 135 of the Code of Civil Procedure. * * * But, even supposing the contract, Exhibit "A", to be invalid, the plaintiff would be entitled to recover, upon a *quantum meruit*, the reasonable value of the services rendered. Otherwise there would result an unjust enrichment of the person who supposed herself to be profiting by the plaintiff's labor." Judgment reversed and cause remanded.—(Street, J.)—*Briefed by J. S. Nava.*

3. ROBBERY WITH HOMICIDE.—*P. P. I. vs. Paking et al.*, G. R. No. 27123, Aug. 3, 1927. *Facts:* The accused, Paking, Pilay Intong and Ampagui Dixen and the deceased, Dalmones, were engaged in a game of monte, in which Dalmones won all the money amounting to ₱10.00. Having been refused some money as "tip," the defendants killed Dalmones, took and divided his money among them and pulled the dead body below the road. The crime was discovered and the defendants were arrested. Each of the defendants voluntarily signed a written confession where each admitted his part of the crime. In all the confessions made, the defendants agreed

as to the essential details of the crime. They were charged with the crime of robbery with homicide and each was sentenced to life imprisonment with the accessory penalties. *Held:* Affirmed on the facts. (In banc. Per Johns, J.)—*Briefed by E. Arévalo.*

4. ESTAFA.—*P. P. I. v. Mateo Tupaz*, R. G. No. 26866, August 4, 1927. *Facts:* Estafa with falsification of public document. "The accused being the chief clerk and cashier of the office of the register of deeds of Occidental Negros received from Mr. León Peñaflorida the amount of ₱200 as registration fees of several documents of the "Compañia General de Tabacos," and prepared the corresponding official receipts, among them Exh. A and its duplicate Exh. C, regarding the payment of registration fee of the mortgage Exh. B." The amount stated in the original receipt Exh. A was ₱40.50, which differs from ₱20.50 appearing on the duplicate Exh. C. Defendant alleges that when he issued the receipt he placed therein the amount of ₱20.50 and that he returned to Leon Peñaflorida the amount of ₱36 as balance of the ₱200. This allegation is denied by both León Peñaflorida and Alejandro Amechazurra, the representative of the "Compañía General de Tabacos." *Held:* Judgment affirmed on the facts, but penalty modified.—(Villamor, J.)—*Briefed by J. S. Nava.*

5. PERSONAL PROPERTY—UNGATHERED PRODUCTS—ATTACHMENT—CHATTEL MORTGAGE.—*Leon Sibal 1.o vs. Emiliano J. Valdez et al.*, G. R. No. 26278, August 4, 1927. *Facts:* Plaintiff alleged that the Deputy Sheriff of Tarlac, by virtue of a writ of execution issued by the Court of First Instance of Pampanga, attached and sold to the defendant the sugar cane planted by the plaintiff and his tenants on seven parcels of land described in the complaint; that within one year from the date of the attachment and sale the plaintiff offered to redeem said sugar cane and tendered to the defendant Valdez the amount sufficient to cover the price paid by the latter, the interest thereon and any assessments or taxes which he may have paid thereon after the purchase, and the interest corresponding thereto, and that Valdez refused to accept the money and to return the sugar cane to the plaintiff. The defendant Valdez, in his answer, set up the defense that the sugar cane in question had the nature of personal property and was not, therefore, subject to redemption. *Held:* That paragraph 2 of article 334 of the Civil Code has been modified by section 450 of the Code of Civil Procedure and by Act 1508, in the sense that, for the purposes of attachment and execution, and for the purposes of the Chattel Mortgage Law, "ungathered products" have the nature of personal property. (In Banc, per J. Johnson). (*Briefed by A. Sólidum*).

6. THEFT—CLAIM OF TITLE TO PROPERTY TAKEN.—*P. P. I. vs. Pablo Ventura*, G. R. No. 26715, August 4, 1927. *Facts:* Defendant is charged with the crime of theft. His defense is based upon an honest claim of title to, and ownership of, the palay which he took and harvested. The evidence is conclusive that the defendant took the palay under an honest claim of right, and that in good faith he believed that he was the owner at the time he took it. *Held:* It appearing that the defendant acted in good faith, and that he was honestly mistaken about the ownership, it follows that the taking and harvesting of the palay was not felonious and that the defendant's guilt has not been proved beyond a reasonable doubt. (J. Johns). (*Briefed by A. Solidum*).

7. GOVERNMENT AS PARTY IN ACTION TO RECOVER ON BONDS.—*The Government of the P. I. et al., vs. Chua Cho Pack & Co. et al.*, G. R. No. 26801, August 4, 1927. *Facts*: Action to recover of the defendants a certain sum of money representing the aggregate amount of eight bonds executed in favor of the Government of the Philippine Islands by defendants. The purpose of the bonds was to enable Chua Cho Pack & Co. to get certain merchandise from the customhouse of Cebu without the production of the bills of lading, and the condition was that the obligors shall produce the bills of lading at the time specified, or otherwise, shall pay to the Government the amount of said bonds. The merchandise was delivered by Joaquin Natividad, Collector of Customs of Cebu, to Chua Cho Pack & Co., but the defendants failed to produce the bills of lading during the period stipulated. After said merchandise had been delivered, the American Express Co., holder of the bills of lading for said merchandise, filed an action in the Court of First Instance of Manila against Joaquin Natividad in order to recover the value of said merchandise, in which judgment was rendered in favor of said company. So this action was brought to enforce the above mentioned bonds and to indemnify Joaquin Natividad for his pending liability to the American Express Co. resulting from the delivery of the merchandise to Chua Cho Pack & Co. Among the defenses set up by the defendants is that the Government of the Philippine Islands has no interest in this case and is without right to bring this action jointly with the plaintiff Natividad. *Held:* It is true that the Insular Government suffered no damage calling for indemnity on said bonds. However, the Insular Government or the Government of the Philippine Islands is merely a nominal party in this action. It was included as plaintiff simply because the bonds which constituted the basis of this action were executed in favor of the Government of the Philippine Islands, even though, to all intents and purposes, said bonds were executed in favor of Joaquin Natividad as Collector of Customs of Cebu for his protection and indemnity. That this is the nature, purpose and effect of said bonds may be seen from Section 1316 of the Administrative Code. (In Banc, per J. Johnson). (*Briefed by A. Sólidum*).

8. HOMICIDE—DEATH RESULTING FROM FEVER.—*P. P. I. vs. Placido Olaes*, G. R. No. 26955, August 4, 1927. *Facts*: The accused was found guilty of homicide in the court below and was sentenced accordingly. It appears that at about 8 o'clock in the evening of December 16, 1923, while the deceased Aristón Ramirez was in the house of Laura Rementilla, the accused Placido Olaes appeared there and asked for the deceased. Upon knowing the desire of the accused, Ramirez left the house with Olaes. When they were already in the street, Olaes gave Ramirez a blow on the face whereupon the latter ran towards the house of Laura Rementilla, followed by Olaes. While Ramirez was on the steps of the house, Olaes overtook him and struck him on the back with the dull edge of a bolo. Ramirez fell down on the steps with his breast striking one of them. Olaes continued to pursue Ramirez while the latter was already inside the house, but through the intervention of the owner, he desisted from doing so. They were then both pacified. On January 1, 1924, sixteen days after the occurrence of the foregoing facts, Ramirez died. The physician who viewed his body found that the color of the skin was yellow, that the face was wrinkled with an expression of anxiety and that there was a contusion on the upper

part of the right side of the neck. In the death certificate issued by the same doctor, he stated that the deceased died of malaria. It was also proved that at 4 o'clock in the afternoon of the same day, December 16, 1923, the deceased was seen working in the rice field and that he complained to one Rufo Olaes that he (Ramirez) had fever, and that when the father of the deceased gave notice to the municipality of the death of his son, he said that his said son died of fever. *Held*: Reversed on the facts. The fact that the deceased had been complaining of fever on the day of the occurrence of the foregoing facts, that the family of the deceased never called for a doctor, not even an "harbolario," and the belief of the father of the deceased himself, in giving account of the death of his son, that the latter had died of fever, which belief was confirmed by the death certificate of the doctor who viewed the body of the deceased, justify the conclusion that Aristón Ramirez died of malaria and not of internal homorrhage as alleged by the prosecution. The accused was, however, found guilty of physical injuries penalized by Art. 588 of the Penal Code. (In Banc, per J. Villa-Real). *Briefed by A. Sólidum.*

9. HOMICIDE—OBFUSCATION.—*P.P.I. vs. Esteban Austria*, G. R. No. 27352, August 4, 1927. *Facts*: The accused was found guilty of homicide by the lower court. It appears that the deceased Jacinto de los Reyes and others were in the "tienda" of the accused on December 23, 1926, drinking wine. After having finished one bottle of wine, the deceased demanded from the accused one more bottle, which demand was refused by the accused for the reason that the deceased tendered no money in payment therefor and also for fear that some trouble might arise as the accused had observed that the deceased and his companions were already drunk. Upon the refusal of the accused to accede to his demand, the deceased struck him on the face with a brass knuckles. Thereupon, the accused got his bolo and a struggle ensued between the accused and the deceased as a result of which the latter died. The father of the deceased, upon learning of the death of his son, also went to the "tienda" of the accused and rebuked the latter for killing his son. In answer thereto, the accused struck the father of the deceased with his bolo on the neck, causing his instantaneous death. *Held*: Affirmed on the facts. The mitigating circumstance of obfuscation was found present in the commission of the crime. (In Banc, per J. Villamor). *Briefed by A. Sólidum.*

10. ESTAFA THRU FALSIFICATION OF DOCUMENTS—PRACTICE OF DISBURSING OFFICERS CONDEMNED.—*P. P. I. vs. Roman Duque*, G. R. No. 27447, August 4, 1927. *Facts*: The accused was charged with the crime of estafa thru falsification of a public document and was found guilty thereof by the lower court. It appears that Roman Duque, the accused, was one of the foremen in charge of the laborers working on the construction of a road in one of the towns of the province of Tarlac, under the supervision of the Municipal President of said town. Duque was the one who recorded the number of days that each laborer had worked. Among the laborers, there were those who were working without pay under the system known in Ilocano as "tagnawa" of whom Domingo Lino was one. In the pay-roll prepared by the accused, however, the name of Domingo Lino appeared as having rendered services from April 16 to 30, 1923, and that the wages corresponding to him amounted to ₱4.80. The accused, as the one in charge of recording the number of days during which

each laborer had worked, certified at the foot of the pay-roll aforementioned that each and every one of the laborers appearing thereon had rendered services on the days indicated, and that he (Duque) had witnessed the payment to each and every one of the persons mentioned therein their corresponding wages. Román Duque collected from the municipal treasury the wages corresponding to Domingo Lino upon the order of the Municipal President and gave it to the latter. Domingo Lino never received such amount for having worked gratuitously. The accused, as a witness on his behalf, testified that acting under the order of the Municipal President, he (Duque) gave the list prepared by him of the laborers and the number of days worked by each to another foreman by the name of Pelagio Madarang; that the latter was the one who had prepared the pay-roll in question; that after the same was prepared and signed by the Municipal President, the latter ordered him (Duque) to make the certification at the foot of the payroll as to the services rendered by the laborers appearing thereon; that to facilitate the payment of their wages, the laborers, especially those who were absent, used to give their cedulas to their foremen and authorized them to collect their wages; that with the presentation of the cedulas of the laborers, the disbursing officer paid to the foremen the wages of those laborers whose cedulas had been shown to him; that once the payment had been made, the disbursing officer ordered the foreman who had collected the amount of the wages to make the attesting certification at the foot of the pay-roll; that the same practice was followed in this case; that the Municipal President ordered him (Duque) to get the cedula of Domingo Lino and to collect the amount of the wages corresponding to the said Domingo Lino, which amount he gave to the Municipal President; that he (Duque) did not know what the latter would do with said sum; and that he had not received any benefit from it. *Held*: Reversed on the facts and the accused acquitted. The Court condemned the practice observed by the disbursing officer, which is dangerous and pernicious both to the government and to private persons, in paying to the foremen the wages of the laborers upon the sole presentation of the cedulas of the latter and in making the said foremen to sign afterward the attesting certification printed at the foot of the pay-roll. Such a practice, according to the Court, constitutes a negligence on the part of the officer in charge of disbursing money from the public funds, in the performance of his duties as such. (In Banc, per J. Villa-Real). *Briefed by A. Sólidum.*

11. ESTAFA—DELAY IN COMMENCING PROSECUTION.—*P. P. I. v. Luis Apoya et al.*, R. G. No. 27678, August 5, 1927. Defendants were charged with crime of estafa in that on October 31, 1924, "they received from Vicente Yap Chian ₱115.00 to be used by them in the purchase of maguey fiber with an express contract to deliver the maguey within twenty days from receipt of the money, and they failed to do so, and appropriated the money to their own use." "On appeal they contend that the court erred in finding them guilty of the crime of estafa, alleged to have been committed two years before the filing of the complaint." *Held:* "The fact that the offended party for two years did not initiate the prosecution is not a defense under the facts shown to exist in this case. The evidence tends to show that he made persistent demands upon them for the maguey or the money, and the fact that he delayed for two years to file an information does not alter the terms of the written contract, and

only tends to show that the complaining witness had no desire to prosecute the defendants, and that all he wanted them to do was to comply with the contract."—Judgment Affirmed.—(Johns, J.)—*Briefed by J. S. Nava.*

12. FALSIFICATION—DOUBLE JEOPARDY.—*P. P. I. vs. Pariña*, G. R. No. 27108-109, Aug. 5, 1927. *Facts*: In two criminal cases, Teodolfo C. Pariña, municipal treasurer of Albuera, Leyte, was charged with the crime of falsification of public documents. The accused, as treasurer, purchased 20 pieces of "sambulawan" for ₱30 and made a municipal voucher in which it falsely appeared that 40 pieces were bought for ₱60 and then entered said sum in the treasury book. As such treasurer he likewise made a municipal voucher in which it falsely appeared that the municipality rented a table for ₱30 when in fact no such table was really rented. In both criminal cases, he interposed the defense of double jeopardy based on the fact that he had been previously convicted and sentenced for the crime of malversation of public funds in which was included the sum alleged to be the object of the falsification of public documents in the two present criminal cases. The lower court disregarded this defense and convicted and sentenced the defendant in each case to 6 years of prision mayor and 250 pesetas fine and perpetual disqualification to hold any public office. *Held*: The defense of double jeopardy cannot be sustained. "In order that there be jeopardy it is essential that the two crimes for which an accused has been convicted and sentenced be identical or that one be necessarily included in the other, as lower in degree of the same, or that he ran the risk of being convicted for the same offense and that the evidence which are necessary to establish the one would likewise be necessary to establish the other." Judgment modified. There being no modifying circumstance the medium degree of penalty provided for in art. 300 of the Penal Code is imposed in each case. (2nd division. Per Villareal, J.)—*Briefed by E. Arévalo.*

13. DAMAGES TO PROPERTY.—*P. P. I. vs. Constantino et al.*, G. R. No. 27268, Aug. 5, 1927, *Facts:* The defendants, Luis Constantino, Calixto Constantino, Sinforoso Recto, Pablo Fevidal and Sabino Fevidal, armed with bolos entered the premises of the complainants and destroyed the plants growing thereon. The defendant Luis owned a parcel of land contiguous to that of the offended parties. The other defendants went to the premises of the complainants at the instance of Luis and always understood that the land on which the damage was done belonged to Luis. The defendants were convicted in the lower court of the crime of damages to property. *Held*: Judgment modified: as to the defendant Luis Constantino, the judgment is affirmed, the evidence being conclusive and proves his guilt beyond a reasonable doubt; as to the other defendants, the judgment is reversed, there being no evidence to show that they had any malicious motive in doing the damage. (2nd. division. Per Johns, J.)—*Briefed by E. Arévalo.*

14. THEFT AS A CONTINUING OFFENSE.—*P.P.I. v. Lazoy & Binuncal* (Igorrot), R. G. No. 27034, August 6, 1927. (2nd. Div.)—*Facts*: An information, charging the defendant with theft of one cow alleged to have been committed in the municipal district of Burgos, La Union, P. I., was filed in the Court of First Instance of Benguet, Mountain Province. Dismissed upon demurrer on the ground that the court had no jurisdic-

tion, it appearing from the face of the information that the alleged crime was committed in La Union, P. I. *Held*: "In offenses where the wrong can be considered of a continuing nature, the prosecution may be brought in any province where the accused carried the thing which is the subject matter of the offense. It was settled at an early date in England that the offense of theft is of a continuing character, so long as the thief retains possession of the stolen goods. If goods are stolen in one county and carried by the thief to another, he may be indicted for larceny in the county to which he carries the goods. This English Common-law rule has been universally adopted in America (17 R.C.L., pp. 45-26)." Judgment reversed and case remanded for further proceedings.—(Street, J.)—*Briefed by J. S. Nava.*

15. THEFT—RETURN OF DOWRY—LACK OF EDUCATION AS MITIGATING CIRCUMSTANCE.—*P. P. I. v. Yapuyap, Sumayao and Baguisen*, R. G. No. 27089. August 6, 1927. (2nd. Div.)—*Facts*: "In January, 1926, the three appellants went to the house of Labnay (Igorot woman) in the barrio of Dadaay, Alilem, Ilocos Sur; and, going under the house, they proceeded to dig up a jar, containg ₱100.00 in silver coins, which Lagnay had secreted in that spot. Having possessed themselves of the money contained in the jar, the appellants went away." The accused do not deny that they took up the money, but allege that "this ₱100.00 had been given by Yapuyap to Labnay as dowry upon the occasion of the marriage of Yapuyap's son, Sumayao, to a daughter of Labnay, named Quinia. Inasmuch as Quinia has abandoned Sumayao, Yapuyap considered himself entitled to the return of the money. Labnay, on the conby Act 3062 to be imprisoned for a period of 3 years of *presidio correccio*-savings over a period of three years from the sale of palay. They further claim that the dowry given by Yapuyap consisted of two pigs, the value of which has been returned to him." The lower court convicted the appellants, but "gave the accused the benefit of Sec. 11 of the Penal Code, as amended." *Held*: "As a general rule, lack of instruction is not properly considered as a mitigating circumstance in connection with offenses against property, since the conception of property right is as well defined among unlettered people as among the more highly cultured. Nevertheless, in view of the peculiar character of the controversy over dowry in this case and the extent of which the idea of the appellants may have been implicated with their retarded state of civilization, we accept the appreciation of the trial court." Judgment affirmed, but penalty modified by adding the accessory penalties incident to arresto mayor.—(Street, J.)—*Briefed by J. S. Nava.*

16. ESTAFA THRU FALSE REPRESENTATION.—*P.P.I. v. Crispino Hombrebueno*, R. G. No. 27154, August 6, 1927. (1st Div.) *Facts*: In January 29, 1926, tht accused was received as guest of the Mignon Hotel. He lived there, together with his family, for 31 days after which he left without notifying the owner. of the hotel. Several times he had been requested personally to pay, but he always answered that he was going to pay as soon as he could sell his copra. A receipt of the hotel was then sent to the accused requesting, in manuscript, the payment of his lodging. The accused answered by a letter that he was going to pay as soon as he could cash the ₱1,000 check issued in his favor by Smith, Bell & Co. for

certain copra sold to the latter. Convicted by the lower court. The appellant alleges that he did not make any false representation to obtain the lodging given him at the hotel, having paid part of said lodging to the amount of ₱105, and contends that the sole action that the hotel has as to the rest of the amount that he still owes, is purely civil." *Held*: "It is not necessary, in order to constitute estafa, as it is defined and penalized in Art. 535, par. 1, of the P[illegible]al Code, that this false representation be made by work or other express form, it being sufficient that in each case concur such circumstances that would indicate that the actor (agente) made such representations which, on the other hand, influence the mind of the offended party to believe in them." But in this case the accused made false representations inasmuch as he stated that he had a check from Smith, Bell & Co. issued to him as payment for copra sold, and by his allegation of payment of ₱105, when in truth and in fact the receipt, altho signed by the manager of the hotel, was a mere requisition to pay, as it appears from the manuscript note thereon. Judgment affirmed.—Avanceña, C. J.)—*Briefed by J. S. Nava.*

17. ELECTION LAW—KEEPING BALLOT BOXES.—*P.P.I. v. Marcelino Dagusuan et al.*, R. G. No. 27197, August 6, 1927. (2nd. Div.) *Facts*: Defendants, as election inspectors, retained in their possession for nearly two days the returns and the election apparatus after the counting of the ballots was terminated and the boxes closed and sealed. Convicted by the lower court of violation of the Election Law. *Held*: "The word '*immediately*', as used in Section 2639 of the Administrative Code, means '*at once*', or as soon as is reasonably possible. The term does not cover the period of nearly two days, in the absence of some overruling necessity making the earlier delivery of the boxes impossible." Judgment modified. *Briefed by J. S. Nava.*

18. PHYSICAL INJURIES—RIGHT OF TEACHERS TO MAINTAIN DISCIPLINE AND DUTY OF STUDENTS TO OBEY RULES.—*P. P. I. v. Clement Andrew*, R. G. No. 27215, August 6, 1927.—(2nd. Div.) *Facts*: The defendant was convicted of the crime of less serious physical injuries both in the Municipal Court of Manila and in the Court of First Instance. The charge was that the accused gave a blow on the lower left jaw of Amado Araneta, the complaining witness, as a result of which the latter complained of "a pain and a slight discoloration and reddening of the skin in and around his left ear." He, however, did not claim "any injury to his lower left jaw where he says that he was struck by the defendant." The incident occured on September 13, 1926, but it was shown that Amado Araneta went to college, altho he did not attend classes, on tht following two days, and that on September 14, he invited three of his classmates for the purpose of taking them to the City Fiscal's office, but that they refused to go there without a subpoena. Araneta also admits that on the 14th he went to the Plaridel Bowling Alley, and that he bowled on the 15th. Drs. Herminio Velarde and Mandanas testified that the injury was not so serious as it was claimed by Araneta, whose claim was not corroborated by any of his classmates who were about 45 present in the room at the time of the incident. *Held*: "This is a criminal case, and it devolved upon the prosecution to prove the defendant's guilt beyond a reasonable doubt. To exist and prosper, colleges, like the one in question, must have and maintain order and discipline, and any reasonable rules and regulations

should be enforced and respected. At the time of the incident, the relation of parent and child more or less existed. Araneta was disobedient. He alone of the class refused to take his seat after the repeated requests of the defendant, who was the teacher in charge. It is true that the law will not uphold a teacher in the use of violence in a class room, except in self-defense, but it is also true that it is the duty of a student, eighteen years of age, in a college, in particular, to obey all reasonable rules and regulations of the school authorities, and that he has no legal right to assume a bold and defiant attitude against his principal, whose duty is to maintain and enforce order and discipline in the school." Judgment reversed and defendant acquitted.—(Johns, J.)—*Briefed by J. S. Nava.*

19. THEFT—RESCIDIVISM—*P.P.I. vs. Virginia Payumo and Melecio Casimura*, G. R. No. 27002, Aug. 6, 1927.—*Facts*: The defendants were charged with the crime of theft. Payumo was acquitted and Casimura was found guilty and being a recidivist was sentenced under paragraph 2 of article 518 of the Penal Code in realation with article 520 as amended trary, testified that this money was the result of her and her husband's *nal*, and to pay an indemnity to the offended party. *Held:* Judgment modified. "Taking into consideration the fact not only admitted by the appellant but proved during the trial of the cause, that he was a recidivist, having theretofore been convicted 3 times of the crime of theft and taking into consideration the provision of paragraph 3 of article 518 of the Penal Code as amended by Act 3244, in relation with paragraph 3 of article 520 and amended by Act 2030, the penalty of the lower court should have been imposed in the maximum degree of *presidio mayor* or imprisonment for a period of 6 years, 8 months and 21 days to 8 years. Considering the said aggravating circumstance the maximum degree of 8 years should be imposed. In addition thereto, and under the provisions of section 1 of Act 3062, he should be sentenced to suffer additional penalty equivalent to one-half of the penalty imposed or 4 years more, making a total of 12 years imprisonment." (1st division, per Johnson, J.)—*Briefed by E. Arévalo.*

20. OPIUM—FACTS SHOWING POSSESSION.—*P.P.I. vs. Domingo Tan*, G. R. No. 27092, Aug. 6, 1927.—*Facts:* A certain amount of opium was found by constabulary soldiers in the trunk of the defendant. During the trial of the case in which he was charged with a violation of the Opium Law, the defendant admitted the discovery of opium in his store; but Hilario Estandarte, an employee of the accused, testified that he was the owner of said opium. The defendant was convicted. *Held*: Judgment affirmed. The admission made by Estandarte was merely intended to save his employer. The discovery of opium in the trunk of the defendant, the key of which being in his possession shows conclusively that he had the opium in his possession and control (2nd division, per Villareal, J.) —*Briefed by E. Arévalo.*

21. THEFT UNDER LAW AMENDED BY ACT No. 3224—SPANISH TEXT GOVERNS.—*P. P. I. vs. Simplicio Lopez*, G. R. No. 26572, Aug. 9, 1927.—*Facts*: The defendant with several co-accused, was charged with and convicted of the crime of theft for having defrauded the firm Gutierrez Hermanos of copra by emptying from the sacks a certain amount.

later to be disposed of and sending the remainder to its destination. The accused was convicted. *Held*: Judgment affirmed. "The act committed falls under the first subdivision of article 517 of the Penal Code in connection with the fourth sub-division of article 518 of the same code as amended by Act 3244, for, as found by the trial judge, the value of copra stolen amounted to ninety pesos (₱90.00). The penalty provided in the English text of Act 3244 is described as "*arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree." But the Spanish text of the same law provides as a penalty "arresto mayor en su grado medio a presidio correccional en su grado mínimo." The Spanish text should prevail, because, according to the Solicitor-General, it was the language used by the House that finally passed the bill (Act 2717), and because the penalty most favorable to the accused should be imposed. The result is that judgment of the lower court is found to be in accordance with law." (2nd division, per Malcolm, J.)—*Briefed by E. Arévalo.*

22. PHYSICAL INJURIES—RIGHT TO RESIST TRESPASS TO PROPERTY.—*P.P.I. v. Tomas Enrile*, R.G. No. 26744, Aug. 9, 1927. (2nd. Div.) *Facts*: "Liwanag was trespassing on the land of Enrile on February 17, 1924. Enrile found Liwanag there and ordered him to low down his bolo and to get off the land. Instead of doing so, Liwanag made a pass at Enrile with his bolo but did not hit him. Enrile defended himself with a gun, using it as a club to knock the bolo from the right hand of Liwanag, resulting in that arm being fractured. Enrile then picked up the bolo of Liwanag, and as Liwanag turned, delivered a blow with the flat side of the bolo on the back of Liwanag." Charged and convicted of less serious physical injuries, and the penalty imposed was 3 months of *arresto mayor*, with the accessory penalties, and costs. *Held*: "The above facts disclose that Enrile was looking after his own property and that he had no intention to harm seriously the intruder, for if he had he would have made use of the sharp edge of the bolo. The above facts also indicate that there were justifiable motives for Enrile to act as he did up to the point when he used the bolo on the back of the offended party. That was not necessary for defense of person or property. The case thus becomes one where the penalty provided for a misdemeanor is appropriate, and this result can be attained considering the presence of incomplete self-defense permitting the court to lower the penalty one or two degrees." Judgment modified, and penalty reduced to only ₱15 fine, with subsidiary imprisonment in case of insolvency, and censure.—(Malcolm, J.)—*Briefed by J. S. Nava.*

23. KIDNAPPING.—*P. P. I. v. Cornelio Santiago and Aniceta Halili*, R. G. No. 27227, August 9, 1927. (1st. Div.) *Facts*: Defendants were charged with the crime of *sustracción de una menor*, in that they took with them Chua Hay Ching, a 14 years old girl, from San Pablo, Laguna, to Bocawe, Bulacan, and upon demand of the girl's father, the defendants refused to deliver the child. Habeas Corpus proceedings were then instituted, which resulted in the grant of the writ. This action was then presented for violation of Article 484 of the Penal Code. The girl testified that the defendants induced her to leave the house of Chua Chiong. Antonio Esconde, a driver, testified that he brought the defendants and the girl to the railroad station in San Pablo, Laguna. Defendants testified that it was the girl who

asked them to bring her with them, which testimony is corroborated by those of Attorney Urrutia and the Chief of Police of Bocawe, who went to defendants' house accompanying Chua Chiong's son in order to get the girl previous to the Habeas Corpus proceedings. They testified that the defendants did not object to the girl's leaving them, but that the girl herself refused to go. Claro Ticson, another driver of San Pablo, Laguna, testified that he brought the defendants to the railroad station without the girl. The paternity of Chua Chiong had been contested during the trial. Defendants were found guilty by the lower court. *Held*: It is not necessary in this case to determine whether or not Chua Chiong was really the father of Chua Hay Ching. The fact that he had the girl under his care was sufficient to justify the application of Article 484 of the Penal Code. Judgment reversed on the facts.—(Avanceña, C. J.)—*Briefed by J. S. Nava.*

24. MOTOR VEHICLE—RECKLESS IMPRUDENCE.—*P. P. I. v. Albino Jimenez*, G. R. No. 27039, August 10, 1927. (1st. Div.) *Facts*: Defendant was charged with, and convicted of the crime of homicide through reckless imprudence, in that while driving a truck with a trailer attached, both loaded with sacks of palay, and while trying to get ahead of another truck driven by Rufino Acosta, which was also loaded with sacks of palay on which several laborers were seated, he (the accused) untimely turned his truck slightly to the left, with the result that the trailer bumped against Acosta's truck. The prosecution claimed that Gregorio Nanubay was thrown to the ground due to the collision, and as a consequence thereof he died the following day. The defense was that the deceased had tried to jump from Acosta's truck to that driven by the accused, and that in doing so, he fell to the ground before the collision took place. This theory is supported by all the witnesses for the defense, as well as by the antemortem statement made by the deceased before the Justice of the Peace who conducted the preliminary investigation. Not one of the witnesses for the prosecution had seen the deceased at the moment of falling. Defendant was convicted by the lower court. *Held*: Judgment reversed on the facts stated, and defendant acquitted.—(Avanceña, C. J.)—*Briefed by J S. Nava.*

25. OPIUM—SEPARATE INFORMATIONS FOR POSSESSION OF DRUG AND PIPE.—*P. P. I. v. Antonio Borromeo*, R. G. No. 27068, August 11, 1927. (1st. Div.) *Facts*: The accused was charged in case No. 1611 with possession of opium paraphernalia and 3 small bottles containing opium, which case was dismissed on motion of the defense on the ground that the information contained two charges. The Court ordered the fiscal to file two separate informations. In Case No. 2172 defendant was convicted for possession of opium paraphernalia. In case No. 2174 he was a convicted for illegal possession of opium, which is the case now under consideration in the Supreme Court upon appeal. The appellant contends that the court erred in denying his plea of double jeopardy. *Held*: "It was not the intention of the legislature that separate informations be filed against a person who is in illegal possession of opium and of a pipe to smoke it, that is, one for illegal possession of opium and the other for the possession of the pipe. * * * When one sole act constitutes one or more crimes, or when one crime is a necessary means to commit

the other, only one penalty can be imposed for all the crimes committed by that act."—Judgment reversed, and defendant acquitted.—(Villamor, J.) —*Briefed by J. S. Nava.*

26. PACTO DE RETRO—RENT AS EVIDENCE OF USURY.—*Severino Tolentino and Potenciana Manio v. Benito Gonzalez Sy Chian,* R. G. No. 26085, August 12, 1927. *Facts*: Sometime before this action, the plaintiffs and appellants bought a piece of land with the camarin thereon, located in Tarlac, Tarlac, from the Luzon Rice Mills Inc. for ₱25,000, in three installments. The first two installments were duly paid on time, and the last installments to the amount of ₱15,000 was to become due on November 30, 1922. Appellants realizing that they would be unable to pay said sum on that date, borrowed ₱17,500.00 from the defendant, and executed in his favor a pacto de retro of the said land and camarin, repurchase to be made within 5 years from December 1, 1922, otherwise he sale was to become absolute and irrevocable. Under the contract, the plaintiffs were to remain in possession as tenants, by paying ₱375 per month as rental, payable within the first 10 days of each month. The condition was imposed that in case of failure to pay the rental for two consecutive months, the lease would be deemed terminated and the right to repurchase lost. (Why this action was brought, does not appear from the decision.) The lower court rendered judgment for the defendant. The issues are: (1) Was the contract in question a pacto de retro or a mortgage? (2) Is the rental, computed upon the purchase price, usurious interest? and (3) May the contract in the present case be modified by parol evidence? *Held*: "In the present case the property in question was sold. It was an absolute sale with the right only to repurchase. During the period of redemption the purchaser was the absolute owner of the property. During the period of redemption the vendor was not the owner of the property. During the period of redemption the vendor was a tenant of the purchaser. During the period of redemption the relation which existed between the vendor and the vendee was that of landlord and tenant. That relation can only be terminated by a repurchase of the property by the vendor in accordance with the terms of the said contract. The contract was one of rent. The contract was not a loan, as that word is used in Act 2655. As obnoxious as contracts of pacto de retro are, yet nevertheless, the courts have no right to make contracts for the parties. They made their own contract in the present case. There is not a word, a phrase or paragraph, which in the slightest way indicates that the parties to the contract in questitn did not intend to sell the property in question absolutely, simply with the right to repurchase. People who make their own beds must lie thereon. * * * The parties thereto entered into said contract with the full understanding of its terms and should not now be permitted to change tr modify it by parol evidence."—Judgment affirmed.—(In Banc per Johnson, J.). Malcolm, J., dissenting: The rental of ₱375 per month and the agreed forfeiture of the right to repurchase in case of nonpayment of the rental for two consecutive months "does mean something, and taken together with the oral testimony is indicative of a subterfuge hiding a usurious loan. The transaction should be considered in the nature of an equitable mortgage."—*Briefed by J. S. Nava.*

27. THEFT—CONSPIRACY.—*P.P.I. vs. Inocencio Banal et al.,* G. R. No. 26999, August 17, 1927. *Facts*: Appellant Evaristo Figueroa, with

others, was found guilty of theft in the court below. It appears that on August 12, 1926, one Co Sing was occupying certain premises on Juan Luna street, Manila, with the accused herein. On said day, the accused were together in the kitchen of the place mentioned, when Co Sing took off his coat and hung it on the wall in order to visit the toilet. When Co Sing took off his coat he had in a pocket of the coat a bulky wad of paper money amounting to ₱775.00, which was left in the coat pocket while Co Sing stepped out. Upon his return, he found that the money was missing, and he observed that his companions, who were still present in the room, were speaking together in a low voice. Upon asking the three if they had taken his money, he received a reply that they had not. The loss was reported to the police, whose investigation of the matter was at first without result. Later on, however, a disagreement arose among the three accused as to the division of the spoils, and upon being arrested, written declarations were given by each of the three, the general nature of which was that each sought to indicate some other one of his companions rather than himself as the actual thief. The appellant, Evaristo Figueroa, however, confessed that on his way home he had been given the sum of ₱30.00 by Inocencio Banal. *Held*: The statement of the different accused can only be properly used against the respective declarants, and taking all the proof together and giving the appellant the benefit of what appears to be a reasonable doubt, owing to the suddenness with which the opportunity for this theft was presented, the conclusion is that there was no previous conspiracy between the three and that it is likely that the principal was the one who took and kept most of the money. Hence, appellant was found guilty as an accomplice in the theft and the penalty imposed on him was reduced according. (J. Street).—*Briefed by A. Sólidum.*

28. THEFT OF LOST ARTICLES.—*P.P.I. vs. Fausta Puno*, G. R. No. 27164, August 17, 1927. *Facts*: Defendant was found guilty of qualified theft in the court below, as defined in the first paragraph of Art. 517 of the Penal Code. It appears that defendant was the laundress of Pablo Rivera and his family; that when she went to the latter's house to get some soiled clothes, she took the soiled trousers of Pablo Rivera, which was placed on the bed, without knowing that there was a diamond ring in one of its pockets belonging to said Rivera; that when Rivera went to her house to look for the diamond ring in one of the pockets of his trousers, he did not find it; that upon being asked by Rivera if she had found the ring in question, the accused denied having seen it; and that the following day, when she was investigated by the police, the accused confessed that she had found the ring among the soiled clothes. *Held*: There being no proof in this case that when the defendant took the soiled trousers from the bed, she knew that there was a diamond ring in one of its pockets, it cannot be said that when she took the said trousers with the ring, she did it with the intent of gain inasmuch as the idea of gain (*lucro*) presupposes knowledge of the existence of the object with which the intention to gain is associated. It follows, therefore, that one of the essential elements of theft as defined by the first paragraph of Art. 517 of the Penal Code, which is the intention to gain at the time of the taking, is lacking. However, from the moment that the ring left the possession of Pablo Rivera and passed into that of the defendant, without the knowledge of each other, the ring was a lost thing and the defendant's retention of the same

and her failure to return it to its owner whom she knew, upon finding it, make her guilty of theft as defined in the second paragraph of the same article of the Penal Code.

The qualifying circumstance of grave abuse of confidence cannot be said to be present in this case, inasmuch as, while it is true that there existed confidential relation between the offended party and the accused, such relation did not facilitate the commission of the crime. (J. Villa-Real). *Briefed by A. Sólidum.*

29. ESTAFA—CHECKS HONORED CREATE NO LIABILITY.—*P. P. I. vs. Archibald McFarland*, G. R. No. 27251, August 17, 1927. *Facts*: The accused was charged with estafa in the court below and was found guilty thereof. It appears that as acting treasurer of the Misamis Carnival Association, the accused drew two checks on the Philippine National Bank, knowing that the Misamis Carnival Association had no funds in the said bank to pay the same. But it appears further that when the said checks were presented to the bank for payment, they were duly honored and paid. *Held*: Reversed. "It is undoubtedly true that a person who draws a check on a banking institution where he has no account or who draws a check, knowing that it will not be paid, is guilty of estafa if he uses this check to defraud another. But in the case now under consideration the persons to whom these checks were negotiated lost nothing by them, since they were honored by the drawee bank as soon as presented." (J. Street). *Briefed by A. Sólidum.*

30. ESTAFA—GRANTING OVERDRAFT TO INSOLVENTS.—*P.P.I. vs. Archibald McFarland*, G. R. No. 272, August 17, 1927. *Facts*: The accused was found guilty of estafa by the lower court. It appears that between December 2, 1919, and March 4, 1920, the accused was the director-general of the Misamis Carnival Association, of Misamis, and at the same time provincial treasurer of Misamis, at Cagayan, and as such, *ex oficio* manager of the Misamis Agency of the Philippine National Bank, that the treasurer of the Misamis Carnival Association, acting under direct instructions from the accused as manager of the association, drew a series of twenty-four checks upon the bank, payable to various persons; that when these checks were drawn the Misamis Carnival Association did not have funds on deposit in the bank to meet them all; that upon McFarland's attention being called to this fact by the treasurer of the association, the accused stated that he, as agent of the Philippine National Bank, had granted the Misamis Carnival Association permission to incur an overdraft, to be made up from the carnival receipts; and that all the checks were duly honored and paid when presented. The question is whether the appellant, in conceding overdraft privileges to the Misamis Carnival Association in the early part of December, 1919, or before, did so in good faith or, on the other hand, whether he did so with knowledge that the Misamis Carnival Association was insolvent and would not be able to meet said checks. *Held*: "If a bank officer concedes overdraft privileges in bad faith to a person or entity that is known to be insolvent or approaching insolvency, with a certainty that it will not be able to make good the overdraft, such officer is guilty of embezzling the money of the bank and is guilty of estafa. On the other hand, if the overdraft privilege is conceded in good faith, in ordinary course of banking usage, the failure

of a person or entity to whom such privilege is conceded to pay the debt thereafter and make good the overdraft does not constitute estafa." In the case at bar, there is nothing in the record which sheds any certain light upon the vital point whether this overdraft was conceded in good faith or not. The circumstance that at the time these transactions occured the appellant was acting in the double capacity of bank agent and director-general of the Carnival Association is a suspicious circumstance, since the natural inference would be that as director of the association, he ought to have been apprised of the conditions of its affairs. But there is absolutely no proof that the accused may not have honestly believed, at the time he granted this overdraft, that the association would be able to meet its obligations. It is human nature for persons concerned in enterprises of any sort to take a rosy view of the financial possibilities of the future. The accused should, therefore, be acquitted. (J. Street). *Briefed by A. Sólidum.*

31. ALIBI.—*P. P. I. vs. Diego Mosares*, G. R. No. 27349, August 17, 1927. *Facts*: The accused was found guilty of theft of large cattle in the court below. The defense was that of alibi. *Held*: Affirmed on the facts. In order that the defense of alibi may be effective, it is not enough to prove its existenct but that it is necessary to show that the presence of the accused in different places during the same period of time was impossible. (J. Villa-Real). *Briefed by A. Sólidum.*

32. MUNICIPAL ORDINANCES—REGULATION DOES NOT INCLUDE PROHIBITION—CONSTITUTIONAL LAW.—*P. P. I. vs. Jose Sy Jong Suy*, G. R. No. 27417, August 17, 1927. *Facts*: The accused was found guilty of violating a certain municipal ordinance of Cebú, prohibiting the storing of mineral coal in the limits of Cebu between the Fajina river and Tejero river and in places where there are collections of houses. It appears that the firm of Hoa Hin & Co., of Cebu, of which the accused is general manager, has been keeping a coal yard in the city of Cebu fronting on the Fajina river for more than 15 years. It is not disputed that there has been an infraction of the ordinance on the part of Hoa Hin & Co., but the accused alleges that the ordinance in question is unconstitutional. *Held*: While under section 2244 of the Administrative Code, municipal councils are given a regulative authority over coal yards, it must be noted that the authority here given is regulative only, and not of a prohibitive character. It may be conceded that this authority includes the right to prescribe reasonably the localities within the limits of the municipality where such a business may be conducted, but it must be remembered that the maintaining of a coal yard is a lawful activity and this activity is not *per se* of a dangerous character nor can it be considered a public nuisance, unless under peculiar conditions, making it offensive or dangerous to health. When therefore it appears, as in this case, that the health and security of the public can be attained by measures short of absolute prohibition, those measures are the reasonable measures that should be adopted. Aesthetic considerations cannot be allowed to control in such a matter. If the city desires to beautify the water front, the lot might be taken under the exercise of eminent domain and converted into a park. Judgment reversed and accused acquitted. (J. Street). *Briefed by A. Sólidum.*

33. ESTAFA—FAILURE TO PAY BET TO WINNER.—*P. P. I. vs. Julian Somastre et al.*, G. R. No. 26968, August 19, 1927. *Facts*: Accused were found guilty of estafa in the court below. It appears that on February 10, 1924, Maximiano Aburot and the accused Julián Somastre agreed to match their resective cocks in the cockpit of Benigno Pelaez. Before the commencement of the cockfight, the accused Felix Estroga asked Maximiano Aburot and Pablo Padoylan to give him their bets, which they did. After the cockfight, the cock of Maximiano Aburot came out as the winner. When Felix Estroga was required to return the bet and the amount of the gain, he answered that the money was yet in the hands of other persons. Aburot and Padoylan complained to the owner of the cockpit and in the presence of the latter, Estrega said that he had in his possession the capital but that the gain was in the possession of the accused Somastre. On the same day, the accused Estroga gave to the owner of the cockpit the amount of the capital only, who, in turn, gave it to Aburot and Padoylan in August, 1925. *Held*: Reversed. There was no intention on the part of the accused to commit the criminal act imputed to them as shown by the fact that the capital of the bet was given by them to the owner of the cockpit; and as to the amount of the gain, it is a legal proposition that the failure of a loser to pay a bet to the winner creates merely a civil obligation. (J. Villa-Real). *Briefed by A. Sólidum.*

34. PRESCRIPTION.—*Macario Gaviola vs. Felisa Ragas et al.*, G. R. No. 27063, August 22, 1927. *Facts*: This was an appeal from an order of the court below sustaining defendants' demurrer to plaintiff's complaint. The purpose of the action was to recover possession of certain real property from defendants. *Held*: Reversed. The failure to allege in the complaint the date on which the act of despoliation took place and the date on which the return of the same was demanded by the owner, does not affect the effectivity of the action. The fact that from the facts alleged in the complaint, it cannot be determined whether or not plaintiff's action has prescribed, does not constitute a vaild ground for demurrer. The defense of prescription in a case in which the facts showing the same do not appear in the face of the complaint, can and should be alleged in the answer. The plaintiff cannot be obliged by means of demurrer or by any other manner to allege in his complaint facts constituting prescription of his action. (J. Romualdez). Briefed by A. Sólidum.

35. RUNNING WATER RIGHTS.—*P. P. I. vs. Marcelo Valdéz*, G. R. No. 27272, August 22, 1927. *Facts*: Defendant was charged with violation of Act No. 2152. It appears that the accused made use of the water of a certain *canal* which springs from the barrio of La Torre, municipality of Solano, Nueva Vizcaya, to irrigate his land without the permission of the corresponding authorities. The defendant demurred to the charge on two grounds; namely, that the facts charged did not constitute a public offense and that the information contained averments which, if true, would constitute a legal justification or excuse. The court below sustained the demurrer. *Held*: Affirmed. The failure to allege in the complaint facts to show that the water appropriated by the defendant is a public domain, is fatal to the information. The allegation that the accused made use of the "water of a *canal* which springs from the barrio of La Torre and which runs thru its natural course," is not sufficient to indicate that the information re-

ferred to certain and determined cases specified in Art. 407 of the Civil Code. (J. Villamor). Briefed by A. Sólidum.

36. ATTORNEY'S SERVICES IN ADMINISTRATION OF ESTATE. *Intestate of the Deceased Aurelio Martillano*, G. R. No. 26919, August 23, 1927. *Facts*: This is an appeal from an order of the Court of First Instance of Capiz, dismissing the claim of Attorney José Y. Torres in the sum of ₱3,000.00 as fees for professional services alleged to have been rendered by him to the estate of Aurelio Martillano. It appears that Marta Martillano, believing herself to be the sole heir of the deceased, presented a petition to the court, thru Attorney Torres, for the appointment of the administrator of the estate. Later on, Attorney Torres presented a motion to the court, asking for the appointment of commissioners on appraisal and claims. According to Torres, he had attended the meetings of the said commissioners for about six months as attorney for the administrator, but it does not appear in what consisted the services rendered by him as such before the said commissioners. The court below recognized him as the attorney for said administrator, but the record does not show that the latter was duly authorized by the court to contract for the services of a lawyer. Neither is it shown that Rosa Aparicio, mother of the minor Beatísima Martillano who was judicially declared as the sole heir of the deceased, had given her consent to the appointment of Torres as attorney for the administrator. On the contrary, the record shows that Torres appeared as attorney for Marta Martillano to oppose the petition of Rosa Aparicio, mother and tutor of Beatísima Martillano, to have the latter declared as the sole heir of the deceased. *Held*: Affirmed. From the foregoing facts, it is clear that the administrator was not authorized by the court to employ José Y. Torres as attorney for the estate. The fact that the court recognized him as representing the said administrator is not equivalent to an authorization by the court to have him represent the administrator as attorney for the estate. That the guardian of the heir did not object to his appearance as attorney for the administrator does not imply consent on her part to such appearance, for the reason that the administrator did not ask the court for authority for such purpose and there was nothing, therefore, to oppose. The administrator had absolute liberty to hire the services of a lawyer at his own expense, and unless he asks the court for authority to employ such lawyer as attorney for the estate, it would be improper for the tutor of the heir to object to his appointment. (J. Villa-Real). Briefed by A. Sólidum.

37. INVOICE—APPLICATION OF SECTION 103 C. C. P.—*José M. Nassr & Co., vs. Miguel Valera*, G. R. No. 26925, August 23, 1927. *Facts*: Plaintiff brought this action to recover from defendant an alleged indebtedness resulting from the sale of goods and merchandise. According to the plaintiff, the goods were ordered by the defendant's manager and delivered to him at the defendant's place of business, as shown by the invoice, Exhibit "A". As against this the defendant offered to prove that the stamp and signature appearing on plaintiff's Esxihit "A" is neither his nor that of any person duly authorized to bind him; but the trial court sustained the plaintiffs' objection to the introduction of any evidence upon this point and rendered judgment in favor of plaintiff. *Held*: The trial court refused to permit the evidence in question, proceeding apparently upon the idea

that, under section 103 of the Code of Civil Procedure, the defendant could not question the genuineness and due execution of the invoice, because he had not specifically denied its genuineness under oath in his answer. But this section was not applicable because the invoice was not contained in the complaint, nor was a copy of the invoice annexed thereto. The invoice was merely introduced in evidence at the hearing; and of course before confronted with it as evidence, the defendant could not be expected to deny its genuineness under oath. The trial court also committed a mistake in ruling that the defense which the defendant was attempting to make out by his proof, namely, that the person ordering and receiving the goods was not authorized to bind the defendant, was a special defense and could only be proved in case the answer had set up said defense. The proof in question tended to show that the debt had not been contracted by the defendant and was admissible under the general issue. Reversed and remanded for new trial. (J. Street). Briefed by A. Sólidum.

38. DIVORCE—EVIDENCE.—*Honorio Puruganan vs. Maria Dancel*, G. R. No. 27257, August 23, 1927. *Facts*: Plaintiff filed a complaint for divorce against his wife, the defendant. During the trial of the case, the plaintiff presented as proof a copy of the dispositive part of the decision of the lower court in the criminal case for adultery against the wife and also a copy of the last three paragraphs of the decision of the Supreme Court in the same case. The court below refused to admit in evidence the copies aforesaid and ordered the plaintiff to produce certified copies of the whole decisions of both the Court of First Instance and the Supreme Court in the adultery case. Upon refusal of the plaintiff to do so, the court below dismissed the case. *Held*: Affirmed. In accordance with the provisions of section 3 of Act No. 2710, the dissolution of the marriage relations can only take place upon petition of the innocent spouse provided the latter has not pardoned the erring spouse or consented to the commission of adultery, and the court, in the interest of society and in order to prevent any abuse of the law, should assure itself that the said legal impediment does not exist, before granting the divorce. Hence, the court in requiring the plaintiff to produce the integral copy of the decision of the Supreme Court, convicting the defendant of adultery, made use of its legal right to do so, and the plaintiff's failure to comply with the order of the court to that effect give rise to the presumption established in paragraph 5 of secion 334 of the Code of Civil Procedure, "that evidence willfully suppressed would be adverse if produced." (J. Villa-Real). Briefed by A. Sólidum.