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COMMENT

Duty of Physician to Exercise the Utmost Care in the Performance of Post-Mortem Examinations

(P.P.I. v. Graciano Palalon, XXV O.G. 2144)

The Supreme Court of the Philippine Islands in reversing the judgment of the Court of First Instance of Oriental Negros, finding the defendant-appellant guilty of the crime of homicide, on the strength of the testimony of a young physician who examined the deceased after death, declared what ought to be the duty of a physician in conducting post mortem examination. The Court said: "In case of death under suspicious circumstances, it is the duty of the physician performing the post mortem examination to exercise the utmost care and not draw unwarranted conclusion from external appearances susceptible of different interpretations," otherwise the conclusions cannot be much more than mere guesses, placing the guilt of the defendant within reasonable doubt which should resolve to his acquittal.

Evidence produced in this case shows that "the defendant in the morning of the 20th day of July, 1925, was acting as one of the foremen on the plantation of Andres Mendiola in Basac, municipality of Bais, Oriental Negros, and was in charge of a small group of children, among whom was the deceased Roman Megio, gathering and piling sugar cane. Roman, who was a boy 10 years of age, was sitting down resting and did not display the activity expected by the accused and was reprimanded by the latter and ordered to work. The defendant was treated in an insolent manner by the boy, who said: "Why do you hurry me? Are you the one who pays my wages? You are cross-eyed." The defendant lost his temper and struck the boy on the mouth with

the back of his hand. According to the testimony of the witnesses for the prosecution the boy fell on his back on a tramway rail, with his nose and mouth bleeding; the witnesses for the defense, on the other hand, state that he did not fall down; that his mouth did not bleed; and that the incident occurred at a considerable distance from the tramway.

"Notwithstanding the blow the deceased continued to work on the plantation unt. about 2 o'clock in the afternoon of the following day, when he was taken sick with fever and was after some delay carried home by his father. Two and one-half days later he died."

In commenting on the facts which surrounded this case, the same court stated further that: "There is no question as to the fact that the defendant struck the deceased a blow on the mouth. But it is extremely doubtful that the blow either directly or indirectly caused the death. It is not denied that fever was prevalent in the locality in July, 1925, and it is quite probable that the death of the deceased was due entirely to natural causes. The theory of the prosecution is that the deceased, in falling down, received fatal internal injuries, and bases its conclusions on the testimony of Dr. Jose V. Valero, who stated in substance that he examined the body of the deceased on the day following the death and found ecchymosis on the right shoulder and on the stomach and that, as a result of the former, there was a congestion of the right lung, which was the principal cause of the death; that the blows causing the ecchymosis must have been of such force as to have made its effect felt immediately; and that the victim could not have continued working.

"No proper autopsy of the body was made, and through the testimony of the boy's father and that of the witnesses for the defense it has been proven conclusively that the deceased, contrary to the doctor's theory of the case, continued to work for more than a day after he received the blow. The ecchymosis testified to by the doctor may have been nothing but suggillations or "death spots" formed after the death; the fact that the marks were found both on the stomach and on the back of the deceased so indicates. Upon this subject Wharton and Stillé say: "* * * As the blood settles by gravity into the dependent parts of the body, new color changes, due to this hypostasis and diffusion of the blood from the blood vessels into the surrounding tissues, take place. The dependent tissues in from three to ten hours begin to show spots of purplish or bluish discoloration, and to become edematous. The areas where pressure is exerted, as by creases

in the clothing, remain pale. Tourdes claims that these spots may be made to disappear if the position of the body is changed at the end of four hours; then the spots will be found in the parts that, after the change of position, become dependent. After twelve to fifteen hours the areas that at first showed hypostatic discolorations may, if the body be turned, grow pale, but they do not disappear. And after thirty hours the primary hypostatic discolorations may grow pale, but secondary spots will not be formed in other places. These hypostatic changes probably take place in all bodies, though they are less marked in the bodies of persons who have died of hemorrhage or from some other cause of depletion, as in the cases of cholera. The appearance of these spots may possibly lead to the suspicion that they have been caused by injuries before death, which have led to ecchymosis; but the hypostatic spots, if incised, allow the escape of merely bloodstained serum, not fluid blood or blood clots; while, if the spot has been caused as an ecchymosis, there will be found traces of fluid blood or clots, which could not have been formed post mortem except in the veins.' (Wharton & Stillé's Medical Jurisprudence, 5th ed., vol. III, sec. 401).

"In the present case the examination of the body took place over twenty-four hours after the death and appears to have been very incomplete; no incisions were made and the examining physician, a young man of limited experience, admitted that his conclusions were partly based upon the statements of the members of the family of the deceased . . ."

The points of interest for discussion in the present case, medico-legally, are those related to (1) the so called "ecchymoses" alleged to have been found on the surface of the body the day following the death and at such undescribed and misnamed points where no direct relation to the alleged congestion of the right lung exists; (2) the alleged fall on the back on a tramway rail and the striking of a blow on the mouth both of which could not have resulted into the alleged ecchymoses located at the front and on the body of the deceased; (3) the absence of clinical symptoms other than fever observed before death indicating the development of the congestion of the right lung and which was regarded as the principal cause of the death; and (4) the great possibility for the post mortem stains to have been present at the points where the so-called ecchymoses were observed the next day following the death, thus the also possible confusion of the appearance of such post mortem stains with the alleged ecchymoses.

There is no doubt that with such a remarkable lack of relationship between causes and effects in this case, together with the fact that no internal examination of any degree and kind has been made by the physician concerned on the cadaver, no possible conclusion as to violent cause or causes of death could have been inferred from the evidences gathered. However, the hypostatic spots alluded to by the Supreme Court in this case, because of their dependence upon the law of gravity, could not have been exclusively located and observed on the right shoulder and much less on the region of the stomach (epigastrium). Such hypostatic spots as described by Wharton and Stillé are usually noted in the cadaver in the average cases from three to six hours after death in the Philippines on the most dependent portions of the body, hence, they are regarded as belonging to the class of primary cadaveric changes. On the other hand, there are the secondary cadaveric changes which include the putrefactive discoloration independent from the law of gravitation. This later kind of discoloration is usually observed in the Philippines on the second day after death and consists in some greenish discoloration which usually appears in the skin of the body, first upon the middle and at both sides of the abdomen and also in the skin of midsternal region. The same discoloration are due to the diffusion of the coloring matter of the blood into the tissues surrounding the blood vessels favored by the process of decomposition.

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RECENT DECISIONS OF THE SUPREME COURT REVIEWED

MUNICIPAL CORPORATIONS — TAXING POWER — LIQUOR LICENSE.—*Juan Arquiza Lata v. The Municipality of Zamboanga et al.*, G. R. No. 26941, September 27 1927. Action to secure a legal declaration that Sec. 16 of Ordinances Nos. 188, 197, and 199 of the Municipality of Zamboanga were invalid, and to obtain the return of ₱2,000.00 paid under protest pursuant to the provisions of the said ordinances. The plaintiff was duly licensed to carry on the liquor business, and for this purpose had a bar and a wine store, the two being distinct departments, but connected by a door. Ordinance No. 197 of the Municipality of Zamboanga went into effect on January 1, 1926, but was disapproved by the Provincial Board on March 26, 1926, and the Municipal Council of Zamboanga later approved Ordinance No. 199 in its stead. "Section 16 of Ordinances Nos. 188, 197, and 199 of the Municipality of Zamboanga, the validity of which are disputed, provides:

"ART. 16. Sale of Liquors.—The following license fees, payable quarterly and in advance, are hereby imposed:

"(a) For the retail sale of wines and liquors of the country and imported in corked bottles not consumed in establishments within one and a half kilometers from the provincial capital, ₱2,000 annually.

"(a-1) For the wholesale sale of wines and liquors of the country and imported in corked bottles, not consumed in establishments within one and a half kilometers from the provincial capital, ₱200 annually.

"(b) For the retail sale of wines and liquors of the country and imported in corked bottles not consumed in establishments beyond one and a half kilometers from the provincial capital, ₱500 annually.

"(b-1) For the wholesale sale of wines and liquors of the country and imported in corked bottles not consumed in establishments beyond a kilometer and a half from the provincial capital, ₱100 annually.

"(c) For the retail sale of wines and liquors of the country only, excluding beer in corked bottles not consumed in establishments beyond a kilometer from the provincial capital, ₱180 annually.

"c-1) For the wholesale sale of wines and liquors of the country only, excluding beer in corked bottles, not consumed in establishments beyond a kilometer and a half from the provincial capital, ₱60 annually.

"The holders of licenses under this article are prohibited from selling wines and liquors of any kind, retail or wholesale, for consumption within the establishment."

Section 2625 (d) of the Administrative Code, a part of the Municipal Law for Mindanao and Sulu, provides that "The Municipal Council shall have power by ordinance or resolution: * * * (d) Licences and license fee.—To regulate, license, or prohibit * * * the selling, giving away, or disposing, in any manner of any intoxicating, spirituous, vinous, or fermented liquors * * *, and fix the sum to be paid for such licenses." The lower court absolved the defendants from the complaint. *Held*: "The only

point which needs elucidation is whether or not the ordinance in question should be placed under the power to tax and held void, or under the power to license and held valid." In the recent case of *Pacific Commercial Company v. Romualdez* (1927) XXV O. G. 1033, it was said that "The terms 'license' and 'regulate' in a municipal charter may authorize licenses for the purpose of raising revenue, if there is nothing antagonistic in the rest of the charter. Otherwise not. * * * That the power to tax was given where it was intended to be exercised, and that it was not given where it was not intended to be exercised." The case at bar is distinguished from the case of *Pacific Commercial Company v. Romualdez*, *supra*, thus: "The prime reason is that the Municipal Law for Mindanao and Sulu does not contain provisions indicative of a strict distinction between the licensing power and the taxing power. In the broadest possible manner, the Municipal Councils within the confines of Mindanao and Sulu are given power over the sale of intoxicating liquors. And this power is not detracted from by a comparison with other powers in the same law or the same section defining the right to tax." Following the doctrine set down in the case of *Cuunjieng v. Patstone* (1922) 42 Phil. 818, the ordinance here in question is held valid as one regulating a non-useful occupation, such as the sale of liquors. "It will also be recalled that the licenses are not only intended for the strictly related power to regulate but might extend so far as to prohibit. Of even a more fundamental nature is the undeniable fact that the Municipal authorities of Zamboanga, better acquainted than we are with the local conditions, were attempting, under the power to license, to regulate the sale of liquors. If under ordinances thus enacted incidental revenue should accrue, it would not undermine the validity of the local provisions. Whether certain sums fixed for certain activities in the sale of liquors were appropriate for the purpose, could better be decided by the local authorities than by any one else. The presumption must be, in lieu of convincing evidence to the contrary, that the ordinances are just and reasonable. The courts should not adopt a policy of petty picking at municipal officials who are attempting to perform their duties and so through judicial interference, unduly embarrass municipal administration."—Judgment Affirmed.—(In Banc, per Malcolm, J.)—*Briefed by J. S. Nava.*

EXECUTION SALE — RIGHT OF REDEMPTION. — *Lorenza Suñga v. Francisco Tingin et al.*, G. R. No. 28117, September 27, 1927. "*Sheriff's Sale; Redemption; Interest Redeemed.*—By redeeming from an execution sale of real property, the person redeeming recovers precisely the same interest that was reached by the levy; and where the judgment debtor, at the time of the levy, had no interest in the property that could be reached by execution, redemption will not restore him or his successors to any better right."

... "*Id.; Id.; Estoppel of Execution Creditor.*—An execution creditor who purchases at his own sale is not estopped as against the judgment debtor and his successors in interest, from showing that the property levied upon really belonged to himself and was levied upon by mistake."—(In Banc, per Street, J.)

TRUST AGREEMENT—EFFECT OF PRESCRIPTIVE PERIOD. —*Paulina Cristobal et al., vs. Marcelino Gomez*, G. R. No. 27014, October 5, 1927.—*Facts:* Epifanio Gomez, deceased husband of Paulina Cristobal and father of the co-plaintiffs in this case, sold three parcels of land to Luis Yango under contract of sale with *pacto de retro*. Unable to repur-

chase said parcels, Epifanio applied for assistance to Bibiano Bañas and to his brother and sister, Marcelino and Telesfora Gomez. Bañas advanced the amount for the repurchase upon the personal credit of Marcelino and Telesfora. The said three parcels were redeemed in the names of Marcelino and Telesfora who on August 12, 1907, created by an agreement a "private partnership in participation" for the purpose of rescuing said property and under said contract of partnership both Marcelino and Telesfora agreed to hold and administer the property until the capital advanced by Bañas should be paid up, after which the property should be returned to Epifanio or to his legitimate children. A year later Epifanio died. On September 10, 1909, Telesfora conveyed to Marcelino her interest and share in the property. Marcelino being now the sole debtor, sold the property to Bañas with *pacto de retro* for the purpose of securing the indebtedness. On April 1, 1918, Marcelino paid to Bañas the sum of P7,575.92 in full satisfaction of the entire claim and received from the latter a reconveyance of the three parcels of land. The plaintiffs instituted an action for the recovery of said parcels of land. The lower court found that the property in question belongs to the plaintiffs, as co-owners and ordered the defendant to surrender said property to them. The defendant contends that the partnership agreement of August 12, 1907, was in the nature of a donation, and that, inasmuch as the donation was never accepted by Epifanio in a public instrument his supposed right therein is unenforceable. The defendant further contends that he has the benefit of prescription in his favor having been in possession more 10 years under the deed by which he acquired the sole right from his sister in 1909. *Held*: "A person who, before the consolidation of property in the purchaser under a contract of sale with *pacto de retro*, agrees with the vendors to buy the property and administer it till all debts constituting an incumbrance thereon shall be paid after which the property shall be turned back to the original owner, is bound by such agreement; and upon buying the property under these circumstances such person becomes in effect a trustee and is bound to administer the property in this character. The so-called partnership agreement between Marcelino Gomez and his sister created a trust for the express purpose of rescuing the property of Epifanio Gomez. The partnership agreement should not be viewed in the light of an intended donation but as an express trust." As against the beneficiary prescription is not effective in favor of a person who is acting as a trustee of a continuing and subsisting trust. (In Banc, per Street, J.) *Briefed by E. Arévalo.*

DEPOSIT—DAMAGES THRU WRONGFUL ATTACHMENT.
—*Silvestra Baron vs. Pablo David*, G. R. No. 26948, *Guillermo Baron vs. Pablo David*, G. R. No. 26949, October 8, 1927. *Facts*: Prior to January 17, 1921, the defendant Pablo David had been engaged in running a rice mill in Magalang, Pampanga, a mill which was well patronized by the rice growers of the vicinity and almost constantly running. In the months of March, April, and May, 1920, the plaintiff in the first action, Silvestra Baron, the plaintiff in the second action, who is his uncle, placed a quantity of palay in the defendant's mill with the understanding that the defendant was at liberty to convert it into rice and dispose of it at his pleasure. On January 17, 1917, a fire occurred that destroyed defendant's mill and its contents, and it was some time before the mill could be rebuilt and put in operation again. Plaintiffs demanded the payment of the palay deposited by them in defendant's mill and upon refusal of the latter to do so, these two actions were brought in the court below. Defendant presented a cross-

complaint to recover damages for the wrongful suing out of an attachment by the plaintiff Guillermo Baron and the levy of the same upon the defendant's rice mill. The Lower Court gave judgment in favor of the plaintiffs. The Supreme Court modified the judgment and held:

"Deposit; Use of Thing Deposited; Liability of Depositary.—The owner of a rice mill who, in conformity with custom prevailing in the trade, receives palay and converts it into rice, selling the product for his own benefit, must account for the palay to the owner at the price prevailing at the time demand is made.

"Id.; Id.; Id.; Destruction of Rice Mill by Fire.—The destruction of a rice mill, with its contents, by fire after palay thus deposited has been milled and marketed does not affect the liability of the miller.

"Attachment; Damages Resulting From Wrongful Attachment.—A plaintiff who, by means of a false affidavit, procures an attachment to be issued and levied upon a rice mill belonging to his debtor is liable in damages for the loss of profits resulting from the closure of the mill, as well as for compensation for the loss occasioned to the good-will of the business in driving away customers.

"Deposition; Reading of Deposition in Court.—When a deposition is presented at the trial and admitted by the court, it is competent evidence for the party in whose behalf it was taken, although it may not have been actually read when introduced in evidence." (In Banc, per J. Street.) (J. Johns dissented and concurred.) *Briefed by A. Sólidum.*

IRRIGATION DITCHES—EASEMENTS NOT NOTED IN TITLE.—*Intestate of Jose P. Banzon vs. Mariano B. Banzon*, G. R. No. 27296, October 8, 1927. *Facts:* It appears that in the year 1905, defendants constructed ditches across plaintiff's lands with his knowledge, consent and approval, to carry waters across his lands to their own lands for irrigation purposes. From that time until the present, said ditches have been used by the proprietors of the neighboring lands, including the deceased José B. Banzon during his life-time and his heirs after his death. In September, 1918, the defendant, Mariano B. Banzon, with the knowledge and consent of his brother, José B. Banzon, and after having been granted by the Director of Public Works the right to use the waters of the Talisay river, constructed a second canal passing through the property of the said deceased José B. Banzon. The present action was brought by the plaintiff to prohibit the defendants from further using the canals in question and to compel defendants to fill up the same. Plaintiff argues that inasmuch as the existence of the canals aforesaid is not recorded in the Torrens Title issued in his favor for the land on which the same are located, his said land is free from such easements and the defendants have no right to continue using them. The Lower Court decided in favor of the defendants. The Supreme Court revoked the decision of the lower court as to the first canal and held that inasmuch as its existence is not annotated in the original certificate of the Torrens Title of the land in which it is located, in accordance with the provisions of section 39 of Act No. 496, said easements were extinguished and the defendants have lost their right to use the same. This decision, however, is without prejudice to the right that the defendants might have under article 557 in connection with article

558 of the Civil Code or under article 118 of the Law of Waters of August 3, 1866. The decision of the Lower Court with respect to the second canal was affirmed. (In Banc, per J. Villa-Real.) (Justices Johns and Malcolm dissented.) *Briefed by A. Sólidum.*

LAWYER'S FEES — UNREASONABLE CONTRACT. — Sebastian *Felices et al. vs. Anacleto Madrilejos et al.*, G. R. No. 27124, October 10, 1927. This action was instituted in the Court of First Instance of Romblon by Sebastian Felices, Rafael Acuña, and Francisco Sanz against Anacleto Madrilejos and Juan Bantigui for the purpose of obtaining partition of various parcels of real property. It appears that Acuña's cause of action is based upon the value of professional services rendered by him as a lawyer to the defendants, for the payment of which the latter agreed to give him two-fifths of the property which they would receive from a certain estate. The right of Sebastian Felices and Francisco Sanz to the partition of said property is based upon the money advanced by them to sustain the litigation, for the payment of which the defendants promised to give them the other two-fifths of the property. The Lower Court decided in favor of the plaintiffs. Reversed. *Held:* "With respect to the contract Exhibit "A" as a contract for compensation to be paid for legal services, we are of the opinion that it is unreasonable and unenforceable. The testimony of Acuña himself shows that at the time the contract was made Anacleto Madrilejos and Juan Bantigui were in an excited state of mind, owing to fear of being put in jail; and there are provisions in the contract itself which suggest that the lawyers, instead of striving to allay these fears, contributed to feed the fire. A client who comes into a lawyer's office and voluntarily offers to give everything he possesses provided the lawyer will keep him out of jail is in no state of mind to enter into a contract for services. Besides, the agreement to convey four-fifths of all the property that the two heirs would derive from the estate under administration to Acuña and his associates provided for grossly excessive compensation." (In Banc, per J. Street.) *Briefed by A. Sólidum.*

MILITARY RESERVATION—ACT OF RE-ENTERING.—*P. P. I. vs. Cirilo Sandal*, G. R. No. 26757, October 11, 1927. *Facts:* This is an appeal by the Attorney-General in behalf of the Government, for the purpose of reversing an order of the Lower Court sustaining a general demurrer to the information. The defendant was charged with violation of section 45 of the Federal Criminal Code, penalizing the act of re-entering a military reservation. The court below in upholding the demurrer proceeded upon the idea that said section 45 of the Federal Criminal Code of the United States is not in force in the Philippine Islands. The Supreme Court affirmed the order of the Lower Court in part, reversed it in part, and remanded the case for further proceedings. The following rulings were handed down:

"Constitutional Law; Laws in Force in Philippine Islands; Section 45 of Federal Criminal Code.—Section 45 of the Federal Criminal Code (Act of Congress of March 4, 1909,) penalizing the act of re-entering a military reservation, was designed to secure the protection of military reservations without regard to their location; and said provision is of inherent vigor in the Philippine Islands, although not expressly declared by Act of Congress to be applicable therein.

"Criminal Law; Re-entrance Upon Military Reservation After Re-

moval or Order Not to Re-enter.—Under the provision above mentioned it is the re-entrance of a person upon a reservation, or being found therein, after he has once been removed or ordered not to re-enter, which constitutes the offense. A first entrance is not an offense unless effected for an unlawful purpose.

"Id.; Id.; Sufficiency of Information.—An information charging that the accused entered a military reservation without permission and notwithstanding an express prohibition made by the authorities to the accused that he should not enter charges no offense under the provision cited.

"Id.; Insufficient Information; General Demurrer.—Where an information which fails to charge an offense under the law is demurred to generally, on the ground that it charges no offense, an order of the trial court declaring the information to be insufficient will be affirmed, although the trial judge may have given an erroneous reason for sustaining the demurrer.

"Id.; Pleading and Practice; Amendment of Information When Demurrer Sustained.—Where the defect from which an information suffers is amendable, the court, upon sustaining a general demurrer, should order that a new information be presented in accordance with section 23 of the Code of Criminal Procedure." (In Banc, per J. Street.) (Justices Johnson and Villamor dissented.) *Briefed by A. Sólidum.*

WRITTEN AGREEMENTS—REFORMATION DUE TO MISTAKES.—*The Bank of the Philippine Islands vs. Fidelity & Surety Company of the Philippine Islands*, G. R. No. 26743 October 19, 1927. *Facts:* On April 26, 1920, the Laguna Coconut Oil Co. executed a promissory note for ₱50,000.00 in favor of the Philippine Vegetable Company, Inc. On May 3, 1920, the Fidelity and Surety Company of the Philippine Islands made a notation on the note reading as follows:

"Manila, May 3rd, 1920.

"For value received, we hereby obligate ourselves to hold the Laguna Coconut Oil Co., harmless against loss for having discounted the foregoing note at the value stated therein.

FIDELITY AND SURETY CO. OF THE
PHILIPPINE ISLANDS.

By (Sgd.) J. ELMER DELANEY,
Vice-President.

Cedula F-3443, Jan. 2, 1920,
Manila, P. I.

"ATTEST

(Sgd.) A. D. TANNER,
Secretary-Treasurer.

Cedula F-3447, Jan. 2, 1920,
Manila, P. I.

On May 4, 1920, the Philippine Vegetable Oil Co. endorsed the note in blank and delivered it to the Bank of the Philippine Islands. It was contended that a mutual mistake was made in the redaction of the note of

guaranty by substituting the words "Laguna Coconut Oil Co." for "Bank of the Philippine Islands." The Lower Court decided in favor of the plaintiff. The Supreme Court reversed the judgment and dismissed the case. The following rulings were handed down:

"Contracts; Reformation of Written Agreements; Section 285 of of the Code of Civil Procedure Construed; General Rule:— The courts will reform a written agreement where, owing to mutual mistake, the language used therein does not fully or accurately express the agreement and intent of the parties.

*"Id.; Id.; Id.; What Necessary to Prove:—*To justify the reformation of a written instrument upon the ground of mistake, the concurrence of three things are necessary: First, that the mistake should be of a fact; second, that the mistake should be proved by clear and convincing evidence; and, third, that the mistake should be common to both parties to the instrument.

*"Id.; Id.; Id.; Amount of Proof:—*Relief by way of reformation of a written agreement will not be granted unless the proof of mutual mistake be of the clearest and most satisfactory character. The amount of evidence necessary to sustain a prayer for relief where it is sought to impugn a fact in a document is always more than a mere preponderance of the evidence. (Philippine Sugar Estates Development Company v. The Government of the Philippine Islands (1917) 247 U. S. 385; Centenera v. Garcia Palicio (1915) 29 Phil. 470; Mendezona v. Philippine Sugar Estates Development Company (1921) 41 Phil. 475.

*"Id.; Id.; Id.; Admissions:—*Admissions or declarations to be competent must have been expressed in definite, certain, and unequivocal language.

*"Id.; Id.; Id.; Case at Bar:—*That the plaintiff "Bank of the Philippine Islands" has not established a mutual mistake by proof of the clearest and most satisfactory character constituting more than a preponderance of the evidence." (In Banc, per J. Malcolm.) (Chief Justice Avanceña and Justices Street, Villamor, and Romualdez dissented.) *Briefed by A. Sólidum.*

SALE OF CONJUGAL PROPERTY — ANNULMENT.—*Prudencia Palima vs. Claro Paraiso et al.*, G. R. No. 27467, October 21, 1927. *Facts:* Justina Paoyo died in 1903, and in 1919, Juan Paraiso, her surviving spouse, sold certain lands supposed to be the property of the conjugal partnership to the defendant Claro Paraiso, who, in turn, sold them to his codefendant and appellant, Rosario Pardiñas Vda. de Buenaventura in 1923. The plaintiff brought this action to annul the said sale on the ground that the lands in question were the exclusive property of her grand-mother, Justina Paoyo, and that she is her only heir. The defendant, Claro Paraiso, on the other hand, alleged that the said lands were the exclusive property of Juan Paraiso, the husband of Justina Paoyo. It does not appear in the record that the conjugal partnership of Justina Paoyo and Juan Paraiso had other kinds of property. Neither does it appear that the said conjugal partnership had debts or that the surviving spouse, Juan Paraiso, needed money when he sold the lands in question with which to improve the conjugal partnership. The record, however, positively shows that Juan Paraiso

sold three parcels of land of the conjugal partnership sixteen years after the death of his wife. The Lower Court ruled that one-half of the said lands pertains to the heirs of Justina Paoyo and the other half to the heirs of Juan Paraiso. Consequently the sale was annulled in so far as one-half of the lands sold was concerned. Affirmed. *Held*: The record of this case does not show any indication as to the legal necessity for the surviving spouse to dispose of all the properties of the conjugal partnership in the manner in which he did, and for this fundamental reason the Court does not believe that the doctrine announced in the Case of Nable José vs. Nable José, 41 Jur. Fil., 760, invoked by the appellant,—that the surviving spouse can dispose of a part or of all of the properties of the conjugal partnership,—is applicable to the case at bar. In order to decide a case, the facts established during the trial thereof should be taken into consideration. To apply the above-mentioned doctrine in its abstract and absolute form would be equivalent to annulling completely the rights of the persons called upon to succeed the spouse who had died first, and the Court does not believe that the legislator had intended to create such a situation. (In Banc, per J. Villamor.) (Chief Justice Avanceña and Justices Romualdez and Street dissented. *Briefed by A. Sólidum.*

PUBLIC UTILITIES—OWNERS AND AGENT'S DUTY TO PROTECT PASSENGER.—*P. P. I. vs. Godofredo Navarro*, G. R. No. 27522, October 21, 1927. *Facts*: The defendant was charged with the crime of unchaste abuse in the court below and was sentenced to three years, six months and twenty-one days of *prisión correccional*, with the accessories of the law, and to pay the costs. It appears that the offended party was a passenger on the truck of the defendant, who was inspector of the same. The latter, taking advantage of the fact that the girl was alone, and that the only other persons in the truck were the chauffeur and the conductor, began to kiss her and touch her breasts. Although the truck was running very fast, the girl jumped off before it arrived at the station and went direct to the home of her cousin to whom she told her story, resulting in the filing of the complaint by her father. One of the assignment of error by counsel for the defendant was that the penalty imposed is "cruel and unusual punishment." Affirmed. *Held*: "A passenger truck running for hire on a highway is a public utility, and when persons pay their fare on such a truck and take their seat, they have a right to assume that they will be treated and respected as a passenger should be, and have a right to assume that they can travel with safety and that they will be protected in their person, in particular, by the owners and officials of the truck."

"It is very apparent that the defendant, whose duty it was to defend and protect the girl, took advantage of the situation and committed the acts alleged, and in doing so, he violated the trust and confidence of the girl as a passenger. It was both his moral and legal duty to defend and protect the girl, but as an official of the truck, he took advantage of a girl, who was the only passenger. Although the punishment may seem severe, upon the undisputed facts, the defendant is guilty and is not entitled to any sympathy." (J. Johns.) *Briefed by A. Sólidum.*

DYNAMITE—CONSTRUCTIVE POSSESSION PUNISHABLE.—*P. P. I. vs. Timoteo O. Vera*, G. R. No. 28026, October 21, 1927. *Facts*: The defendant was charged with the crime of illegal possession of dynamite and was found guilty thereof. On appeal, it was contended by his counsel that the defendant was never actually in possession of the box containing

dynamite. Affirmed. *Held*: The law should not be restricted to personal custody, but should be permitted to include constructive possession. The rule announced in the opium case of *U. S. vs. Juan* (1912) 23 Phil. 105, to the effect that the phrase "having possession of" in section 31 of Act No. 1761 is not limited to manual touch or personal custody, and that a principal acting through an agent comes within the purview of this expression, could apparently be applied to the law relating to the unlawful possession of dynamite. (J. Malcolm.) *Briefed by A. Sólidum.*

MUNICIPAL CORPORATIONS—DOUBLE TAXATION—PEDDLER'S TAX.—*P.P.I. v. Laureana Castronuevo*, R. G. No. 27905; *P.P.I. v. Ponciano Mendoza et al.*, R. G. No. 27908, October 28, 1927. *Facts*: The defendants in these three cases were charged with the violation of Municipal Ordinance No. 10, Series of 1922, of the Municipality of Aringay, La Union, in that they, as peddlers, sold their goods in the public market of the said municipality at fixed and regular intervals and in a systematic manner, without first paying the municipal license therefor. Upon conviction by the trial court, the defendants appealed, alleging that under Sec. 2307 (f) of the Administrative Code as amended by Act No. 3021, they are exempt from paying the said license tax in Aringay inasmuch as they had previously paid the corresponding license in their own municipalities; that it constitutes double taxation, and that the said ordinance is unreasonable and oppressive. *Held*: As to whether defendants were peddlers coming under the exemption provided for in Sec. 2307 (f) of the Administrative Code, as amended by Act No. 3021, that "the authorities are unanimous that 'occasional,' in the sense it is here used, means 'occurring at irregular intervals' and that the adverb 'occasionally' signifies 'in an occasional manner or more or less frequently at irregular times or intervals.' An examination of the stipulation of facts shows clearly that with this definition in view, the defendants, in plying their trade, were not *occasional* travelers but visited the town of Aringay on fixed days and at regular intervals. They are therefore not entitled to the exemption provided in the subsection" mentioned above. "Counsel contends that the Ordinance referred to in the stipulation of facts is invalid in that it imposes double taxation and that it is oppressive and unreasonable. In regard to the question of double taxation, it is sufficient to say that the several license fees are imposed by the different municipal governments within their separate jurisdictions and that there therefore is no violation of the rule against double taxation. As to the point that the Ordinance is unreasonable and oppressive it may be noted that it is in accordance with an act of the Legislature and that there are, as far as we can see, no sufficient grounds for declaring that act unconstitutional."—Judgment affirmed.—(Ostrand, J.)
—*Briefed by J. S. Nava.*

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