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RECENT DECISIONS OF THE SUPREME COURT REVIEWED

LAND REGISTRATION—REHEARING OF ORDER OF CANCELLATION OF TITLE.—*The Director of Lands vs. Serafin Advincula et al.*, G. R. No. 27488, November 19, 1927. *Facts*: It appears that a piece of land was ordered registered in the name of Pantaleon Palec, subject to the incumbrance of a *pacto de retro* in favor of Segundo Asuero for the amount of ₱70 and for the term of ten years from September 25, 1916. Palec failed to redeem the land before expiration of the term of the *pacto de retro*, and upon motion of Asuero, the Lower Court issued an order compelling Palec to show cause why the certificate of title issued to him should not be canceled and a transfer certificate issued in favor of Asuero. Palec failed to appear on the day set and the court issued an order directing the Register of Deeds to cancel Palec's certificate and to issue a transfer certificate in favor of Asuero. Palec moved for reconsideration under Sec. 113 of the Code of Civil Procedure, which motion was denied by the court. *Reversed. Held*: The denial of the motion for a reconsideration amounted to abuse of discretion. It is alleged in the pleadings of record, and is not contradicted, that the land in question is assessed for taxation in the sum of ₱940 and that its sales' value is ₱2,000, and that the so-called *pacto de retro* was intended as security for a loan of ₱70 and that it in reality was only an equitable mortgage. The provisions of Sec. 113 of the Code of Civil Procedure are applicable to this case inasmuch as this is not a question of setting aside or reopening a final decree, but is simply a question of cancelling a transfer certificate of title. (J. Ostrand) *Briefed by A. Solidum.*

INSURANCE—APPLICATION OF SEC. 47 OF INSURANCE LAW.—*Tan Chay Heng vs. The West Coast Life Insurance Company*, G. R. No. 27541, November 21, 1927. *Facts*: Plaintiff brought this action to recover from defendant the amount of the policy issued by defendant on the life of Tan Caeng, of which plaintiff was the sole beneficiary. It appears that the premium was paid on April 10, 1925, at which time the temporary policy issued; that Tan Caeng died on May 10, 1925; that upon refusal of the defendant to pay the amount of the policy, plaintiff brought this action

on January 4, 1926; that the original answer of the defendant, consisting of a general and specific denial, was filed on February 27, 1926; and that its amended answer alleging fraud on the part of the plaintiff and others in procuring the policy was filed on August 31, 1926. Plaintiff contended that Section 47 of the Insurance Act should be applied, and when so applied, defendant is barred and estopped to plead and set forth the matters alleged in its special defense. The Lower Court sustained plaintiff's demurrer to the answer of the defendant. Reversed. *Held*: "In the instant case, it will be noted that even in its prayer, the defendant does not seek to have the alleged insurance contract rescinded. It denies that it ever made any contract of insurance on the life of Tan Caeng, or that any such a contract ever existed, and that is the question which it seeks to have litigated by its special defense. In the very nature of things, if the defendant never made or entered into the contract in question, there is no contract to rescind, and, hence, Section 47 upon which the lower court based its decision in sustaining the demurrer does not apply. As stated, an action to rescind a contract is founded upon and presupposes the existence of the contract which is sought to be rescinded. If all of the material matters set forth and alleged in the defendant's special plea are true, there was no valid contract of insurance, for the simple reason that the minds of the parties never met and never agreed upon the terms and conditions of the contract." (In Bank, per J. Johns.) *Briefed by A. Sólidum.*

CONSTITUTIONAL LAW — APPLICABILITY OF U. S. A. PENSION LAW IN P. I.—*P. P. I. v. Carlos S. Tan*, G. R. No. 27637, Nov. 17, 1927. *Facts*: Defendant was accused of and convicted by the lower court of an infraction of Article 2 of the Act of Congress of the United States of July 16, 1918, entitled "An Act To Pension Widows and Minor Children of Officers and Enlisted Men who Served in the War with Spain, Philippine Insurrection or in China." Said Act of Congress provides that no sum greater than \$10 shall be charged by any agent, attorney or other person for the preparation, presentation, or prosecution of any claim under the provisions of the said Act. On appeal, defendant contends that said Act of Congress of July 16, 1918, is not applicable in the Philippine Islands. *Held*: The pension given by said Act "is in consideration to the services rendered by officers and enlisted men of the Army and Navy of the United States in the war with Spain, in the Philippine insurrection or in China. This being so, the pension granted in consideration of military services partakes of such character. In the case of *Tan Te v. Bell*, 27 Jur. Fil. 38, the following doctrine was set down, expressed in its syllabus: 'Laws Relating to the Army.—Laws for the creation, regulation, and maintenance of the Army, not specifically limited to certain districts, are of nation-wide application and extend to all territory under the jurisdiction of the United States. Subsequent laws of Congress organizing territorial governments do not repeal such laws by implication.' The doctrine above quoted is applicable to the present case, since as we have said, the law which we now consider has as its indirect object the maintenance of the Army and Navy. Altho it is true that the pension law in question was promulgated after the Jones Law, the title or heading, as well as Article 1 of the same, which speaks of the widows and minor children of officers and enlisted men who served in the war with Spain, in the Philippine insurrection or in China, refers both to Americans and Filipinos and is a sufficient expression of the applicability of such law to these Islands."—Judgment modified by eliminat-

ing the sentence of subsidiary imprisonment ordered by the L. C. and ordering the defendant to return to Rufina Bañez the sum of \$15.00 equivalent to ₱30, being the sum in excess of what he was entitled to for services rendered under said Act of Congress.—(In Banc, per Villa-Real, J.)—*Briefed by J. S. Nava.*

CRIMES—MINOR DELINQUENTS—ACT NO. 3203 REPEALS ART. 8, PAR. 3, PENAL CODE.—*P. P. I. v. Paquito Florencio*, G. R. No. 27716, Nov. 9, 1927. *Facts:* Defendant, a 15-year old boy, was charged with robbery under Art. 508, par. 4, of the Penal Code, and the trial court, without declaring him guilty and taking into consideration his age, ordered that he be sent to an institution for the confinement of delinquent minors, under the care of the Office of the Public Welfare Commissioner, in accordance with Act No. 3203 amended by Act No. 3309, to remain in the said institution for 2 years. Counsel contends that the defendant being only 15 years old and it not having been proved that he had acted with discernment, should be declared exempt from criminal responsibility, under Art. 8, par. 3, of the Penal Code. *Held:* Art. 3 of Act No. 3203 "expressly provides that accused minors under 18 years of age should not be declared guilty, even though the charges against them be proven, but that further proceedings should be suspended, and their confinement should be ordered in one of the institutions enumerated by said Law for their reformation. The Law does not distinguish whether the accused minor has acted or not with discernment. There exists, therefore, an irreconcilable incompatibility between the two legal provisions, * * * for while the Penal Code provides that one above 9 and below 15, who had acted with discernment, should be declared responsible, the pertinent provision of Act No. 3203, amended by Act No. 3309, provides that he should not be declared guilty, but that his confinement must be ordered in any institution destined to the correction and reformation of minors. And while the first law (Primer Cuerpo legal-meaning the Penal Code-Reporter) orders that one above 9 and below 15 should be declared not guilty if he has not acted with discernment, and turned over to his family with the order of taking care of and educating him, and in its absence to any institution of beneficence destined to orphans and abandoned children (desamparados), the said Act No. 3203 provides that he should be sent to an institution of beneficence, without regard as to whether or not he had any family that could take charge of his care and education. This incompatibility prevents the application of the provisions of par. 3 of Art. 8 of the Penal Code, and should therefore be considered as repealed by Art. 15 of the said Act No. 3203.—Judgment affirmed.—(Villa-Real, J.)—*Briefed by J. S. Nava.*

LICENSE ISSUED IN EXCESS OF AUTHORITY, VOID.—*Amparo Davila vda. de Barrera vs. China Banking Corp. et al.*, G. R. No. 27557, November 19, 1927.—*Facts:* The plaintiff is the owner of a building at Dasmariñas street, Manila. The defendants had a multi-story building constructed adjoining the premises of the plaintiff. For the purpose of the construction a large portion of the street in front of the plaintiff's premises was surrounded with a wooden enclosure which rendered the thoroughfare practically impassable to the public. As a result a tenant vacated plaintiff's premises. Hence this action was brought to recover damages suffered by her during the construction period. The enclosure occupied an area of the street more than what was allowed by section 1024 of the

Revised Ordinances. Defendants alleged that the work was constructed under the terms and provision of the permit issued by the City of Manila and that by reason thereof it is relieved from all liability even tho the City acted beyond the scope of its authority. The lower court rendered judgment against the contractors. Affirmed. *Held*: "The granting of an illegal permit by the City could not legalize an illegal act. No official has any legal right to issue a permit for the use of any portion of the street outside of the limits specified in the Ordinances and any permit which goes beyond the limits specified in the Ordinance is null and void." (2nd div. per Johns, J.)—*Briefed by E. Arévalo.*
