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RECENT DECISIONS OF THE SUPREME COURT REVIEWED

TAXES—ONLY ONE SALES TAX IN ONE SALE.—*W. F. Stevenson & Co. Ltd. vs. The Collector of Internal Revenue*, G. R. No. 27877, December 6, 1927.—*Facts*: This case was tried and submitted upon an agreed statement of facts. It is stipulated that during the period mentioned in the complaint, the plaintiff, as agent of Forbes, Munn & Co. Ltd. which was duly authorized to transact business in the Philippine Islands and for and on behalf of its principal, sold in the Province of Iloilo merchandise and effects of its principal amounting to ₱128,761.03; that plaintiff for and on account of its principal and acting as its agents, made returns to defendant and paid the merchants' percentage taxes on all such sales under the provisions of section 1458 of the Administrative Code; that for itself and in its own name, the plaintiff made returns to the defendant and paid him the percentage tax owing from its business as a commercial broker; that the defendant required the plaintiff to pay the sum of ₱2,183.73 as tax upon the theory that in the making of such sales as agent for Forbes, Munn & Co. Ltd., plaintiff was a merchant, and as such was subject to the payment of the percentage tax imposed on merchants by section 1459 of the Administrative Code. The plaintiff paid the tax last mentioned under protest which was overruled. Lower court rendered judgment for the defendant. *Held*: "Upon the record before us, there never was but one sale, and the merchants' percentage tax was paid on that sale, and in addition thereto plaintiff paid its percentage tax on that business as a commercial broker, and the sales in question were made by plaintiff as agent for its principal and they were not sale by plaintiff as a merchant, and it is not liable for the tax in question. To hold otherwise, would require the payment of two merchants' sales tax in one sale only of the same merchandise and effects." Judgment reversed. (In Banc, per Johns, J.) *Briefed by E. Arévalo.*

MURDER—PRESENTATION OF FISCAL'S INVESTIGATION—ADMISSIBILITY OF TESTIMONY OF COACCUSED.—*P. P. I. vs. De Otero, et al.*, G. R. 28072, December 10, 1927.—*Facts*: Induced by the ac-

cused De Otero, the coaccused Infante and Sitchon killed Gerardo Rocha. Infante and Sitchon pleaded guilty; De Otero pleaded not guilty. According to the testimony of Infante, De Otero before the commission of the crime revealed to him and to Sitchon his desire to have Rocha murdered so that he (De Otero) could live again with the wife of Rocha. They carried out the plan of murdering Rocha in consideration of the promise made by De Otero of giving them positions with ₱50 a month salary and a second hand automobile. In the Lower Court, Infante and De Otero, as principals, were sentenced to *cadena perpetua, and Sitchon, as accomplice,* to 8 years and 1 day *prisión mayor.* On appeal by De Otero, the following errors were assigned: (1) in giving credit to the testimony of the coaccused Infante; (2) in not requiring the Fiscal to present the secret investigation of Infante; (3) in not declaring that the proof of the prosecution is insufficient; (4) in not absolving the accused De Otero. The Supreme Court affirmed the decision of the Lower Court. The following rulings were handed down:

1. *Criminal Law and Procedure; Evidence; Investigation by Fiscal.*—Investigations made by a Fiscal under the authority of the Administrative Code need not be presented in court where no proper basis is laid and where the defense contents itself with merely making a demand on the prosecution to produce in court the written statement. (U. S. v. Baluyot (1919) 40 Phil. 385.)
2. *Id.; Id.; Codefendant Whose Case Has Been Disposed of By Plea of Guilty as Witness.*—A codefendant, who is one of a number of persons charged with the crime and whose case has been disposed of by the plea of guilty, is yet a competent witness for the prosecution on the subsequent trial of one who is charged with him.
3. *Id.; Id.; Presumption on Conviction of Alleged Coprincipal.*—The conviction of a coprincipal on a separate trial raises no presumption against another alleged principal jointly charged with him.
4. *Id.; Id.; Conviction on Testimony of Codefendant.*—While there is authority to the effect that the declaration of an accomplice or co-conspirator may be sufficient to sustain conviction even though uncorroborated, the more liberal doctrine is that one defendant should not be convicted on the sole testimony of a codefendant unless such testimony is to a certain extent corroborated by other witnesses or circumstances. (U.S. v. Balicasan (1905) 4 Phil. 545).
5. *Id.; Id.; Credibility of Testimony for Prosecution.*—The absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive existed, and that their testimony is worthy of full faith and credit. (U. S. v. Pajarillo (1911) 19 Phil. 288).
6. *Id.; Id.; Contradictions in Testimony for Prosecution.*—Minor contradictions in the testimony of the principal witness for the prosecution do not destroy the effectiveness of the testimony regarding the material facts.

7. *Id.; Id.; Effect of Failure to Call Witness.*—Where a witness is equally accessible to either party, no unfavorable inference can be drawn from failure to produce or examine him.

8. *Id.; Id.; Proof of Circumstances Determining the Crime and Its Penalty.*—The circumstances determining the crime and its penalty must be proved in a direct and evident manner. Mere inferences and presumptions arising from hypothetical facts are not enough.

9. *Id.; Murder; Circumstances.*—The evidence discloses a principal who induced others to commit the crime of murder because the victim was killed for a price or promise of reward. There are present the aggravating circumstances of evident premeditation and craft offset by no mitigating circumstance.

10. *Id.; Id.; Circumstance of Treachery.*—The aggravating circumstance of treachery may not be taken into account against a principal by induction where he was not present when the crime was actually committed, and left the means, modes or methods of it commission to a great extent to the discretion of others. (In Banc, per Malcolm, J.) (Johnson, J., dissented) *Briefed by E. Arévalo.*

INSOLVENCY—PREFERRED CLAIMS UNDER CIVIL CODE STILL RESPECTED.—*Voluntary Insolvency of Rafael Rebullida—H. E. Heacock Company v. Meliton Galan,* G. R. No. 27706, Dec. 12, 1927.—*Facts:* On April 10, 1926, H. E. Heacock Company filed an action against Rafael Rebullida, then a merchant doing business in Manila under the firm name of "La Nacional," for the recovery of ₱3,348.51, the balance of the purchase price of certain merchandise theretofore sold by H. E. Heacock Company to Rebullida. Judgment in favor of H. E. Heacock Company for the full amount asked was rendered on August 9, 1926. It further appears that on August 12, 1926, Rafael Rebullida was, upon his own petition, declared an insolvent debtor by the Court of First Instance of Manila. H. E. Heacock Company filed its claim in the insolvency proceedings on September 29, 1926. "The order of the trial judge * * * denied a preference to the claim of the H. E. Heacock Company and directed that the same be paid as an ordinary claim. The resolution rested on the basis that the claim could not be held to be preferred without violating the provisions of Section 32 of the Insolvency Law, and that the credit was not named in Section 50 of that law. Thereafter the court authorized the assignee to sell the property belonging to the insolvent estate, but upon the express condition that *'una cuenta separada de los efectos vendidos al insolvente por Heacock & Co.'* be kept by him. In compliance with this order, the assignee, with the assistance of the representatives of the H. E. Heacock Company, identified and segregated from the rest of the personal property of the insolvent such of the merchandise sold to him by the H. E. Heacock Company as were in his possession on that date." The object of this appeal is to determine if the plaintiff's claim against the insolvent is or is not preferred. The defendant is the assignee. The appellant claims that the lower court erred: 1). In holding that the claim of the appellant H. E. Heacock Company may not be declared preferred

without infringing the provisions of Section 32 of the Insolvency Law; 2). In holding that only claims named in Sec. 50 of the Insolvency Law are preferred; 3). In not holding that, with respect to the personal property in the possession of the assignee, identified and segregated from the rest of the personal property of the insolvent as part of the merchandise sold to him by H. E. Heacock Compay, the claim of H. E. Heacock Company is preferred under the provisions of Article 1922, par. 1, of the Civil Code; and 4). In not holding that the whole of the claim of H. E. Heacock Company is preferred under the provisions of Paragraph 3-B of Art. 1924 of the Civil Code. *Held:* 1). Under the facts, the judgment was not entered in an action commenced within 30 days immediately prior to the commencement of insolvency proceedings. "It is further perfectly evident that the judgment was not entered by default or consent of the debtor within 30 days prior to the commencement of the insolvency proceedings. (C. C. P., Sec. 128; Go Changjo v. Roldan (1911) 18 Phil. 405; Cabagan v. Weissenhagen and Camara (1918) 38 Phil. 804). Accordingly, the declaration of insolvency of Rebullida did not have the effect of dissolving the judgment against Rebullida in favor of the H. E. Heacock Company. It is the commencement and not the rendition of the judgment which is made the test by the statute." 2). That the statutory liens still subsist, besides the preferred claims enumerated in Section 50 of the Insolvency Law as decided in Tec Bi & Co. v. Chartered Bank of India, Australia & China (1917) 41 Phil. 819, wherein it was said "that the word 'lien' as used in Section 59 of the Insolvency Law (Act No. 1956) should be held to include 'statutory preferences' arising under articles 1922 and 1924 of the Civil Code, if and when they are duly asserted in the course of insolvency proceedings. The decision concluded with the remark 'that it was not the intention of the legislature to destroy, without providing a substitute therefor, the security in the form of 'statutory preferences' furnished in our Civil Code in like cases, and that the language of these statutes (The Insolvency Law and the C. C. P.) does not sustain such a contention.' The decision in the Tec Bi case is one of a series along the same line, of which the others are Smith Bell & Co. v. Estate of Maronilla (1916) 41 Phil. 557; Kuenzle & Streiff v. Villanueva (1916) 41 Phil. 611. The Tec Bi doctrines have since been confirmed and carried forward in the cases of E. Viegelmann & Co. v. Perez (1918) 37 Phil. 678, per Carson, J.; Javellana v. Mirasol (1920) 40 Phil. 761, per Street, J.; and Hunter, Kerr & Co. v. Murray (1925) 48 Phil. 499, per Villa-Real, J. The current of antagonistic authority begins with the elaborate concurring and dissenting opinion of Mr. Justice Moreland in Kuenzle & Streiff v. Villanueva, Supra, (Vol. 41 at p. 633) when he announced as a grave question whether the new bankruptcy law does not repeal articles 1922 to 1926 of the Civil Code as well as other provisions of the old bankruptcy law contained in that Code. In the same file stands the case of Ingersoll v. National Bank (1922) 43 Phil.. 308 where, speaking thru Mr. Justice Johns, it was held that Act No. 1956, known as the Insolvency Law, specifies and defines what claims are to be preferred, and it follows that any claim which is not in the nature of, or kindred to, those specified is not a preferred claim. Somewhat later came the concurring opinion of the writer (Malcolm, J.—Reporter) in Roman v. Herridge (1924) 47 Phil. 98, 106, and the joint dissenting opinion of the writer (Malcolm, J.—Reporter) and Mr. Justice Ostrand in the Voluntary Insolvency of Central Capiz (1927) No. 26293. There could also be added merely as cumulative

authority the propositions that the expression in an insolvency law of certain well defined cases which should constitute preferences, excludes all other cases, in accordance with the maxim *Expressio Unius est exclusio alterios*, and that, as in the case of all other statutes, where a provision in an insolvency law cannot stand and be enforced with provisions on the same subject in a latter law, the former is repealed by implication and without any express repealing clause. 32 C. J. pp. 817, 819; Mingin v. Alva Glass Manufacturing Co. (1897) 55 N. J. Equity 463; C. C. P., Secs. 523, 524, and Insolvency Law, Sec. 83 providing that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed. On a re-examination of the question of whether or not articles 1922 and 1924 of the Civil Code have been impliedly repealed by the Insolvency Law in relation with local authorities on the subject, it is the opinion of a majority of the Court that the question should be answered by sustaining the provisions of the Civil Code. One of the principal reasons advanced by the majority is that this has now become a rule of property and as a well recognized principle, should be respected." 3). The claim of the H. E. Heacock Company as to the part of merchandise segregated, is a preferred claim, under Art. 1922 of the Civil Code, which says: "With respect to determine personal property of the debtor, the following are preferred: 1. Credits for the construction, repair, preservation, or purchase price of personal property in the possession of the debtor, to the extent of the value of the same." It is the rule under this article, as to goods sold and not paid for, that preference may be claimed by the vendee if the identity of the goods is established, as it is conceded in the case at bar. (Rupert & Guamis v. Luengco & Martinez (1907) 8 Phil. 554; International Bank v. Corrales (1909) 14 Phil. 360; McMicking v. Nubla Co Piaco (1913) 24 Phil. 439; Calvo v. Co Cang & Co. (1917) 36 Phil. 954; and Tec Bi v. Chartered Bank of India, Australia and China, supra). * * *" 4). That the whole of the claim of H. E. Heacock Company is preferred under Par. 3-B of Article 1924, C. C., which, in part, says: 'With respect to the other personal and real property of the debtor, the following credits shall be preferred: * * * 3. Credits which without a special privilege are evidenced by: * * * B. A final judgment, should they have been the subject of litigation. These credits shall have preference among themselves in the order of the priority of dates of the instruments and of the judgments respectively.' In this connection, it must be recognized that the judgment in favor of the H. E. Heacock Company rendered on August 9, 1926, was as final as a judgment could possibly be made. It is accordingly protected as a statutory preference recognized by Article 1924 of the Civil Code and the decisions of this Court, particularly the Tec Bi decision."—Order Reversed and plaintiff's claim declared a preferred claim.—(In Banc, per Malcolm, J.)

Johns, J., *dissenting:* That H. E. Heacock Company is only entitled to a lien on the personal property which has actually been identified and segregated as part of the merchandise sold by the Company to the insolvent, on the ground that a judgment standing alone and within itself, without the aid of a levy by either an attachment or execution, is not a lien on the property of the judgment debtor.—*Briefed by J. S. Nava.*

PROHIBITION—WRIT ISSUES WHEN A TRIBUNAL HAS NO JURISDICTION TO ACT.—*Juan Sumulong v. Hon. Carlos A. Imperial et al.*, G. R. No. 28725, Dec. 17, 1927.—*Facts:* Original proceeding to obtain a writ of prohibition directed to the probate court of the City of

Manila prohibiting, during the pendency of petitioner's appeal, its carrying out, or taking any steps whatever to enforce certain orders requiring petitioner, as administrator of the estate of the late T. H. Pardo de Tavera, to pay his widow the sum of ₱5,000. It appears that the petitioner, as administrator, "has sanctioned the paying out from time to time of various sums for the support of the widow and the children of the deceased. Eventually, on August 31, 1927, the widow, Doña Concepcion Cembrano, asked the court to order the administrator to pay her the amount of ₱5,000. Against the opposition of the administrator, the court on September 14, 1927, conformed to the motion of the widow. The administrator asked for a reconsideration without obtaining a favorable ruling. : * * On October 14th the record on appeal was filed by the petitioner. On October 17th the appeal bond was approved by the court. On the same day the widow again petitioned the court to secure her allowance of ₱5,000. On October 24th the record on appeal was approved by the court. On the same day the court ordered the administrator to turn over to the widow the ₱5,000. Following this came the usual motion for reconsideration presented by the petitioner and its denial by the court, but with a proviso directing the administrator to comply with the order relating to the payment of the ₱5,000. The administrator twice unsuccessfully prayed for a suspension of the order pending appeal. Finally, on November 12th the judge peremptorily commanded the administrator to pay the widow the sum of ₱5,000 before eleven a. m. on November 15th, with the admonition that on failure to obey, the administrator would be ordered arrested by the court. The last order and related orders of the trial court have been suspended by a temporary injunction issued by a member" of the Supreme Court. The facts as alleged, in the complaint, seem to be admitted by respondents, and "the subject of inquiry is the extent of power in the court proceeded against. The following rulings were handed down by the Supreme Court:

1. *Prohibition; Grounds of Relief.*—The subject of inquiry in each case is the extent of power in the extent of power in the court proceeded against.

2. *Id.; Id.; Loss of Jurisdiction once Existing, General Rule.*—Jurisdiction over the subject matter of an action or the parties thereto, though it has once confessedly attached, may subsequently terminate, and when this happens, the court is as destitute of jurisdiction as if jurisdiction either of the subject matter or of the person had never existed.

3. *Id.; Id.; Loss of Jurisdiction once Existing, by an Appeal.*—The jurisdiction of a court may be terminated by the perfecting of an appeal to some other court, accompanied by an undertaking sufficient to stay proceedings until the appellate court has exercised its jurisdiction. All further proceedings dependent upon, or in the way of the enforcement of, the order or judgment whose effect has been thus terminated by the appeal are unauthorized and will be prohibited.

4. *Executors and Administrators; Appeals in Special Proceedings; Chapter XLII of the C .C. P. Construed.*—In special proceedings to perfect an appeal, it is now necessary for the trial court both to approve the appeal bond and the record on appeal. Calderon v. McMicking (1908) 10 Phil. 650 distinguished, and Rule 16 of the Courts of First Instance, and Buenaventura and Del Rosario v. Ramos (1921) 42 Phil. 490 followed.

5. *Id.; Id.; Id.*—As a general rule, on the perfecting of an appeal in special proceedings, the trial court loses its jurisdiction.

6. *Id.; Id.; Id.*—An appeal from an order directing an administrator to pay to the widow of the deceased a certain sum operates as a supersedeas, and stays all further proceedings in the court in the particular matter involved in the order appealed from.

7. *Id.; Id.; Id.*—Upon an appeal which stays proceedings, the subject matter is removed from the jurisdiction of the lower court until the appeal has been determined; and the lower court has no jurisdiction pending an appeal from an order directing the administrator to pay a certain sum of money to punish the administrator for not obeying the order, and the Supreme Court will issue a writ of prohibition to prevent such proceedings, as being in excess of the jurisdiction of the lower court. The fact that the two acts of approving the record on appeal and of attempting to enforce its judgment were as nearly simultaneously performed as is physically possible, does not alter the situation, since the orders were antagonistic one with the other.

Preliminary injunction made permanent.—(In Banc, per Malcolm, J.) —*Briefed by J. S. Nava.*

INSOLVENCY—PREFERRED RIGHT OF VENDOR ON PROPERTY SOLD.—*Voluntary Insolvency of "Central Capiz." Timoteo Unson et al. v. Urquijo et al.*, G. R. No. 28205, December 24, 1927.—The only question to be determined in the present appeal is whether, as the lower court has declared, the right of preference of the appellants (Urquijo, Zuloaga and Escubi) for the unpaid balance of the purchase price of the machinery is only for the unpaid proportional part of said machinery, or whether, as the appellants claim, their right of preference for the unpaid balance of the purchase price of the said machinery is for the whole thereof. The Lower Court was of the opinion that appellants' right of preference extended only to the unpaid proportional part of the machinery in question. *Held:* "Article 1922, par. 2 of the Civil Code, in its pertinent part, says the following: "Art. 1922. With respect to determinate personal property of the debtor, the following are preferred: 1. Credits for * * * purchase price of personal property in the possession of the debtor, to the extent of the value of the same." The principle on which is based the privilege established in the legal provision above quoted is of equity and justice. 'While the price has not been paid, the patrimony of the vendee has been increased at the expense of the vendor; the latter becomes finally a gratuitous debtor of the former's creditors, because the thing sold is property (prenda—Reporter) upon which the creditors might charge, with no reason whatever, were the preference not to be established; that is to say, that the vendor is privileged because he had placed the thing in the patrimony of the vendee.' (25 Enciclopedia Jurídica Española, pag. 362). 'Without the sale—said the (Tribuno) Grenier in the Tribunado,—the thing sold would not have become property (prenda-Reporter) of the other creditors. These, therefore, should first comply with the obligation that rested upon their debtor.' (5 Colin y Capitant, Curso Elemental de Derecho Civil, pag. 182.) If this is true, the other creditors have no right to collect the product of the resale of the thing until the original vendor thereof has not been paid the full price of the original sale, to the extent of the value of the said thing in the resale. The privilege exists whether the price has been paid partially or not; for the law does not establish any distinction, and we cannot establish it without impairing said privilege; which would be the case if

in the case of partial payment the privilege should be limited upon a part of the chattel sold proportional to the unpaid balance of the price; or, what is the same, if said privilege be limited to what remains of the chattel sold after deducting a part proportional to the price already partially paid. * * * In conclusion, therefore, we are of the opinion that the privilege of the vendor for the purchase price of the chattel sold extends over the whole thereof, whether such pric has been partially paid or not, while said chattel remains in his possession and to the extent of its value." —Judgment Reversed.—(Ir Banc, per Villa-Real, J.)—*Briefed by J. S. Nava.*

PROCEDURE—DISMISSAL OF CASE FOR FAILURE TO AMEND COMPLAINT NOT RES ADJUDICATA.—*Tomas Casao et al. v. Joaquina Palad et al.*, G. R. No. 27938, December 24, 1927.—*Facts:* From a stipulation of facts agreed upon by the parties and submitted to the lower court, it appears that on May 19, 1923, the complaint was filed in civil case No. 1551. The defendants' demurrer having been sustained, the plaintiffs were given 10 days within which to present an amended complaint. On June 30, 1924, no amended complain having been presented, the case was dismissed. The present case concerns the same subject-matter and is between the same parties to civil case No. 1551. The Lower Court dismissed this action on the ground that it was *Res Adjudicata.* From this decision, plaintiffs appeal. The question is whether the dismissal in civil case No. 1551 constitutes *Res Adjudicata. Held:* "Undoubtedly, the dismissal was made, as is clearly expressed in its dispositive part, (of the judgment of the L. C. in civil case No. 1551—Reporter), because the plaintiffs have failed to prosecute the case during an unjustified period of time, for they have taken no steps for its continuation during approximately one year. It is clear, therefore, that that dismissal was ordered in pursuance of Article 127 of the Code of Civil Procedure, and, whose paragraph 3, does not bar another action based on the same causes (motives-Reporter).—Judgment Reversed and case remanded.—(In Banc, per Avanceña, C. J.)—*Briefed by J. S. Nava.*

TAXATION—TIME TO PAY INTERNAL REVENUE TAX ON IMPORTS.—*Luzon Brokerage Co., Inc., v. Juan Posadas, Jr., as Collector of Internal Revenue*, G. R. No. 27822, Dec. 24, 1927.—*Facts:* Appeal from a judgment of the Court of First Instance of Manila affirming the decision of the Collector of Internal Revenue in assessing the internal revenue charges on certain playing cards and the action taken by the same under the provisions of the action taken by the same under the provisions of Act No. 3246, and dismissing the complaint with costs. It appears that the boxes of playing cards arrived at Manila on November 20, 1925, at 8 a. m., but were not declared for the payment of the internal revenue tax until December 1st. of the same year, nor was the permit asked to withdraw said boxes until December 2, 1925. *Held:* "In accordance with Article 1251 of the Administrative Code, * * *, the customs duties begin to accrue from the arrival of the importing vessel within the jurisdictional waters of the Philippine Islands with intention to unload therein; and according to Sec. 1248 of the same Code * * * the importation of said merchandise is not completed until the duties to which they are subject have not been satisfied, or until they have legally left the jurisdiction of the customhouse, in case they are exempt from the payment of duties. According to Section 1480 of the same Code * * * the internal-revenue

tax on imported articles shall be satisfied before said articles are withdrawn from the customhouse. Now, then, from what moment is the importer or owner of the imported merchandise obliged to pay the internal-revenue tax? From the moment that the importation has terminated, by the payment of the customs duties? or, from the time the importer or owner of the imported merchandise decides to withdraw it from the customhouse to place it in the market?" According to the doctrine laid down in Asiatic Petroleum Company v. Rafferty, 38 Jur. Fil. 503, "the imported merchandise are not subject to the payment of the internal-revenue tax until immediately before they are withdrawn from the customhouse to be placed in the market. * * * The moment from which the imported merchandise becomes subject to the payment of the internal-revenue tax depends, therefore, upon the will of the importer or owner of the imported merchandise; because while he does not decide to withdraw them from the customhouse to place them in the market and to apply for the permit to do it he is not obliged to pay said tax. * * * The law in force regarding the payment of internal-revenue tax on imported merchandise at the time of the arrival of the boxes of playing cards with which we are now concerned was Act No. 2835, Article 7, amending Section 1498 of the Administrative Code, and the law in force at the time when the declaration was made for the payment of the internal-revenue tax on said imported merchandise was Act No. 3246 which went into effect on December 1st, 1925. If the importer or owner of the imported merchandise can choose the moment when he should pay the internal revenue tax on the same, from their arrival at the port of Manila until they are withdrawn from the customhouse, and the plaintiff-appellant herein not having take advantage of the favorable provision of Section 1498 of the Revised Administrative Code, as amended by Article 7 of Act No. 2835, and not having paid the tax while said article was in force, but only when the new Act No. 3246 was already in force, it cannot now protest against the levying (cobro-Reporter) of the internal-revenue tax made under the law in force at the time payment was made. We have, therefore, that the determination of the time in which the internal-revenue tax should be paid being dependent upon the will of the importer or the owner of the imported merchandise, from their arrival at the port of Manila until immediately before their withdrawal from the customhouse, the law in force at the time payment is made should prevail; because the voluntary human acts are governed by the laws in force at the time they are executed, unless there exists a legal provision to the contrary."—Judgment affirmed.—(In Banc, per Villa-Real, J.)—*Briefed by J. S. Nava.*

EVIDENCE—PROBATORY FORCE OF ANNOTATION ON BACK OF CERTIFICATE OF TITLE.—*Philippine National Bank v. Tan Ong Zse*, G. R. No. 27991, Dec. 24, 1927.—*Facts:* Appeal from a decision of the Court of First Instance of Iloilo dismissing plaintiff's complaint against defendant for the recovery of ₱357,075.80 with interest at the rate of 8% per annum from November 15, 1924, until fully paid with an additional 10% on the total sum as attorneys fees. The principal question to be determined in this appeal refers to the sufficiency of the evidence to establish the existence of a power of attorney executed by the defendant Tan Ong Zse Widow of Tan Toco, in favor of Mariano de la Rama Tan Bunco to administer and mortgage properties belonging to her. "The only evidence presented by the plaintiff corporation to prove the existence of such power of attorney is the Original Certificate of Title Exhibit "F"

issued in favor of Tan Ong Zse Widow of Tan Toco, on the back thereof exists, among others, a memorandum which says:

Memorandum of the Incumbrances Affecting the Property Described in the Original Certificate of Title No. 329, Issued in Favor of Tan Ong Zse, a Widow.

Doc.	*Kind*	*Executed in favor of*	*Conditions*	*Date of Instrument*	*Date of Inscription*
	PODER	TAN BUNCO	Queda conferido poder para hipotecar entre otras cosas como administrar bienes pertenecientes.	1916 Sept. 14 a Tan Ong Zse	1919 Sept. 10

The appellant contends that said annotation is sufficient to establish the existence of a power of attorney execued by Tan Ong Zse Widow of Tan Toco in favor of Mariano Tan Buco, authorizing the latter to administer her properties, to borrow money and mortgage said properties as a guaranty for the payment thereof. *Held*: "In the case of Government of the P. I. v. Martinez et al., 44 Jur. Fil. 863 (44 Phil. 817—Reporter) this Court, treating of the probative value of inscriptions in a public registry said the following:

> '1. *Evidence; Primary and Secondary.*—While it is true that the record of any document in a public registry is a public document, yet before the record or a certified copy of the recital made in a public registry of the contents of a deed of sale, may be admitted as evidence of the contents of said deed, it is indispensable to establish first that said deed really existed, was duly executed and was lost; for while it may be true that said document was really presented to the registry, as stated in the entry or the books of the registry, yet the document actually presented may have been falsified or simulated, and may not have really been executed by the parties appearing thereon to have signed the same. And if it really existed, it should be presented unless it is proven to have been lost, in which case, and only then, secondary evidence may be introduced.'

By analogy we can say that the memorandum of a document of a power of attorney annotated on the back of the certificate of the original title is not admissible as evidence of the contents of said document of power of attorney, but only of the fact of its execution, of its presentation for annotation and of its annotation for the effects of its notification to the public in order to create preferential rights upon the registered land subject-matter of the title. The non-presentation of the document of power of attorney issued in favor of Mariano de la Rama Tan Bunco

by the defendant Tan Ong Zse Widow of Tan Toco, to administer and mortgage her properties, deprives us of the best means to determine whether the acts performed by the supposed attorney in fact are comprised within the powers conferred by said document of power of attorney."—Judgment set aside, and case remanded.—(In Banc, per Villa-Real, J.)—*Briefed by J. S. Nava.*

CUSTOMS DUTIES—EXEMPTION OF IMPORTED FUEL—MEANING OF COASTWISE TRADE.—*Teodoro Yangco v. Vicente Aldanese, Insular Collector of Customs*, G. R. No. 27491, December 31, 1927. —*Facts:* It appears that the petitioner, Teodoro Yangco, is the owner of several vessels engaged in trade between the ports of Manila and various ports of Laguna, Pampanga, Bataan, and Cavite. The petitioner used imported fuel for the propulsion of said vessels and presented the corresponding drawback entries on said fuel used for the purpose of obtaining the refund of duties paid on said imported fuel less one per centum thereof in accordance with sec. 21 of the Act of Congress of 1909 known as the Philippine Tarrif Act of 1909. The respondent Collector of Customs disapproved the claim of the petitioner for the refund of said duties relying on paragraph 3 of the Administrative Order No. 178 of the Bureau of Customs which provides that "Drawbacks will be allowed only on account of imported fuel, upon which the duty has been paid, used in the propulsion of vessels engaged in trade with foreign countries or between ports of the United States and the Philippine Islands or in Philippine coastwise trade. Vessels engaged in the bay and river business, holding either license of that class or a license to engage in the general coastwise trade of the Philippine Islands, will not be entitled to drawback on account of fuel used in their propulsion." The respondent alleged that the vessels referred to in this appeal are engaged in the bay and river business and not in coastwise trade as referred to in the Act of Congress of 1909. The question involved in this case is whether the vessels engaged in coastwise trade as referred to in the Act of Congress of 1909. The question involved in this case is whether the vessels engaged in coastwise trade as referred to in the Act of Congress of 1909 includes vessels engaged in bay and river business. *Held:* "The words *coastwise trade* has a definite meaning in the acts of Congress as interpreted by the courts of the United States. It is used as opposed to foreign commerce and to commerce between ports of the United States and foreign ports, meaning domestic commerce between ports of the United States. In that concept it is general and comprehensive and, as applied to vessels, it refers to all vessels engaged in domestic commerce between the ports of the United States including what is known here as vessels engaged in bay and river business. It must be understood that Congress has given to the words used in its Act of 1909 the meaning they have in its legislation, as interpreted by the courts of the United States. Therefore, paragraph 3 of the Administrative Order No. 178 of the Bureau of Customs, in so far as it excludes vessels engaged in the bay and river business from the benefits of the refund established by the Act of Congress of 1909, violates this Act and should be declared null." Judgment affirmed. (In Banc, per Avanceña, C. J.)—*Briefed by E. Arévalo.*

JUDGES OF FIRST INSTANCE—PRESUMPTION OF JURISDICTION.—*Herederos de Filomeno Esquires vs. Director of Lands and Rufina Mañagas et al.*, G. R. No. 27207, December 31, 1927.—*Facts:* The

heirs of F. Esquires applied for the registration of a tract of land and was opposed by the Director of Lands and by the heirs of Ramon Pimentel. The Lower Court found that the land in question belonged to R. Pimentel and denied the application. The applicants appealed and contended that the judgment of the lower court is null and void because at the time of signing said judgment, Judge Platon had been appointed judge of the Court of First Instance of Albay and therefore had no jurisdiction of the case at that time. *Held:* "The presumption is 'that the court, or judge acting as such, whether in the Philippine Islands or elsewhere, was acting in the lawful excercise of is jurisdiction' (Subsec. 15, sec. 334 Code of Civil Procedure), and there is no sufficient evidence in the record to rebutt this presumption. It is true that the judge signed as judge of the Court of First Instance of Albay but for all we know, he may have been authorized by the Secretary of Justice, under Section 155 of the Administrative Code, to finish the trial of the case after his appointment to the district of Albay and, if so, the judgment is valid." Judgment affirmed. (In Banc, per Ostrand, J.)—*Briefed by E. Arévalo.*