PHILIPPINE LAW JOURNAL

Published monthly, August to April inclusive, during the academic year, by the College of Law, University of the Philippines.

Subscription P4.00 and P5.00 per year. Single number 60 centavos

RECENT DECISIONS OF THE SUPREME COURT REVIEWED

SERVICE OF COURT ORDERS ON ASSISTANT ATTORNEY IS SUFFICIENT.—*The Roman Catholic Archbishop of Manila v. Francisco Ycasiano et al.*, G. R. No. 28679, Feb. 2, 1928. *Facts:* Certiorari in the Supreme Court with a view to setting aside an order of the respondent Judge, wherein it was declared that the attorneys for the petitioner had been duly notified of the denial of a motion for a new trial presented by said attorneys in Civil Case No. 23627 of the Court of Nirst Instance of Manila. In said case Francisco Ycasiano recovered P4,620 by the judgment of the trial court. Exception to the judgment was filed by the attorneys for the petitioner, which exception was signed by Leonardo Abola, an assistant attorney of Feria & La O:

> "Feria & La O
> Por: (Sgd.) Leonardo Abola,
> Abogados de la Demandada,
> The Roman Catholic Archbishop of Manila,
> China Bank Building, Manila."

A motion for new trial was subsequently filed, which motion was signed "Feria and La O por F. R. Feria" as attorneys for the defendant, and was supported by an affidavit of F. R. Feria, which affidavit was subscribed and sworn to before Leonardo Abola, as notary public. Motion for new trial was denied by the trial Judge, who wrote the following words at the bottom of its last page: "Overruled. Manila, 11 de Septiembre 1916, Geo. R. Harvey, Juez." Notice of denial of motion for new trial was left with Leonardo Abola, who informed neither Feria nor La O of the receipt of the notice. Abola further states in an affidavit that he had no recollection of having received the notice. Feria and La O did not know of the order denying the motion for new trial. *Held:* Although service of notice of the order denying motion for a new trial in this case was not made in accordance with the Rules of Courts of First Instance, still the writ is denied because the other circumstance that Feria and La O "having authorized Abola to sign the exception to the judgment and thus appear in their behalf and that of their client, cannot now be heard to deny that he was at least their agent in the case and as such authorized

to accept service of the notice in question. Personal service on one of the members of Counsel for the aggrieved party would have been sufficient service on all of them and so was the service on their authorized agent. To hold otherwise would frequently lead to embarrassing complications and would neither be good sense nor good law." The petitioner should have made use of the remedy afforded by Section 113 of the Code of Civil Procedure.—Writ denied.—(En Banc, per Ostrand, J.)—*Briefed by J. S. Nava.*

PERJURY—EVIDENCE.—*P. P. I. v. Paula de Reyes*, G. R. No. 28357, Feb. 9, 1928. *Facts:* Appeal from a sentence of the Court of First Instance of Batangas convicting the defendant of the crime of perjury. *Held:* Defendant alleges that "it has not been proved *aliunde* which of the two contradictory statements made by her is the false one, an essential requisite in these cases according to the decision of this Tribunal (Supreme Court—Reporter) rendered in the case of U. S. v. Capistrano (40 Jur. Fil. 947). It is a fact, however, that the proof which is alleged to be missing is furnished by the defendant herself in her own testimony when she declared in this case admitting that the declaration made by her in the preliminary investigation of case No. 4686 was the false one." Judgment affirmed.—(Romuáldez, J.)—*Briefed by J. S. Nava.*

PERCENTAGE TAXES COLLECTIBLE FROM SUGAR CENTRALS' SHARE OF SUGAR SOLD.—*Pampanga Sugar Mills v. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands*, G. R. No. 23985, Feb. 2, 1928. *Facts:* Under the so-called milling contracts, the plaintiff mills sugar cane grown by sugar cane growers of lands other than those belonging to plaintiff, and as compensation it receives 50% of the resulting centrifugal sugar, and the sugar cane growers receive the remaining 50%. The defendant Collector of Internal Revenue, acting under Sec. 1459 of the Administrative Code, exacted payment of P60,911.42 as the merchants' percentage tax alleged to be due from the sales of the centrifugal sugar which the plaintiff received as compensation from July 1, 1920 up to and including June 30, 1922. Payment was made under protest. Subsequently, the plaintiff filed its claim with the Collector of Internal Revenue alleging that the aforesaid taxes exacted were illegal and that it was exempt therefrom by Sec. 1460 of the Administrative Code. The protests of plaintiff were denied, and so complaint was filed in the Court of First Instance, which rendered judgment for the defendant. Plaintiff alleges that the Lower Court erred: 1). In declaring it a manufacturer in the sense of constituting it a merchant within the meaning of Sec. 1459, Administrative Code, and 2) In holding that plaintiff is not entitled to the exemption provided for in Sec. 1460 paragraph B of the same Code.

> SEC. 1459. *Percentage Tax on Merchants' Sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be

refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

The following shall be exempt from this tax.

(a) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.

(b) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.

(c) Producers of commodities of all classes working in their own homes, consisting of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso.

"Merchant," as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production, and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers.

The pertinent part of Sec. 1460 reads as follows: "In computing the tax above imposed transactions in the following commodities shall be excluded:

. . . . . .

(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not. *Held:* A sugar central functioning under milling contracts with planters is not to be considered a contractor under Sec. 1462 of the Administrative Code, as decided in the case of La Carlota Sugar Central v. Trinidad, 43 Phil. 816. "The weakness of the contention claiming exemption under Sec. 1460, Administrative Code, is that no consideration is given to the distinction between the production of the raw material, sugar cane, and the manufacture of the finished product, centrifugal sugar. This distinction is well brought out in the case of Allen v. Smith, 173 U. S. 389, in which the United States Supreme Court says:

> "* * * The word "producer does not differ essentially in its legal aspects from the word "manufacturer," except that it is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product. In a number of cases arising in this court under the revenue laws, it is said that the word "manufacture" is ordinarily used to denote an article upon the material of which labor has been expended to make the finished product * * * So the one who raises the cane is undoubtedly entitled to be considered the producer of the cane, but he is not the producer of the sugar. That appellation is reserved for him who turn out the finished product. * * *"

The plaintiff admits that it manufactured its share of the sugar and sold it for its own account, and that the cane from which the sugar was manufactured was not grown on its own land. That is sufficient to justify the collection of the tax under the statute; there is nothing in the statute requiring the Government to inquire into the legal title to the raw materials from which the articles sold by the manufacturer are produced. * * * The facts are indisputable that the plaintiff corporation, a manufacturer, produced its share of the sugar for its own benefit and from cane grown on land other than its own; that it, under its contracts, had the legal right to mill the cane as soon as it was delivered to the central; and that it sold its share of the sugar for its own account. That is all there is to the case and is all that is necessary to make the sales taxable under Section 1459, supra."—Judgment affirmed.—(In Banc, per Ostrand, J.)—(Johnson, J., concurs *pro hac vice* in separate opinion. Avanceña, C. J., Villamor, J., and Johns, J., dissent).—*Briefed by J. S. Nava.*

NATURAL CHILDREN—APPLICATION OF TRANSITORY PROVISIONS OF CIVIL CODE.—*Intestate of the deceased Pedro de Sala. Sinforoso de Sala vs. Generoso de Sala and Josefa Alabastro*, G. R. No. 27989, February 8, 1928. *Facts:* The petitioner Sinforoso de Sala asks for the liquidation of the estate of his father Pedro de Sala, deceased, and for the recovery of his alleged hereditary portion. This petition was opposed by Josefa Alabastro, as widow, and Generoso de Sala, a son of the decedent and half-brother of the plaintiff. It appears that Sinforoso de Sala is a natural son of the decedent and was born on June 17, 1879; while Generoso de Sala is a legitimate son of the decedent and was born on July 17, 1881. Pedro de Sala died in July 13, 1919. The plaintiff was recognized as natural son of the decedent in 1922 by an enforced judicial recognition. The right of the plaintiff to participate in the estate of his deceased father is based upon articles 134, 840 and 942 and No. 12 of the Transitory Provisions of the Civil Code. The contention of the defendants questioning the heritable right of the plaintiff is based upon No. 1 of the Transitory Provisions of the Civil Code. *Held:* A natural son born before the Civil Code went into effect but recognized under the regimen of said Code is entitled to the hereditary portion of his father's estate given him by said Code as against a half-brother-legitimate son of the same father—who was born before the Civil Code went into effect. No. 12 of the Transitory Provisions of the Civil Code is of exact and particular application and there is nothing in No. 1 of the Transitory Provisions which supplies any obstacle to the application of No. 12 to the facts of this case. "It will noted that, under No. 1, when there are two competing rights, one of which is given for the first time by the Code, the law looks to the acts in which the two competing rights may have originated, and when it is found that the facts which gave origin to the competing rights occurred prior to the adoption of the Code, the right newly recognized in the Code cannot be given effect, because prejudicial to the other right. In the case before us, while it is evident that the successional right of the legitimate son Generoso de Sala did not become vested until the death of his father, yet it is also clear that his right is derived from the fact which occurred under law anterior to the Code, namely, the fact that said son was born with the status of legitimate son. It is this right which originated the successional right of the heir. But with respect to the natural son, Sinforoso de Sala it is equally obvious that the act that gave

origin to his successional right was the enforced judicial recognition resulting from the civil action began by the plaintiff in 1917. This act occurred under the Code. In this connection it must remembered that the fact of birth does not give the natural child any heritable right whatever in the estate of his father. This is equally true of both the old and the new law. It is the recognition of the natural child that originated his right of succession, recognized for the first time in the Code. As a consequence, the two competing successional rights in this case do not have the same origin in respect to the state of law under which they occurred, since one had its origin in an act occurring under the anterior legislation while the other had its origin in an act occurring under the Code." (In Banc, per Street, J.)—*Briefed by E. Arévalo.*

ATTACHMENT OF PARTNERSHIP PROPERTY FOR DEBTS OF PARTNER.—*Agustin Jocson vs. Provincial Sheriff of Iloilo, Estrella Products Corp. and Donato F. Lim*, G. R. No. 28575, February 11, 1928.—*Facts:* Under contract of lease, the plaintiff, Agustin Jocson, had been farming and harvesting sugar on the hacienda "Naval" owned by Teodorico Jocson. The plaintiff had been delivering sugar to the Binalbagan Estate Inc. to be converted into sugar. On March 26, 1927, there remained in the bodega of the central a balance of 100.80 piculs of sugar to the credit of plaintiff. In the meantime the Estrella Products Corp. obtained judgment for a sum of money against Donato F. Lim for which an attachment was issued against the property of Lim. Lim claimed that the 100.80 piculs of sugar on deposit in the Binalbagan Central to Jocson's credit belonged to himself. The sheriff levied the attachment on said sugar. Agustin Jocson protested against this act and put in a third party claim. The sugar was seized and sold. Lim claims interest in the sugar in question alleging that he had been a partner with Agustin Jocson in the leasing and farming of the hacienda "Naval." The trial court declared this claim unfounded and found that said sugar was the property of the plaintiff. This action was instituted to recover damages for the appropriation and conversion of the sugar in question. *Held:* "We can discover no sufficient reason for disturbing this finding of fact, but even accepting Lim's contention as a fact it does not follow that the creditor of Lim can take in attachment specific property pertaining to the partnership. The remedy of the creditor would be to levy his execution upon the interest of Lim in the partnership and enforce a liquidation of the partnership in a proper proceeding. It is impracticable to enforce a liquidation of the partnership by mere levy of an attachment or execution against one or more partners upon specific property of the partnership." (2nd Division, per Street, J.)—*Briefed by E. Arévalo.*

LEASE CONTRACTS—STATUTE OF FRAUDS.—*Rosa Fojas et al., vs. Pantaleon Velasco*, et al., G. R. No. 28295, February 14, 1928. *Facts:* Defendants are the owners of a parcel of land situated on Calle Juan Luna, City of Manila. Beginning with the year 1916, plaintiffs have been occupying this land as lessees and as such, they took it upon themselves to construct camarines and a house of mixed materials on said land. On September 14, 1923, the defendants executed a contract of lease of the land in favor of plantiffs at a monthly rental of P43.00, payable at the end of each month, and without fixing the term of the lease. Thereafter, the lessees contend that the there was a modification of the contract

of lease extending the prior contract at the same amount for a period of ten years. At any rate, the defendants, gaining knowledge of this asserted right, on November 15 1926, notified the lessees that beginning with the month of January, 1927, the monthly rent would be raised to ₱100.00 a month. So plaintiffs brought this suit to have the Court order the defendants to execute a new contract of lease in favor of plaintiffs. The Lower Court dismissed plaintiffs' action. Affirmed. *Held:*

"1. *Contracts of Lease; Statute of Frauds; Code of Civil Procedure, Section 335 Construed.*—An oral agreement for a supplemental lease of real property for a longer period than one year is within the Statute of Frauds. An agreement to enter into an agreement is within the Statute of Frauds, and the promise is not enforceable unless the statute is satisfied. An oral agreement to execute a lease cannot be enforced.

"2. *Id.; Civil Code; Applicability of Articles 361 and 453 or of Articles 1573 and 487; Rights of Lessee on Termination of Lease.*—The right of a lessee who has been holding land under a rental contract is governed not by Articles 361 and 453 of the Civil Code but by Articles 1573 and 487 of the same code. Upon termination of the lease, the lessee is entitled to remove the improvements made by him, provided he leaves the property in substantially the same condition as when he entered upon it. (In Banc, per J. Malcolm.)—*Briefed by A. Sólidum.*

SALE OF PERFECTED HOMESTEAD, VALID.—*Buenaventura Balboa vs. Cecilio L. Farrales*, G. R. No. 27059, February 14, 1928. *Facts:* In 1913, plaintiff applied for homestead under the provisions of Act 926. In 1918, he submitted final proof, showing his residence upon, and cultivation of, said homestead, as well as his compliance with all the requirements of Sections 3 of said Act 926, which final proof was approved by the Director of Lands on February 15, 1918. On July 1, 1919, Act 926 was repealed by Act 2874, which prohibits the sale of homestead land during the period of five years subsequent to the issuance of the patent or certificate of title. On September 10, 1920, the homestead patent for said land was issued in favor of plaintiff by the Governor-General. On August 11, 1924, plaintiff sold the land to defendant. This action was brought for the purpose of having said sale declared null and void on the ground of lack of consent on the part of plaintiff and fraud on the part of the defendant, and on the further ground that said sale was contrary to, and in violation of the provisions of Section 116 of Act 2874. The Lower Court held that the deed of sale in question had been duly executed, but at the same time the Court declared that said deed was null and void, in view of the fact that it was executed before the lapse of five years from the date of the issuance of the certificate of title, in violation of the prohibition contained in Section 116 of Act 2874. Reversed. *Held:* "The moment the plaintiff had received a certificate from the Government and had done all that was necessary under the law to secure his patent, his right had become vested before the patent was issued. His right had already vested prior to the issuance of the patent, and his rights to the land cannot be affected by a subsequent law or by a subsequent grant by

the Government to any other person. (Herron vs. Dater, 120 U. S. 464). The delay in the issuance of the patent cannot affect the vested right of the homesteader."

"A perfected valid appropriation of public lands operates as a withdrawal of the tract from the body of the public domain and, as long as such appropriation remains valid and subsisting, the land covered thereby is deemed private property. A perfected homestead, under the law, is property in the highest sense, which may be sold and conveyed and will pass by descent. It has the effect of a grant of the right to present and exclusive possession of said land. A valid and subsisting perfected homestead, made and kept up in accordance with the provisions of the statute, has the effect of a grant of the present and exclusive possession of the land. Even without a patent, a perfected homestead is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is in the Government. Such land may be conveyed or inherited." (In Banc, per J. Johnson.)—*Briefed by A. Sólidum.*