PHILIPPINE LAW JOURNAL

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

Subscription P8.00 per year. Single number 60 centavos

Digest of RECENT DECISIONS of the Philippine Supreme Court

[In this column is presented a digest of current cases of general interest to practitioners. These decisions have not yet been published in the Official Gazette, and many of them, especially those rendered *in division*, will not so appear because not selected for official report.]

PLEADINGS—CO-OWNERS AS PARTIES.—*Jose Villaruz, Plaintiff and Appellee vs. Isidro Andrada, Defendant and Appellant. G. R. No. 34777. March 11, 1932. Facts.* By virtue of a power of attorney defendant's wife sold an unregistered land to the plaintiff. Later the land was subdivided into lots one of them being assigned to defendant and his wife. Plaintiff's motion for issuance of title to said lot in his name was denied. Hence this action. Defendant demurred but demurrer was overruled. *Held:* The court below erred in overruling defendant's demurrer because it appears in the original certificate of title that the wife of the defendant was a co-owner, and that, consequently she should have been joined as a party defendant or in case of death, her relatives entitled to inheritance should be joined as parties. (In Division, Per Ostrand, J.; Avanceña, C. J., Johnson, Villamor, Villa-Real, JJ., concur.)—*Abridged by* P. M. KATIGBAK.

NEGLIGENCE—LIABILITY FOR LOSS.—*Eulalia Feliciano, Plaintiff and Appellee vs. Maria Angeles Ramos et al., Defendants. Maria Angeles Ramos, Defendant and Appellant, G. R. No. 35683, April 25, 1932. Facts:* Action to recover the value of certain jewelry belonging to plaintiff and given to defendant for sale. The defense was theft. The trial court found that the jewelry was stolen thru a hole in a *tambique* from a sewing machine where defendant left it. *Held*: As the person who turned out to be the thief was not well known to her, the act of leaving the jewelry exposed within his reach was a negligence which rendered defendant responsible for the loss. (In Division, Per Street, J.; Malcom, Villa-Real, Imperial, J. J., conur) *Abriged by* P. M. KATIGBAK.

ATTACHMENT.—*Florentino E. Rivera vs. Adeodato Liboro et al., Defendants, Sy Piao Du Wai & Co., Defendant and Appellant, G. R. No. 35264, July 1, 1932. Facts*: Rosales

sold the lumber, consigned to him by Liboro, to Sy Piao Du Wat & Co. Of the sale there remained a balance of ₱425. Rivera obtained a judgment against Liboro for ₱425 and the defendant company was notified. Rosales obtained a judgment against the company for the balance. The company deposited the sum with the sheriff. *Held*: The sum deposited the company was the balance of the sale price, and was deposited by reason of the complaint of Rosales against it, and as compliance with the judgment in favor of Rosales. Said sum belongs to Liboro, and Rivera has a right to attach it. To avail himself of the provisions of Art. 276, par. 1. Code of Commerce, Rosales should have interpleaded and having failed to do so, the attchment of Rivera ought to prevail. (In Division, Per Villa-Real, J.; Avencena, C. J., Street, Malcolm, Villamor, J.J., concur) *Abriged by* P. M. KATIGBAK.

MORTGAGE—TO WHOM RENTS DURING REMDEMPTION PERIOD BELONG. —*El Ahorro Insular v. Yan Mi Cheong Co.; Felicidad Legaspi, intervenor-appellant, R. G. No. 35189, April 22, 1932.* This is an action to recover rent. As a defense, defendants allege that they had already paid the rent to the intervenor. It appears that the intervenor was the owner of the property as to which rent is sought to be recovered. She mortgaged the property to the plaintiff corporation and upon her failure to comply with the conditions of the mortgage, the mortgage was foreclosed, and the plaintiff bought the property at the sheriff's sale. The question arose: Who is entitled to the rent of the mortgaged property during the period of redemption, the mortgagor or the purchaser? *Held*: Under both Sec. 469 of the Code of Civil Procedure and Art. 1877 of the Civil Code, the purchaser, whether a third person or the mortgagee himself, is entitled to the fruits or rents of the porperty mortgaged during the redemption period. However, some difference exists between the two provisions cited. Section 469 of the Code of Civil Procedure permits the mortgagor, in case he exercises the right of redemption, to recover from the purchaser the rents and fruits collected by the latter during the period of redemption, while Article 1877 of the Civil Code does not. To the extent Art. 1877 of the Civil Code is modified by Sec. 469 of the Code of Civil Procedure. (In Division of Five, per Villamor, J.; Street, Malcolm, Villa-Real and Imperial, J. J., concurring.—*Briefed by* F. C.

CRIMINAL LAW—RETROACTIVITY—ART. 22 OF THE REVISED PENAL CODE INTERPRETED.—*Ananias Pineda v. Director of Prisons, R. G. No. 37113, March 29, 1923.* Petition for habeas corpus. Petitioner had been convicted of estafa, the amount involved being ₱3,560.20. Under the old Penal Code, this crime was punishable, applying the medium degree, by 1 year, 8 months and 21 days to 2 years, 11 months and 10 days of *presidio correccional.* The trial court imposed the minimum degree, i.e., 1 year, 8 months and 21 days, plus subsidiary imprisonment in case of insolvency. Under the Revised Penal Code, the same crime in its medium degree is punishable by 1 year and 1 day to 1 year and 8 months of *prisión correccional.* Petitioner, who began to serve his sentence on Sept. 2, 1930, now claims that if the more favorable provisions of the Revised Penal Code were to be applied to him in accordance with Art. 22 thereof then he ought to be set at liberty. The Attorney-General, representing the respondent, insists that

in giving retroactive effect to the provisions of the Revised Penal Code, the court should be guided by the extreme maximum of the penalty which can be imposed within the degree provided for, notwithstanding the application to the convict of the minimum or medium of the corresponding degree. *Held*: This contention is untenable. The new Penal Code retroacts not to new and different facts and circumstances but to identically the same facts and circumstances contemplated by the old Penal Code.

RECIDIVISM—COMPUTATION OF ADDITIONAL PENALTY UNDER ACT 3586.—*P. P. I. v. Lu Bon Hong, R. G. No. 35510, March 29, 1932.* The defendant was convicted of robbery upon a plea of guilt. In fixing the additional penalty to be imposed under Act 3586, the lower court took account of five previous convictions and the accused was given 21 years of imprisonment as additional penalty. *Held*: "* * * one of these convictions should not be estimated in assessing the additional penalty, in view of the fact that the last conviction for robbery was upon a crime committed before he was convicted in the next to the last case. It is established doctrine in this court that ,in order to be properly estimated under the Act mentioned, the several convictions must be successive upon offenses committed each after the next prior conviction. (People v. Santiago, R. G. No. 32456; People v. De la Cruz, R. G. No. 33786). It results that the additional penalty should be assessed as for a fifth conviction, and the appropriate additional penalty runs from 16 to 20 years." Additional penalty fixed at 16 years. (In Division of Seven or More, per Street, J.; Avanceña, C. J., John, Malcolm, Villamor, Ostrand, Romualdez, Villa-Real and Imperial, JJ., Concurring) —*Briefed by* F. C.

ESTAFA-EFFECT OF BOND UPON CRIMINAL LIABILITY.—*P. P. I. vs. Antonio Leachon, R. G. No. 36112, March 31, 1932.* The defendant was a salesman of the Manila Publishing Co., and to "secure the payment or reimbursement of any and all debts, damages, advances, costs, and expenses, etc." he executed a a bond in favor of the company. In the course of his employment, the defendant collected a certain sum which he misappropriated and converted into his own use. *Held*: The act constitutes estafa. The contention of the appellant that the bond executed by him has the effect of exempting him from criminal liability and makes him only civilly liable is untenable. The bond guarantees his civil liability only, but does not exempt him from criminal responsibility arising from the misappropriation or conversion of the money or property belonging to his principal.

(In banc, per Johnson: Avanceña, Street, Malcolm, Villamor, Romualdez, Villa-Real and Imperial, JJ., Concurring.)—*Briefed by* Q. MAKALINTAL.

NOTICE OF JUDGMENT—JUSTICE OF THE PEACE COURT.—*Isaias Obias vs. Rufina Baduria, and Leonilo San Buenaventura, R. G. No. 35644, April 19, 1932* In an action of forcible entry and detainer instituted in the justice of the peace court, notice of the judgment against the defendants was given to them in open court on November 22, 1930. No notice of the decision was given to the defendants by registered mail. November 27, 1930 being a holiday, the defendants filed their notice of appeal to the Court of First Instance on November 28, 1930, deposited the docket fee for the appeal on November 29, 1930, and filed the regular bond of appeal on December 2, 1930. The appeal was dis-

missed on the ground that it was not perfected within the period allowed by law. *Question*—What is deemed proper notice of the judgment of the justice of the peace for the purpose of computing the time for perfecting an appeal? *Held*: The justice of the peace court not being a court of record the notice of judgment given to the defendants in open court serves as proper notice to the defendants for the purpose of computing the time within which they are to perfect an appeal. (In Division of Five. Per Streeet, J., Malcolm, Villamor, Villa-Real, Imperial, J.J., (Concurring.)—*Briefed by* HECTOR BISNAR.

"ARM" WITHIN THE MEANING OF THE ELECTRICAL LAW.—*P. P. I. vs. Estanisloa Novilla, R. G. No. 35863, March 19, 1932.* On June 2, 1931, upon the occassion of the general election held in Alabat, Tayabas, the accused brought upon the polling grounds a 29-centimeter knife in the hip pocket of his trousers. He was arrested and prosecuted under the paragraph 3 of section 416 of the Election Law, as amended by Act 3387, which makes it unlawful to carry a firearm "or any kind of arms", within a distance of fifty meters of any polling place during voting time. The question here presented is whether the knife is an arm within the meaning of this provision. *Held*: The purpose with which the instrument is brought upon the polling grounds is immaterial. The knife in question is of a kind not infrequently in use among the mass of the people in his country, and although it can be used, and is used, for many lawful purposes, nevertheless the same instrument is not infrequently used with deadly effects. It should in our opinion be considered an arm within the meaning of the law.

(In division, per Street: Malcolm, Villa-Real, Romualdez and Imperial, J.J., Concurring.)—*Briefed by* Q. MAKALINTAL.

LIABILITY FOR INTERLOCUTORY COSTS AND EXPENSES.—*The Province of Pangasinan vs. Anastacio Viloria, et. al., R. G. No. 25688, April 25, 1932.* In an election contest, the judgmentn against the protestee to pay the costs and expenses of the protest could not be executed, for the protestee possessed no leviable property. Action is brought against the successful protestant and his sureties on the bond filed for the protest to recover the costs and expenses of the protest. *Question*: Whether a separate action is maintainable against the protestant and his sureties on the bond where there has been a failure to insert in the judgment against the protestee a provision holding said protestant and his sureties liable on the failure of the protestee to pay said costs and expenses. *Held*: It is a well-known rule of jurisprudence that in the absence of a especial statute authorizing it, and independent action is not maintainable for the recovery of interlocutory costs. (In Division of Five. Per Street, J., Malcolm, Villamor, Villa-Real, Imperial, JJ., Concurring).—*Briefed by* HECTOR BISNAR.

WILL—INTERPRETATION OF ATTESTING CLAUSE.—*Testament of Custodio Celestino, Hilarion de Guzman vs. Ciriaco Celestino, R. G. No. 35273, April 25, 1932.* The will of Custodio Celestino presented for probate contained the following attesting clause: "Declared and signed by the testator as his last will or testament in the presence of all and each one of us three, which at the request of said testator all and each one of us signed the said testament in the presence of all and each one of us in that of the testator, at the

bottom of this testament, and at the left hand margin of all and each of the four sheets of which the testament is composed". *Question*—Whether this attesting clause complies with the requirements of section 618 of Act. 190 as ammended by Act. No. 2645 which provides in part as follows: The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the three witnesses, and the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of each other. *Held*: The attestation in question is sufficient. Where by the construction of the sentence, the phrase" at the bottom of the testament, and on the left hand margin of all and each one of the four sheet of which the testament is composed refers both to the signature of the testator and those of the attestinng witnessess, the attestation complies with the requirements of the law. (In Division of Five. Per Villa-Real J., Street, Malcolm, Villamor, Imperial, JJ., Concurring).—*Briefed by* HECTOR BISNAR.

COURT ACTION ON AGREEMENT OF PARTIES LITIGANT.—*Luis Baquing and Others vs. Cipriana Surla, as administratrix of the intestate of Mónica de Dios Ricarfort, R. G. No. 25282, April 15, 1932.* In a cadastral proceeding involving lots Nos. 1884 and 1986 an agreement of the parties presented to the Court of First Instance was of the following tenor: That lot No. 1884, be adjudicated exclusively in favor of Monica de Dios Recafort, Luis Baquing and others withdrawing their claim over the same, and that lot No. 1986 be divided into two equal parts, one-half to be adjudged to Monica de Dios Ricafort and the other half to Luis Baquing and others. The court, in disregard of this agreement, on May 12, 1919 adjudicated one-half of lot No. 1884 to Monica de Dios Ricafort and the other half to Luis Baquing and others. Lot No. 1986 was adjudicated in the same manner as lot No. 1884. After a new trial on motion of Monica de Dios Ricafort the court on January 5, 1921 ammended its decision of May 12, 1919 and rendered a judgment in accordance with the agreement of the parties. From this judgment Luis Baquing and others appealed. *Question*: Has the court jurisdiction to render a judgment ignoring an agreement of the parties of a nature in the instant case? *Held*: The agreement of the parties presented in open court for the purpose of terminating a controversy between the parties, is a judicial transaction in accordance with article 1809 of the Civil Code, and is binding on the parties as an adjudicated matter in accordance with article 1816 of the Civil Code, and at the same time binding on the court. Hence the court was without jurisdiction to render its judgment of May 12, 1919. (In Division of Five. Per Villa-Real, J., Street, Malcolm, Villamor, Imperial, JJ., Concurring). —*Briefed by* HECTOR BISNAR.

LAWYER AND CLIENT—ABANDONMENT OF CLIENT AS CAUSE FOR SUSPENSION OR EXPULSION.—*In re J. F. Yeager, Administrative Case No. 516. March 28, 1932.* Lorenzo Catalan employed Attorney J. E. Yeager to handle the appeals in the Supreme Court in three criminal cases in which Catalan had been convicted in the lower court. Attorney Yeager received from Catalan the sum of ₱1,700.00, ₱1,200.00 of which was for professional services to be

rendered, ₱400.00 for the transcription of stenographic record, and ₱100.00 for the printing of the briefs. The appeals in these cases were dismissed in the Supreme Court through the failure of counsel to file the briefs. Notwithstanding repeated demands made on Attorney Yeager, the amounts received by him not have been returned to his client. The reasons offered by the attorney during the investigation for thus abandoning his client are entirely unsatisfactory in nature. *Held*: The abandonment of a client in violation of the attorney's contract ignores the most elementary principles of professional ethics. It is the order of the court that Attorney J. E. Yeager be suspended from the practice of his profession as a lawyer for a term of one year, with the privilege after the expiration of three months, to make a showing of reimbursement of the client of the moneys received, and to make application for reinstatement as a member of the Philippine Bar. (In banc, per Malcolm, J., concurring, Avanceña, C. J., Street, Villamor, Ostrand, Romualdez, Villareal, Imperial, JJ.) *Briefed by* W. VINZONS.

CRIMINAL LAW—ROBBERY—ELEMENT OF ENTRANCE.—*P. P. I. vs. Cecilio Profeta, G. R. No. 35749, March 3, 1932.* Silvestre Ramos lived in the house of Celilio Profeta. Ramos was the owner of jewelry and money which he kept in a tin can which he placed in a bag locked with a key from which parted possession. The tin can in the bag were hidden in a cupboard of the house. One day, having missed the bag, Ramos began a search and found it opened in an isolated hut. Later the jewelry was discovered in a shop of one Sopoco where it had been taken by Profeta, owner of the house. Profeta's explanation was that the jewelry really belonged to a daughter of Ramos, but that after her death the father took the jewelry, and that he, Profeta was only acting for the husband in recovering the jewelry. Was the crime of robbery committed by the owner of the house unlawfully breaking into a bag of a person living in the house and abstracting the contents of the bag? *Held*: Although there is no exact precedent, we think that the questions must be answered in the affermative. Article 508 of the Penal Code relates to robbery committed in an inhabited house, and its counter part is now to be found in article 299 of the Revised Penal Code. These provisions contemplate the cases of malefactors who shall enter the house or building by any of the means outlined, including the breaking of wardrobes and chests. The article is rendered clear in the Revised Penal Code by a division into (a) and (b). On the other hand, article 512 of the Penal Code relates to robbery committed in an uninhabited place or building. We incline to the view that article 508, number 5, in relation to article 512, number 512, number 4, article 299 (1) and 2, paragraphs 4, are applicable. Judgment affirmed. (In division, per Malcolm, J., concurring, Avanceña, C. J., Street, Romualdez, Imperial, JJ.) *Briefed by* W. Q. VINZONS.

WILLS AND ADMINISTRATION—EXPENSES OF EXECUTOR TO SECURE A BOND NOT CHARGEABLE AGAINST THE ESTATE.—*Estate of deceased Fruto Santos, Macario Sulit vs. Fausta Santos et al, oppositors and appellees, G. R. No. 34895, March 15, 1932.* Appeal from order of the Court of First Instance disallowing certain items of the account rendered by the executor of the estate of the deceased Fruto Santos. A le-

gal question which has not been heretofore decided in this jurisdiction is presented, and is whether the expenses incurred by an executor or administrator to procure a bond is a proper damage against the estate. The trail judge refused to permit the executor to secure reimbursement from the estate for money paid as premium on the bond filed by him as special administrator and for the preparation, filing, and substitution of his bond as such and as executor of the estate, all totalling ₱173.95. *Held*: *The* case of Testamentaria de la Finada Felipe Alonso y de Mesa, Trusteeship of the Instituto Burgos, Luis Lauchengco vs. Vicente Reyes, R. G. No. 24699 was a case in division which related to the construction of a well in determiinng if the premium for the bonds and Atoorney's fees should be allowed, and so is neither in point nor controlling in this instance. The position of an executor or administrator is one of trust. In fact, the Philippine Code of Civil Procedure so mentions it. It is proper for the law to safeguard the estate of deceased persons by requiring the executor or administrator to give a suitable bond. The ability to give the bond is in the nature of a qualification for the office. The execution and approval of the bond constitute a condition precedent to acceptance of the responsibilities of the trust. If an individual does not desire to assume the position of executor or administrator, he may refuse to do so. On the other hand, when the individual profers an adequate bond and has it approved by the probate court, he thereby admits the adequacy of compensation which is permitted him pursuant to law. It would be a very far-fetched construction to deduce that the giving of a bond in order to qualify for the office of executor or administrator in a necessary expense in the care, management, and settlement of the estate within the meaning of section 680 of the Code of Civil Procedure, for these are expenses incurred after the executor or administrator has met the requirements of the law and has entered on the performance of his duties. Expenses not allowed. Judgment affiremd. (In division of 7 or more per Malcolm, J., concurring, Avanceña, C. J., Johnson, Street, Ostrand, Romualdez, JJ.) Dissenting: It is evident from the provision of section 680 of the Code of Civil Procedure that by the expenses of administration must be understood those which redound to the benefit of the estate and for its care and conservation and to prevent deterioration. The bond is undoubtedly given by the administrator or executor for the benefit of the estate as the same responds directly for the faithful compliance of the charge or for the good care, custody, and conservation of the estate. The class and finality of the payment must be the determining factor in charging the estate for the same. (Per Imperial, J., Concurring Villamor, Villareal, JJ.)
Brieged by W. Q. VINZONS.

BOOK REVIEW

HUMAN STERILIZATION. (The history of the sexual sterilization movement) By J. H. Landman. Mcmillan Co.: New York, pp. XVIII + 341.—As stated in the above title the author attempts with creditable success to present a clear, concise and comprehensive history of the growing sexual sterilization movement, particularly with reference to the prevailing conditions in the United States.

The actual progress of human sterilization in that country as presented by the writer is certainly creating an interesting question as to the importance of the measure within the contemplation of the American legislators and sociologists as well. The author cites over 12,000 people that have already been sterilized under the present laws in the United States and that 27 states of the Union have already sterilization legislation in actual force.

The approach of the author on this subject-matter is therefore a justified one, and it reflects the growing literature and all modern views and practice on the relationship of the human sterilization to the present legislative, judicial and scientific activities. The practice of human sterilization by harmless medico-surgical methods are likewise well described in the book, pointing out their consequences and practical significance as preventive and protective means against human deterioration as it has been heretofore advocated by modern eugenists.

As to whether or not the betterment of the human race should be accomplished mainly by means of human sterilization, in response to the modern eugenic and sociologic dealing with the study of all the causes that improve or impair the propagation of human specie, the author is herewith quoted saying that,

> This book is not designed as propaganda either for or against the program of human sterilization. It purports to be a scholarly and scientific treatment of the available data on the subject. The conclusions are not final but suggestive. What the question of cacogenicity, which is the crux of the entire problem of human sterilization, requires is more science than propaganda, and more research than speculation.

The book includes within its covers the following topics, to wit:

PART I—EUGENICS AND SOCIAL LEGISLATION.

Chapter I—The Eugenics Movement.

Chapter II—Statistics of the Mentally Incompetent People of the United States.

Chapter III—The History of Human Sterilization in the United States.

PART II—HUMAN STERILIZATION AND THE COURTS.

Chapter IV—Three Landmark Legal Decisions on Human Sterilization.

Chapter V—The Present Legal Status of our Human Sterilization Laws.

Although the idea and practice of human sterilization are not new, yet heretofore there are no sufficient reliable information and understanding concerning it; hence, the high significance of a scientific treatise of this nature and particularly of the statistical data on the alarming growth of undesirable people of the United States population and on the extent of the application of the human sterilization.