# PHILIPPINE LAW JOURNAL

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

Subscription P6.00 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.]

ATTORNEY AND CLIENT—BREACH OF TRUST AND MISSAPPROPRIATION OF CIENT'S FUNDS, GROUND FOR SUSPENSION.—*Domingo Aya vs. Juan Bigornia—Per. Rec. No. 1712 July 26, 1932.*—The respondent Bigornia was attorney for Aya in a certain civil case in which, as such attorney, Bigornia obtained judgment in Aya's favor for the sum of P1,000.00. Bigornia caused an execution to be issued, and collected all the money due on the judgment. Despite repeated demands on Aya's part, Bigornia failed to remit part of the amount so collected. *Held*:—Attorney Bigornia was guilty of a breach of trust and misappropriation of funds. Moneys collected by an attorney on a judgment in favor of his client are trust funds and should be immediately paid over to the client; less such proper deductions as may be allowed by law. In this case, there was gross abuse of trust, and respondent is suspended from the practice of law for six months.

(In banc, per Butte, J.; Avanceña, Street, Malcolm, Villamor, Ostrand, Villa-Real, Santos, Hull, Vickers, Imperial, JJ. Concurring.) *Briefed by* Q. MAKALINTAL.

PERJURY—INTRODUCTION OF FALSE DOCUMENT AS EVIDENCE—*P. P. I. vs. Pe Bon Uy, G. R. No. 36425, July 21, 1932.*—The accused herein, Pe Bon Uy, was defendant in a certain criminal case for estafa, and as such defendant, he caused a false document to be prepared, which he presented at the trial of the case to prove an alibi, knowing the contents of the document to be false, and testified that they were true. He was prosecuted for perjury under Art. 325 in relation with Art. 320 of the old Penal Code. *Held*:—That the defendant is guilty of perjury, not under Art. 325 in relation with Art. 320 of the Penal Code, those two articles having been repealed by Act No. 1697, but under Section 3 of the latter Act. Although said Act was repealed by

the Administrative Code, the provision of the Administrative Code repealing it was itself repealed by Act 2718, effective March 17, 1917, which revived section 3 and 4 of Act No. 1697.

(In division, per Vickers, J. Street, Hull, Villa-Real, Imperial, JJ. concurring.) *Briefed by* Q. MAKALINTAL.

---

CERTIORARI—HEARING BEFORE PUBLIC SERVICE COMMISSION.—*Bohol Land Transportation Co. vs. Public Service Commission, G. R. No. 35294, July 25, 1932.*—The Bohol Land Transportation Co., petitioner, and Jureidini have both been granted the privilege of operating buses over the same route, but Jureidini's hours are fixed while the petitioner had permission to dispatch its buses without restriction. The petitioner operated its lines in such a way as to prejudice Jureidini. The The Public Service Commission, upon complaint of Jureidini, ordered the Company to adopt a fixed schedule for the trips of its buses. Notice was served upon the petitioner, and the order in question was made upon its answer, without any hearing. Hence this petition for a writ of certiorari. *Held*:—A formal hearing and notification to the parties is not necessary in such a matter. The Commission has the power to investigate, *de oficio* or in virtue of a written complaint, any matter concerning any public service and the order was of such a character that could be made at chambers upon the answer of the entity against whom the order was entered.

(In division, per Street, J.: Villa-Real, Hull, Vickers, Imperial, JJ., concurring.) *Briefed by* Q. MAKALINTAL.

CRIMINAL PROCEDURE—PRELIMINARY INVESTIGATION—PRESCRIPTION OF CRIMES AGAINST THE ELECTION LAW, —*P. P. I. v. Nalangan, R. G. Nos. 36880 etc., Aug. 2, 1932.*—Facts: The illegal acts of the defendants were known from June 5, 1928, the day of the election. The informations were filed May 3, 1932. After examining the information in each case, the Court of First Instance issued the warrant of arrest and trial was had. *Held*: Although it was held in People v. Solon, 47 Phil. 443, that it is not necessary for a judge of the Court of First Instance to make a further investigation after the arrest of the accused, it is not to be inferred therefrom that he may entirely dispense with the preliminary investigation. In the Solon case, the trial judge examined the complaining witness under oath before issuing the order of arrest. Nothing of the sort was done in the present case; neither was there any waiver of the preliminary investigation by the accused. Besides, in accordance with Sec. 2660-1/2 of the Election Law, the offenses charged have already prescribed. Defendants acquitted. (Second Division, per Vickers, J.; Street, Villa-Real, Hull and Imperial, JJ., concurring.) *Briefed by* F. C.

---

CIVIL PROCEDURE—WITNESS' FEES IN ELECTION CONTESTS—REVIEW OF EVIDENCE.—*Hermogenes Santiago v. Timoteo Ignacio, R. G. No. 36060, Aug. 3, 1932.*—By an unappealed judgment of the Court of First Instance, the election protest filed by Santiago was dismissed with costs against him. The protestee offered no testimony although attending at the trial at his request but not subpoenaed were witnesses whose fees for mileage and attendance were afterwards taxed by the court against the protestant. From this taxation, the protestant appealed

without however previously filing a motion for a new trial. *Held*: Since the Election Law, Sec. 482, provides that costs and expenses are taxed and collectible as a "judgment", in order for the Supreme Court to examine the evidence, the appellant should file in the lower court a motion for new trial based on the insufficiency of the evidence in accordance with the procedure in ordinary civil actions. In this case therefore the trial judge's findings of fact must be accepted. Fees for attendance and mileage of witnesses who are not subpoenaed, summoned, sworn, examined, or called to testify are not taxable in election cases against the losing party. Such witnesses, not having placed themselves subject to the order of the court, could have departed at pleasure and the party at whose request they attend is alone responsible for them. In fact, such persons, properly speaking, are not witnesses since no evidence is given by them in the trial. Fisher v. Burlington, G. R. & N. Ry. Co., 73 N. W. 1070. Bill of costs reduced. (First Division of Six, per Malcolm, J.; Avanceña, C. J., Villamor, Ostrand, Abad Santos and Butte JJ. concurring.) *Briefed by* F. C.

---

FORCIBLE ENTRY AND DETAINER—JURISDICTION OF THE JUSTICE OF THE PEACE.—*Saniel & Cabiling v. Horilleno et al., R. G. No. 37380, Aug. 1, 1932.*—Original petition for certiorari. Respondents were plaintiffs in a "desahucio" action in which the defendants, petitioners here, were alleged to have failed to pay the rent in accordance with the terms of the lease by virtue of which they held possession of the land in question. On appeal to the Court of First Instance the defendants introduced for the first time as a defense the question of usury and claimed that the lease was a fictitious document. Based on this defense, petitioners claim that the justice of the peace court had no jurisdiction and therefore the Court of First Instance was likewise without jurisdiction to head and determine the case presented. The Court of First Instance refused to dismiss the case and hence this petition. Without adverting to the change in the theory of the defense, the Supreme Court *Held*: Sec. 68 of Act 136, as amended by Sec. 3, Act 1627, Act 2041, and finally by Act 3764, provides that a justice of the peace may receive evidence upon the question of title to lands involved in *desahucio* cases solely for the purpose of determining the extent and character of possession and damages for detention. The Court of First Instance did not act in excess of its jurisdiction in refusing to dismiss the case. Writ denied. (In banc, per Hull, J.; all concurring.) *Briefed by* F. C.

---

CHATTEL MORTGAGE—FAILURE TO REGISTER SALE.—*The Manila Overland Sales Company Ltd., vs. Alejandro Pagalar & Sepriaba Abue, G. R. No. 36040, July 20, 1932.*—Judgment was rendered in the Court below in favor of the defendant. Upon examing the record on appeal, it was found that the depositions and affidavits had been transmitted with the records but that the stenographic record was not transcribed.

Question: What is the effect of an appeal to the Supreme Court if the records disclose that the stenographic notes had not been transcribed?

*Held*: It is a well settled practice that whenever cases of this kind happen, the Supreme Court is forced to accept the findings of the lower court, the only qualification being to ascertain whether such findings of fact are legally sustainable.

Where the personal properties enumerated in a chattel mortgage are sold at public auction by a sheriff, the failure of the latter to inscribe in the registry of deeds the report of the sale as required of him by law is not a mandatory provision as to nullify the sale and defeat thereby the right of the judgment creditor.

(In division. Per Malcolm, J., Villamor, Ostrand, Abad Santos and Butte, JJ., Concurring. *Briefed by* BENJAMIN GOZON.

---

BOND—FORFEITURE.—*P. P. I. vs. Tan Kee Kow @ Tan Ho Lee. Sheik Asubakar & Salim Asubakar, Sureties, G. R. No. 35760, July 26, 1932.* —The appellant sureties filed a bond in favor of the people of the Philippine Islands on condition "that the defendant will apear and answer the charge above-mentioned in whatever court it may be tried and will at all times hold himself amenable to the orders and process of the court". On the date of the trial, the defendant failed to appear and the judge ordered his arrest and the forfeiture of the bond, giving the sureties 30 days within which to produce the body of the accused and to show cause why the bond should not be executed. Notwithstanding the said notice, the sureties appeared only four months thereafter alleging that the accused fled to a foreign country. The lower court ordered the confiscation of the bond, and from that order, the defendants appealed. *Held*: Where the accused, who is on bail, fails to appear on the date of the trial and the sureties were given the reglamentary period of 30 days within which to produce the body of the accused and to show cause why the bond should not be confiscated, it is no error for the court below to order the confiscation and execution of the said bond at the request of the fiscal. To enforce the bond, it is not necessary to bring a new action or that an ordinary action be brought for this purpose. (U. S. v. Carmen, 13 Phil. 455, People v. Lorredo 50, Phil. 209, cited.)

(In division. Per Ostrand, J., Avanceña, C. J., Malcolm, Villamor, Abad Santos and Butte, JJ., concurring.) *Briefed by* BENJAMIN GOZON.

---

CRIMINAL LAW—JURISDICTION—EFFECT OF THE REVISED PENAL CODE.—*P. P. I., Plaintiff and Apellant vs. Damian Tolentino R. G. 36824, Aug. 1, 1932.*—The defendant was accused of estafa for the sum of ₱152.50 in an information filed in December of 1931. The court in its own motion dismissed the case on January 7, 1932, on the ground that since the Revised Penal Code had become effective and Art. 315, paragraph 4, thereof prescribes the penalty of *arresto mayor* for estafa of any sum not exceeding ₱200.00 the Court of First Instance had no longer jurisdiction over the case. The crime described in the information is within the jurisdiction of the justice of peace according to the Revised Penal Code and that since the provisions are favorable to the accused as to the penalty they have a retroactive effect. *QUESTION*: Has the Court of First Instance jurisdiction to hear and decide the case ,wihch was filed before The Revised Penal Code became effective? *Held*: The Court of First Instance did not lose jurisdiction over the case. The provisions of the Revised Penal Code have a retroactive effect as to the penalty to be imposed when it is favorable to the accused, but do not affect matters of procedure in cases filed before the Revised Penal Code became effective. (Per

Vickers, J, Street, Villa-Real Hull, Imperial, JJ., concurring.). *Breifed by* J. P. DE LEON.

---

NOTICE OF APPEAL—HOW IT MAY BE PRESENTED.—*Emilio Yangco vs. Buenaventura Ocampo, Judge of First Instance of Nueva Ecija, G. R. No. 37171, July 18, 1932.*—Mandamus to compel respondent judge to admit petitioner's notice of appeal from a judgment finding him guilty of estafa. The notice of appeal, addressed to the clerk of court, was sent by registered mail, and deposited in the mail box rented by the court within fifteen days after the receipt of the judgement by the petitioner. *Held*: A notice of appeal in a criminal cause sent by registered mail addressed to the clerk of court and deposited during office hours in the mail box rented by the court amounts to a presentation to the clerk himself and is a substantial compliance with section 45 of General Orders No. 58. Writ granted. (In division of seven or more. Per Villa-Real, J., Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Santos, Hull, Vickers, Imperial, Butte, JJ, concur.) *Briefed by* E. FERNANDEZ, Jr.

---

IMMIGRATION—POWER OF THE COURT TO REVISE FINDINGS OF FACT MADE BY CUSTOMS AUTHORITIES—DETERMINATION OF RELATIONSHIP.—*Felipe Mesa v. Collector of Customs, R. G. No. 35672, July 20, 1932.—Habeas* corpus. Alleging himself to be the minor son of F. Mesa, who is a Filipino citizen, Ng Chok sought to gain admission to these islands. The board of special inquiry, after hearing the evidence, denied Ng Chok's application. This decision was affirmed by the Collector of Customs. Petition for habeas corpus was made to the Manila Court of First Instance which decided that the evidence presented before the board of special inquiry conclusively established the right of Ng Chok to enter as the minor son of F. Mesa. Appeal. *Held* Questions of fact are left to the determination of the customs authorities who, in such cases, act as a jury, and their findings, as long as they are supported by *some* evidence, however weak, are conclusive and will not be disturbed by the courts. The relationship between Ng Chok and F. Mesa is a question of fact properly determinable by the customs authorities and their findings in this regard should not have been set aside by the Court of First Instance. Writ denied. (First Division, per Villamor, J.; Malcolm, Ostrand, Abad Santos and Butte, JJ., concurring.) *Briefed by* F. C.

---

ELECTION PROTEST—ANNULMENT OF AN EECTION ON GROUNDS OF IRREGULARITY.—*Luis Macandog v. Manuel Pelayo, R . G. No. 36370, Aug 1, 1932.*—Appeal from an order of the court annulling *in toto* the election for municipal president in Pili, Camarines Sur. In the general election of 1931 for municipal president, Manuel Pelayo was declared elected by a vote of 302 as against 268 for his opponent. Macandog thereupon filed a protest, and upon hearing, the court annulled the election by reason of certain irregularities which he found had taken place in precinct No. 4 of the said municipality. The alleged irregularities found by the judge were that many people flocked to the polling place and the booths, thus permitting the perpetration of fraud, that at the door of the polling place certain political leaders were posted by the Democrata Party in order to influence the independent judgment of the voters: and that the voting place was not according to law. These

findings, however, were not supported by the transcript of the record. However, for the purpose of justifying the action of the trial court, were the irregularities such as to justify the annulment of the election? *Held*: The power to throw out an entire election should be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been so prevented by violence, intimidation, and threats from exercising their franchise. (Demetrio v. Lopez, 50 Phil. 45; Cailles v. Gomes, 42 Phil. 496) Judgment reversed.

(Per Street; In Division of Five, with Villa,Real, Hull, Vickers, and Imperial. JJ., concurring.)

---

LAND REGISTRATION LAW—PETITION FOR REVIEW OF DECREE OF LAND REGISTRATION.—*Perfecto Manaual et al v. Rufino Casco et al, and Director of Lands, G. R. No. 35642, July 21, 1932.*—Appeal by the Director of Lands to reverse an order of the Court in a land registration proceeding, whereby the Judge dismissed a proceeding for the revision of a Torrens title in the name of the petitioners Manaual and his children on the ground of fraud. In 1914, the Manauals applied for the registration of a parcel of land of over 128 hectares, and judgement was rendered in their favor despite the opposition of the Director of Lands and several homesteaders, the extent of 57 hectares, 45 ares, and 37 centares. But the decision did not segregate the land adjudicated to the petitioners; so in a subsequent decision affirmed by the Supreme Court, a survey was ordered, which so run as to include the land and improvements of the homesteaders. A decree was issued pursuant to this survey plan, and so a petition for review on the ground of fraud was presented in due time of one year from the entry of registration. On Feb. 21 1931, however, upon motion of the Manauals, the petition for review was dismissed, on the idea that the allowance of this revision would contravene the original decree of adjudication affirmed by the Supreme Court. From this dismissal, this appeal was taken by the Director of Lands, alleging that such action was contrary to law.

*Held*: The irregularity and fraud which is supposed to vitiate the decree of registration did not occur in the original case, but occurred in the course of the carrying out of the original decree into effect, namely, the drawing of the survey plan and awarding accordingly to said plan. It results that the granting of the revision did not at all impugn the terms of the original judgment. The trial Judge should have given a hearing on the merits.

ORDER REVERSED.

(Per Street; In division of five; with Villa-Real, Hull, Vickers, and Imperial, concurring.)

---

APPEALS—EFFECT OF NON-COMPLIANCE WITH SECTION 76 of Act No. 190, as AMENDED BY ACT 3615.—*Richard Sherman v. Antonio Horilleno, Judge and Herman Schuck, G. R. No. 37372, July 26, 1932.*—Application for mandamus to compel the respondent Judge to annul his orders dismissing petitioner's appeal, and to allow said appeal. An original action was instituted in the justice of the peace by Schuck, against the herein petitioner, in which judgment was ren-

dered in favor of Schuck. Within the period authorized by law, an appeal was made to the Court of First Instance, which was dismissed on the ground that the petitioner had not complied with Sec. 76, C.C.P., as amended by Act 3615. *Held*: The provisions of Section 76, C.C.P., as amended,, lay down the requisites for the perfection of appeals in civil cases, and must be followed. Failure to comply with said provisions would result in the dismissal of the appeal. The dismissal of the appeal would constitute a final disposition of the legal proceedings of the case. Writ denied. (Mejia v. Alimorong, 4 Phil. 572).

(Per Hull, in Division of seven, with Avanceña, Street, Malcolm, Villamor, Ostrand, Villa-Real, Santos, Concur.)

---

ADULTERATED OR MISBRANDED FOOD —SECTION 1111, ADMINISTRATIVE CODE.—*The People of the P. I. plaintiff and appellee vs. Manuel Blas, defendant and appellant, G. R. No. 35405, April* R, *1932.*—The defendant, a baker, is accustomed to prepare and sell bread and cake commonly known in the local trade as "*masa podrida*". He does not use eggs in the making of this bread, but uses instead thereof the product margarine which imparts to the bread a yellowish tint similar to that resulting from the use of eggs. The appellant does not make any representation to the public or to his customers that eggs are used. It is proved that margarine is a food product of an acceptable character in itself, but, considered as an ingredient of bread, it is of inferior quality to eggs. Is the act of the defendant a violation of sec. 1111 of the Ad. Code which declares that it is unlawful to manufacture "any adulterated or misbranded article of food or any adulterated or misbranded drug," taken in connection with sec. 1115 of the same Code which provides that an article of food shall be deemed to be "adulterated", "if it be mixed, colored, powdered, coatted or stained in a manner whereby damage or inferiority is concealed?" *Held*: Under the facts of the case, the defendant is not guilty of any infraction of the law. The circumstance that the product made with margarine as an ingredient has about the same color as it would have if the yellow of eggs were used, does not make the product manufactured with margarine an unlawful or adulterated food. Otherwise, no useful ingredient could be used in the manufacture of foodstuffs if a superior ingredient imparting the same color could be, or has been, commonly used in the manufacture of a similar product. In People vs. Buhain, R. G. No. 35598, in which we have held that the use of coloring matter in bread to impart the same color as eggs is unlawful, there was no proof as to the character of the coloring matter. It was incumbent on the accused to rebut the presumption resulting from that fact and to prove the true character of the colorant. Circular No. 3 of the Board of Food Inspection (December 18, 1923) should be interpreted to refer to colorants only which are not in themselves proper constituents in the manufacture of food product. Reversed. (Per Street, J., Villamor, Villa-Real, Imperial, JJ., concurring; Malcolm, J., dissenting.)—*Briefed by* W. Q. VINZONS.

---

MARRIAGE—DAMAGES FOR BREACH OF CONTRACT.—*Eduardo Platon and Felipe Platon, plaintiffs and appellants vs. Venancio Salumbides et al., defendants and appelles, G. R. No. 35588, April 20, 1932.*—Felipe Platon, while yet a minor, courted Lour-

des Belante, also a minor, and obtained her consent to marry, to which the mother and stepmother of the girl, it is alleged, also assented, but requiring as a condition precedent that the suitor and his parents should remove from their house and come to the town where the girl resided. Plaintiffs agreed, and in the town of the girl, both suitor and his father rendered personal services in the house of the defendants without remuneration and buying for the intended bride clothes and flowers. When time set for marriage arrived, defendants refused to fulfill promise of marriage. Action for damages. Demurrer on insufficiency of cause sustained by lower court. Appeal. *Held*: Complaint states in part an insufficient cause of action and in part a good cause action. Damages incurred in selling property and and livestock preparatory to removal not recoverable as speculative and remote. But compensation can be recovered for services rendered and value supplied in consideration of promise. (Garcia vs. Del Rosario, 33 Phil. 189; Domalagan vs. Bolifer, 33 Phil. 471). Reason: To prevent the unjust enrichment of party who has failed to comply with contract. Art. 44 of the Civil Code, which requires that the agreement to marry be evidenced by a public or private document, as a condition precedent to the reimbursement of expenses, is not in force in this jurisdiction Art. 1326 declaring that any agreement made in a contract of marriage, in contemplation of future marriage, shall be void and of no effect in case marriage does not take place, is not against the action. The obligation to compensate results from the very fact that the marriage does not occur. As to the existence of a custom in certain parts of the country for the suitor to go to the home of the girl and render personal services to show his good faith and worthiness, it is incumbent on the defendants to prove that such services are intended to be gratuitous. (Per Street, J., Malcolm, Villamor, Villa-Real, Imperial, JJ concurring.)—*Briefed by* W. Q VINZONS.

---

ELECTION PROTEST—LIABILITY FOR COSTS OF SUCCESSFUL CONTESTANT AND SURETIES.—*La Provincia de Pangasinan. plaintiff and appellee vs. Anastacio Viloria et al., defendants and appellants, G. R. No. 35688, April 25, 1932.*—In the June, 1919, general election, Viloria and Aurellano were candidates for vice-president. Aurellano was declared elected. Viloria contested election, giving bond with two sureties, the latter, according to the terms of the bond, to answer for costs and expenses for which their principal should be held liable by the court. The contestant, Viloria, was declared elected, and judgment was rendered ousting Aurellano and requiring him to pay costs and expenses of the contest. Execution was fruitless because the debtor had no leviable property. Ten years later, April 10, 1930, present action was instituted by the province against Viloria and the two sureties on his bond for costs and expenses. *Held*: Costs and expenses are an inseparable incident of the contest and provision should have been made in the judgment entered in the contest case, for the payment of those expenses by the successful contestant, Viloria, in the event that the unsuccessful party could not pay. "In the absence of a special statute authorizing it, an independent action is not maintainable for the recovery of interlocutory costs." (15 C. J. 298). The right to recover these expenses has been, there-

fore, lost by the failure to have appropriate provision made for their payment by Viloria in the eventuality that has occurred. As to the surety, judgment cannot be maintained. Where recourse is lost against the principal by the negligence of the creditor, the surety is discharged. It is not necessary to decide the validity of the limitation contained in the bond. Reversed. (Per Street, J., Malcolm, Villamor, Villa-Real, Imperial, J.J., concurring.) *Briefed by* W. Q. VINZON.