

**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.]

ATTACHMENT OF REAL PROPERTY RECORDED IN THE NAME OF A PERSON NOT A PARTY TO THE ACTION.—*Faustino de la Merced vs. The Government of the Philippine Islands, R. G. No. 35412, September 29, 1932.*—Real property originally belonging to Julio de la Cruz was conveyed to Faustino de la Merced to whom a transfer certificate of title was issued free from any incumbrance. By a judgment in a criminal case, Julio de la Cruz was condemned to indemnify the Government of the Philippine Islands in the sum of ₱9,289.30. The Government of the Philippine Islands obtained an order of attachment against the property of Julio de la Cruz, by virtue of transfer certificate of title of the property conveyed to Faustino de la Merced. *Question:* Whether the register of titles can annotate on the original of the transfer certificate of title issued in the name of a person, an order of attachment of a right, interest, or participation of another, the owner of the transfer certificate of title not being a party to the action in which the order of attachment was issued. *Held:* The registrar of titles can. The pertinent part of Sec. 429 of Act 190 provides that real property or an interest therein, belonging to the defendant and held by any other person, or standing on the records in the name of any other person, shall be attached by filing with the registrar of lands titles in the province in which the

land is situated, a copy of the order of attachment together with a description of the property, and a notice that such real property or any interest of the defendant therein, held by or standing in the name of such other person are attached. Furthermore, according to Secs. 71 and 72 of Act 496 the registrar of titles shall annotate said attachment not only on the original transfer certificate of title but also on the duplicate, and may require the presentation of the duplicate for the purpose of annotation by means of judicial process. (In Division of Five. Per Villa-Real, J., Avanceña, C. J., Street, Hull, Vickers, JJ., Concurring.) *Briefed by* HECTOR BISNAR.

BONDS—LIABILITY OF BONDSMAN.—*Luzon Surety Co. Inc. vs. Francisco Tan Cuan @ Tan Kee et al. Joaquin Ventura, G. R. No. 36532, September 19, 1932.*—The defendants executed counter-bonds or indemnity agreements in favor of the plaintiff company which undertook, at the request of the defendants, to post appeal bond for one Barreto who was then convicted in the court below for estafa and desired to appeal to the Supreme Court. court below for estafa and desired Judgment for conviction was affirmed. It was discovered that Barreto escaped from the Philippines, so his bond was confiscated. Plaintiff then brought this action against the defendant guarantors based on the indemnity agreements.

Defendants disclaim liability on the following grounds: 1. It was the duty of the plaintiff to guard and have custody of the accused so as to prevent his escape, 2. That plaintiff was notified that accused was about to leave the Philippines, and 3. that the case should have been discontinued because the accused died. *Held*: Altho the plaintiff should exercise some care to prevent the escape of the principal, yet liability does not attach to it unless satisfactory evidence is introduced imputing negligence to the plaintiff guarantor. With respect to the second contention, the notification as alleged not appearing in record, the finding of the trial judge to this effect should be taken as true. As to the third contention, section 119 of the Code of Civil Procedure is not applicable in the instant case because it does not apply to cases where the defendant dies after final judgment has been rendered against him. (In Division. Per Hull, J., Street, Villa-Real, Ostrand and Imperial, concurring.) *Briefed by B. GOZON.*

SPECIAL PROCEEDINGS—SUFFICIENCY OF APPEAL FROM DECISION OF COMMITTEE ON CLAIMS.—*Maria Alcantara Riestra vs. Leticia Gomez Vda. de Alcantara etc., G. R. No. 36100, September 16, 1932.*—Upon the disallowance of a claim she presented before the committee on claims of the intestate estate of Diego A. Riestra, deceased, plaintiff herein excepted to the decision and within three days thereafter instituted this action. From a judgment in favor of the plaintiff, defendant appealed. It is insisted by the appellant that no appeal was taken by the plaintiff from the action of the committee, in accordance with Sec. 775 of the Code of Civil Procedure, for the word "appeals" was not used in addition to excepting to

the decision of the committee. *Held*: The bringing of the action promptly after the taking of the exception to the action of the commissioners was sufficient. In matters of this kind, a substantial compliance with the procedural requirements is sufficient. *Affirmed.*

(Division of Five. Per Street, J.; Villamor, Villa-Real, Hull, Vickers, JJ., concur.) *Briefed by E. FERNANDEZ, JR.*

CONTRACTS—ELEMENTS OF COTENANCY.—*Emilio E. Esmeralda, Plaintiff and Appellant, vs. Tomas Payron et al., Defendants and Appellees, G. R. No. 36454, September 3, 1932.* *Facts*: Action to recover money advanced by the plaintiff on a contract with the following conditions: (a) defendants were to prepare the land, plant the sugar cane and take care of it until ready to be milled, (b) cost of cutting and transportation to central to be paid by plaintiffs, (c) plaintiff to advance necessary money to defendants, the latter to repay it from their share of the crop with 12% interest, (d) defendants to receive 20% of the gross amount of sugar produced, and (e) costs of fertilizers to be borne equally by the parties. Lower court held the contract one of partnership and allowed plaintiff only one-half of the amount claimed. *Held*: Under the conditions the contract is one of *aparceria* (cotenancy) and plaintiff may recover all the money advanced with interests. (In Division, Per Vickers, J., Street, Villa-Real, Hull and Imperial, JJ., concur.) *Abridged by P. M. KATIGBAK.*

CRIMINAL LAW—COUNTERFEITING.—*P. P. I. v. Uy Sieng, R. G. No. 36496, September 10, 1932.*—Defendant appeals from a decision of the trial court convicting him of the crime of counterfeiting as punished

by Sec. 10, Act 1754. *Held*: "The evidence shows that the appellant admitted that he was in possession of the counterfeit coins. Whether he made, bought, or found the said coins makes no difference, provided he was in possession thereof and his possession was coupled with knowledge of their falsity. Possession does not require that the counterfeit be found on his person. It is sufficient that it was under his control. (15 C. J. 361.) Affirmed." (In First Division, per Ostrand, J.; Malcolm, Villamor, Abad Santos, and Butte, JJ., concur.) *Briefed by F. C.*

WAREHOUSE RECEIPTS ACT (ACT 2137)—DOCTRINE OF EQUITABLE ESTOPPEL.—*Siy ong Bieng & Co., Inc. v. Hongkong and Shanghai Banking Corporation, R. G. No. 34655, March 5, 1932.*—Action to recover ₱31,645.00, the value of 464 bales of hemp deposited in certain bonded warehouses as evidenced by certain negotiable *quedans* (warehouse receipts) which had been delivered by one Ranft to the herein defendant-appellant as collateral security for his debt in the sum of ₱622,752.22. It appeared that said Ranft wanted to purchase hemp from the plaintiff corporation, and the latter offered the hemp covered by the *quedans*. The *quedans* were sent to Ranft, on the understanding that the payment would be made against the said *quedans*, which had not yet been paid for to the plaintiff. Ranft pledged these *quedans* to the defendant-appellant to guarantee the payment of the former's indebtedness. Ranft died, as a result of which the plaintiff filed its claim for the sum aforesaid in the testate proceedings of the estate of Ranft, which claim was allowed by the Court on appeal from the decision of the Committee on Claims disallowing said claim. Meanwhile demand had been made by the plaintiff on the defen-

dant Bank for the return of the *quedans* or their value; but this demand was refused on the ground that the latter was a holder in due course, the Bank having received the *quedans* as security of Ranft's pre-existing indebtedness. The Bank further alleged that the *quedans* were negotiated to it duly indorsed by Ranft and the plaintiff. The acceptance was made in good faith, in due course of business, and for valuable consideration.

Trial court rendered judgment for the plaintiff, on the ground that the negotiation was made under circumstances which would have apprised the indorsee Bank of a vice in the title of Ranft.

Plaintiff contended that the defendant, before the delivery of the *quedans* should have ascertained whether Ranft had any authority to negotiate the *quedans*; on the other hand, the defendant-appellant argued that the plaintiff-appellee was estopped to deny the Bank of a valid title to the *quedans* for the reason that the plaintiff had voluntarily clothed Ranft with all the attributes of ownership and upon which the defendant Bank had reason to rely.

Held. With regard to the plaintiff's contention, the Supreme Court reversed the judgment of the trial court, stating: "The clear import of Secs. 47, 38, 40 and 41 of Act No. 2137 known as The Warehouse Receipts Act, is that if the owner of the goods permits another to have the possession or custody of negotiable warehouse receipts running to the order of the latter, or to the bearer, it is a representation of title upon which bona fide purchasers for value are entitled to rely, despite breaches of true or violations or agreement on the part of the apparent owner." (Commercial National Bank of New Orleans v. Canal-Louisiana Bank, 239 U. S., 520.)

Passing upon the argument of the defendant-appellant, the Supreme Court held: "In such case we think the principles which underlie equitable estoppel place the loss upon him whose misplaced confidence has made the wrong possible." (National Safe Deposit v. Ribbs, 229 U. S. 391.)

Judgment of the trial court reversed, and plaintiff absolved from the complaint. (In Banc, per Ostrand, J.; Johnson, Street, Malcolm, Villamor, Villa-Real and Imperial concurring; Romualdez dissenting, JJ.)

ESTAFA—EFFECT OF SALE BY A HIRER—DISTINCTION BETWEEN CONTRACT OF SALE AND CONTRACT OF HIRE.—*P. P. I. v. Adolfo Abaya, G. R. No. 35968, September 13, 1932.*—Defendant hired a piano which he sold to a third person upon representation that he was the absolute owner. The defense was that the contract was one of sale by instalment. Thruout the contract, however, the defendant was referred to as "hirer" and the original owner as "owner". There was an option in the contract of hire to purchase, but such option was never exercised.

Held, A purchaser who sells his chattel is not guilty of estafa, because he has absolute title to the thing purchased. But in the instant case, the contract was one of hire merely. Where a party gets possession of a chattel by a contract of hiring, and then unlawfully disposes of it, the crime committed is estafa. (U. S. v. Juan Goyenechea, 8 Phil. 117). Judgment affirmed.

(Per John Hull, J.; In division of Five, with Street, Malcolm, Villa-Real, and Imperial, JJ., concurring.) *Briefed by* DOMINDOR P. PADILLA.

CRIMINAL LAW—PENALTY—ART. 171, REV. PENAL CODE, INCLUDES THE PENALTY OF PERPETUAL DISQUALIFICATION FROM PUBLIC OFFICE.—*P. P. I. vs. Estela Romualdez and Luis Mabunay, G. R. 31012, Oct. 5, 1932.*—In a motion for reconsideration, Estela Romualdez, previously convicted of falsification of public and official documents, submits eleven propositions, the ten of which were not considered. The eleventh one alleges that the Court has erred in imposing upon the defendant a sentence of punishment above and beyond such as is authorized under our Revised Penal Code, by including the penalty of perpetual disqualification from public office which is alleged not to be authorized by the said article. *Held:* Art. 171 of the Revised Penal Code corresponds to Article 300 of the old Code. The penalty of *prision mayor* under both codes carries with it certain accessory penalties. Art. 300 as amended provides the imposition of *prision mayor*, fine, and perpetual disqualification from any public office for a public officer who by taking advantage of his position shall be guilty of the falsification of a document. Art. 42 of the Revised Penal Code provides that *prision mayor* shall carry with it temporary special disqualification and perpetual special disqualification from the right of suffrage. In Art. 32 of the Revised Penal Code, perpetual or temporary special disqualification from the exercise of suffrage shall include a deprivation of the right to vote in any popular election, to be elected to such office, or to hold any public office. Under Art. 300 of the old Code, the offender is perpetually disqualified from holding public office, but under art. 61 his right of suffrage is only suspended during the term of sentence. Under both Codes the offender is perpetually

disqualified from holding public office. Motion denied. (In banc. Per Vickers, J., Avanceña, C. J., Malcolm, Ostrand, Santos, Hull, Imperial, Butte, JJ., concurring; Street, Villamor, Villa-Real, JJ., dissenting.) *Briefed by W. Q. VINZONS.*

IMMIGRATION—WHICH FACTS SHOULD DETERMINE ALIEN'S RIGHT OF ENTRY?—*Cua Ku*, in representation of *Cua Kua*, petitioner, vs. *The Insular Collector of Customs*, respondent. R. G. No. 36616, October 6, 1932.—*Cua Kua*, of 19 years of age, born in China, arrived in the Philippines on January 1, 1929, and sought admittance into the country as a minor son of *Cua Ho*, a Chinese merchant, then resident and doing business in Laguna where *Cua Kua* went to live with his alleged father and brothers. *Cua Ho* left for China on March 23, 1929, leaving his children, among them *Cua Kua*. *Cua Ho* died in China on April 24, 1929. The application for entry was heard by the Special Customs Investigation Board whose decision denying the same was confirmed by the Insular Collector of Customs. Hence, this petition for habeas corpus. The question is whether the right of an alien to enter in these islands must be determined by the facts existing as of the date of his arrival in this country, or by those as of the date of the hearing of the application subsequent to his arrival. *Held*: This question must be determined according to the facts which took place on the date of his arrival. If according to those facts, he has the right to enter and reside in the Islands, such right cannot be prejudiced by facts occurring subsequently. The case of *Tan Boc vs. Insular Collector*, 47 Phil. 728, has similar application. The delay of the Customs Board is the cause for the applicant's inability to enjoy his right.

If by the death of his Chinese father, a minor son who arrived here and made application for entry before his death would lose his right, then it would permit the Board, in abuse of its powers, to prevent the entry of such minor children by delaying the hearing until they arrive at the age of majority or until their father die. The right to reside in these Islands after having acquired *ipso facto* the right to enter by means of the application of a minor son of a Chinese resident at the time of his arrival in Manila is what gave the petitioner herein the right to a certificate of entry. (In division of five. Per Villa-Real, J., Avanceña, C. J., Hull, Vickers, Imperial, JJ., concurring.) *Briefed by W. Q. VINZONS.*

CRIMINAL LAW—HOMICIDE AND PHYSICAL INJURIES THROUGH RECKLESS IMPRUDENCE.—*P. P. I. vs. Patricio Villanueva*, G. R. No. 36024, September 15, 1932.—Appeal from a judgment of conviction for the crimes of homicide and physical injuries through reckless imprudence. The accused was the chauffeur of a PU automobile. On a trip he felt drowsy and permitted *Crisanto Siller* to drive in his place although the latter had no operator's license. As *Siller* was unskillful the car he was driving struck a woman, then crashed into a store and injured three others. One of the victims of the accident died: while the rest sustained injuries. *Held*: It is immaterial whether the accused invited *Siller* to drive or whether *Siller* asked to do the driving. The accused having given the custody of the auto-truck to a person untrained and unskillful in its operation is guilty of reckless imprudence and must be held directly responsible as a principal for the accident. Affirmed.

(Division of Five. Per Hull, J.; Street, Villa-Real, Vickers, Imperial JJ., concur.) *Briefed by E. FERNANDEZ, JR.*

CRIMINAL PROCEDURE—ENGLISH TEXT OF SEC. 59 MUST PREVAIL OVER SPANISH VERSION—PAR. 3, SECTION 15 CONSTRUED—P. P. I. vs. Estela Romualdez and Luis Mabunay, G. R. No. 31012, October 5, 1932.—Luis Mabunay asks for the reconsideration of the decision of this court for two reasons: (1) The Court relied on mere suspicion and conjecture in convicting Mabunay; (2) From the fact that the accused Mabunay did not testify at the trial of this case, nothing against his innocence should be inferred. As to the first ground, *Held*: The Spanish text of Sec. 59 of General Orders No. 58, reading as follows: "En todas las causas criminales las pruebas admitidas deberán ser concluyentes para demostrar el hecho que se trata de probar. Al querrelante corresponderá proponer y practicar las pruebas que demuestran la culpabilidad y deberá ser presentada la prueba más concluyente de que sea susceptible la causa," is not an exact translation of the original of this section in English, which latter shall prevail. As to the second ground, *Held*: Par. 3, sec. 15 of General Orders No. 58 provides that the neglect or refusal of a defendant to be a witness shall not in any manner prejudice or be used against him. But distinction must be made between failure of defendant to testify and explain a certain fact and the failure of the defendant to present any other witness in explanation of that fact. After having elected not to testify or to present any other witness to explain for what purpose he withdrew the money in question from the Philippine Trust Compa-

ny, Mabunay, now that he has been convicted, prays that he be granted a new trial in order that he may testify himself and present other witnesses to testify as to that fact. Motion denied. (In banc. Per Vickers, J., Avanceña, C. J., Malcolm, Ostrand, Santos, Hull, Butte, Imperial, JJ., concurring; Street, Villa-Real, Villamor, JJ., dissenting.) *Briefed by ELIEZER MANIKAN.*

CRIMINAL LAW—PENALTY—CONFESSION OF GUILT AS MITIGATING CIRCUMSTANCE.—P. P. I., Plaintiff and Appellee, vs. Eduardo Maran, et al., Accused and Appellants, G. R. No. 36460, September 3, 1932. *Facts*: Defendants were charged with less serious physical injuries "with the aggravating circumstances of *alevosia*, premeditation" and recidivism. They pleaded guilty and the court imposed the maximum penalty. They appealed on the ground that under Art. 13, (7), Revised Penal Code, the minimum penalty should have been imposed. *Held*: The mitigating circumstance of confession of guilt in favor of the appellants [Art. 13 (7), Revised Penal Code] is not sufficient to offset the aggravating circumstances alleged in the information which were admitted by the defendants by their plea of guilt. (In Division, Per Ostrand, J., Malcolm, Villamor, Santos, and Butte, JJ., concur.) *Abridged by P. M. KATIGBAK.*

THE RIGHT OF A DIRECTOR OR STOCKHOLDER TO INSPECT AND OBTAIN CERTIFIED COPIES OF PAPERS OF THE CORPORATION.—Eugenio Veraguth, as Director and Stockholder of Isabela Sugar Company, Inc., Petitioner vs. Isabela Sugar Company, Inc., Gil Montilla, President, and Agustin Montilla, as Secretary of the same Corporation, Respondents, R. G. No. 37064, October 4,

1932. The petitioner sues for a writ of mandamus to compel the respondents to place at his disposal at reasonable hours, the minutes, documents and books of the Isabela Sugar Company, Inc. for his inspection as director and stockholder of said corporation and to issue upon payment of fees, certified copies of any documentation in connection with said minutes, documents and books of the corporation. It appears that the petitioner telegraphed the secretary of the company, asking the latter to forward in the shortest possible time a certified copy of the resolution of the Board of Directors concerning the payment of attorney's fees in the case against the Isabela Sugar Company and others. The secretary denied the request of the petitioner on the ground that, since the minutes of the meeting in question had not been signed by the directors present, a certified copy could not be furnished. Question.—Whether the petitioner can so require the respondents as prayed for in the petition. *Held*:—Directors of a corporation have the unqualified right to inspect the books and records of the corporation at reasonable times. Pretexts may not be put forward by officers of a corporation to keep a director or shareholder from inspecting the books and minutes of the corporation, and the right to inspection is not to be denied on the ground that the director or shareholder is on unfriendly terms with the officers of the corporation whose records are sought to be inspected. A director or stockholder can of course make copies, abstracts, and memoranda of documents, books, and papers as an incident to the right of inspection, but cannot, without an order of a court be permitted to take books from the office of the corporation. A director or stockholder has no

absolute right to secure certified copies of the minutes of the corporation until these minutes have been written up and approved by the directors. Petition denied. (In Division of Seven or More. Per Malcolm, J., Avanceña, C. J., Villamor, Villa-Real, Hull, Imperial, JJ., Concurring. Vickers, J., with whom concur Street, Ostrand, Santos, JJ.; dissents in a separate opinion. Butte, J., dissents in another separate opinion.) *Briefed by* HECTOR BISNAR.

PUBLIC SALE OF REAL PROPERTY UNDER MORTGAGE—*Benito Gonzalez vs. Antero Manio and Catalina Soto, R. G. No. 35763, September 28, 1932.*—Real property belonging to Pascuala Viuda de Buhain was mortgaged in favor of Catalina Soto. The mortgage was executed and registered subsequent to a recovery of a judgment by Gonzalez against Pascuala but prior to the levy against said property to satisfy the judgment. The property was bought by Gonzalez from public auction, the sale being registered in the registry of property. Afterwards Catalina Soto instituted foreclosure suit against Pascuala as a consequence of which the property in question was again sold at public sale and purchased by Catalina Soto, the sale being recorded in the registry of property. Question—What are the effects of the different transactions? *Held*: (1). The mortgage executed in favor of Soto was valid. The judgment previously rendered in favor of Gonzalez does not bar the execution of a mortgage of the property subsequent to such judgment. (2). The purchase at public sale by Gonzalez was likewise valid. The fact that the property was mortgaged does not bar its acquisition at public sale. However, since the mortgage was registered it is presumed that the vendee at

the public sale had knowledge of the mortgage and therefore acquires the property subject to the mortgage. As the title had already passed to Gonzalez, the purchase by Soto at the second public sale does not give her any additional right over the property. She had only the claim of mortgage. (In Division. Per Avanceña, C. J., Malcolm, Villamor, Ostrand, Santos, Butte, JJ., concurring.) *Briefed by* HECTOR BISNAR.

UNREGISTERED LAND—FORECLOSURE OF MORTGAGE THEREON.—*Bachrach Motor Co. v. Jose Reyes Ti Yienco, G. R. No. 36260, September 13, 1932.*—Action to foreclose a mortgage on land not registered either under the Torrens or the Spanish system. The mortgage was executed and registered in accordance with Sec. 194, Administrative Code. From the decision of the lower court, refusing to take account of the mortgage contract and to order its foreclosure, although giving judgment for the amount of the indebtedness, the plaintiff appeals. *Held*: "The informal mortgage on unregistered property contemplated in section 194 of the Administrative Code is undoubtedly a different form of mortgage from the mortgage known to the Civil Code and Spanish Mortgage Law; but the provisions relative to mortgage foreclosure in the Code of Civil Procedure are appropriate to the foreclosure of any mortgage upon real estate, and it is proper that upon this contract the same system of foreclosure should be followed as in other cases," Judgment modified. (In Division of Five, per Street, J.; Villa-Real, Hull, Vickers, and Imperial, JJ., concur.) *Briefed by* F. C.

OBLIGATIONS AND CONTRACTS—EFFECT OF JUDICIAL INTERPRETA-

TION OF CONTRACT.—*Emilio Esmeralda v. Tomas Paypon and Pedro Paypon, G. R. No. 36454, September 3, 1932.*—Action to recover ₱699.47, amount advanced by plaintiff to defendant by virtue of a written contract of cultivation of a sugar cane field. The agreement stipulated that the parties shall divide the expenses for fertilizer, but that the plaintiff was to advance to the defendants the money for the clearing of the land, and that this amount was to be repaid by the defendants from their share of the crop. Because of unfavorable weather, the defendants abandoned the field and sought work elsewhere. Plaintiff continued the work, and after deducting the portion belonging to the defendants, there was left a balance of ₱715.09. But the amount claimed is only ₱699.47. Lower court held that the amount claimed should be borne share and share alike between the parties, that being a loss in a partnership transaction.

Held, in accordance with the contract, the money advanced by the plaintiff became a debt of the defendant, and was repayable with interest at 12% per annum. The contract is very clear, and the trial court was not justified in making a different contract for the parties. Reversed.

(Per Vickers, in Division of Five, with Street, Villa-Real, Hull, Imperial, JJ., concurring.) *Briefed by* D. PADILLA.

OBLIGATIONS—PLACE AND TIME OF PAYMENT.—*Ismael Bautista vs. Victoriano Bucani et al., G. R. No. 36140, September 20, 1932.*—The defendants executed in favor of the plaintiff a written obligation for the sum of ₱2400 payable at the rate of ₱60 per month during the first five days with an acceleration clause to the effect that failure to

pay any monthly instalment due shall cause all subsequent instalments to mature. As each instalment became due, the plaintiff made demands and defendants paid at their residence, but later, plaintiff failed to make similar demands resulting in the non-payment of several instalments after they have become due. This action is brought to declare the remaining debts matured. *Held*: Where an obligation to pay is undertaken by a party and no specific place for payment is stipulated therein, payment must be made at the domicile or place of business of the debtor. In the instant case, there was no stipulation as to place of payment, hence it became the duty of the creditor to go and make demands at the domicile of the debtor whenever any instalment which became due. Failure of the defendant to pay therefore within the stipulated time did not constitute default inasmuch as he was acting within a course expressly provided for and sanctioned by law. (Art. 1171, C. C.). He was however ordered to pay all the instalments then due.

(In Division. Per Street, J., Villa-Real, Hull, Vickers and Imperial, concurring.) *Briefed by* B. GOZON.

EVIDENCE—ADMISSIBILITY OF CERTIFIED COPY OF A COPY OF A CONDITIONAL PARDON.—*P. P. I. v. Eduardo C. Enriquez, R. G. No. 36494, September 10, 1932.*—Prosecution on a violation of a conditional pardon. Among the errors assigned by the defendant on appeal was the admission of Exhibit "L". *Held*: "The rule of the Supreme Court in the case of U. S. v. Zapanta (33 Phil. 367) that the carbon copy of the pardon is inadmissible in evidence is inapplicable in the present instance. In that case the carbon copy of the pardon involved

therein never was signed or certified as a true copy of its original by any government officer or employee. In the case before us, the said Exhibit "L" has been duly certified by a clerk and executive inspector of the Bureau of Prisons to be a true copy of the true copy on file in that bureau of the conditional pardon in question." Judgment Affirmed. (In First Division, per Ostrand, J.; Malcolm, Villamor, Abad Santos, and Butte, JJ., concur.) *Briefed by* F. C.

REFEREES—EFFECT OF REPORT.—*Director of Lands vs. Anastacia Abalos et al., G. R. No. 36503, September 19, 1932.*—In the cadastral proceedings for the registration of the lands in question, the judge designated the clerk of court as commissioner to receive the evidence of the parties. The proceeding was continued, the appellant having failed to appear personally or by counsel and not having asked for postponement. The report of the commissioner was confirmed and judgment was rendered accordingly. Later the court, on motion of the appellant, revoked its former decision and a new trial was ordered. In the new trial, the judge himself conducted the hearing. This was assigned as error.

Held: In hearing applications for the registration of land, be it under the Land Registration Act or under the Cadastral Act, the courts of competent jurisdiction are authorized to delegate the power to receive evidence supporting the claims of either party to a referee. The findings of the referee are not binding upon the court and for that reason they may either be affirmed or reversed or modified. Once affirmed however, these findings acquire the force and effect of any finding made personally by the same judge. A de-

cision based on that report is the decision of the court and not of the referee.

When the judge has authorized a referee to receive the evidence of the parties in a cadastral proceeding, the authority given is not exclusive as to deprive the judge to make separate findings for himself. He is the sole arbiter and has the final say on the matter. The same rule obtains where a new trial is granted for in that case, the previous judgment is vacated and the action stands for trial de novo but recorded evidence taken upon the former trial so far as the same is admissible and competent to establish the issues, shall be used upon for the new trial without retaking the same.

(In Division. Per Vickers, J., Street, Villa-Real, Hull, and Imperial, concurring.) *Briefed by B. GOZON.*

JUDGMENT—LIMIT OF REMEDY THAT MAY BE GRANTED IN A JUDGMENT—*The Roman Catholic Bishop de Nueva Segovia vs. The Municipality of Laoag, Ilocos Norte, G. R. No. 35769, September 28, 1932.*—Plaintiff bought from the defendant municipality a parcel of land. One of the conditions of the sale was that, thereafter, the defendant would build defenses to protect the land of the church and convent in the municipality from the current of the river. Specific performance of this condition is demanded in the present action. The defense is that the condition has already been fulfilled. From a judgment rescinding the contract of sale, defendant appealed. *Held:* None of the parties has asked for rescission. The Court cannot decide the cause in a sense other than that submitted by the parties. Although the plaintiff in his complaint prayed for such other relief as may be just and

equitable, it does not include a remedy not compatible with the allegations of the complaint. The petition for the fulfillment of a contract is incompatible with its rescission. The ground for the rescission was not within the allegations of either party; so neither, especially the defendant, has not been able to prepare his defenses thereto. It appearing that the conditions of the contract have been fulfilled, the judgment is hereby REVERSED.

(Division of Five. Per Avanceña, C. J.; Malcolm, Villamor, Ostrand, Santos, Butte, JJ., concur.) *Briefed by E. FERNANDEZ, JR.*

SALE—OPTION TO BUY OR TO SELL.—*Simeona Carrillo and Albina Yap-tinchay vs. Juan Garcia and Lorenza Almarines, G. R. No. 35640, September 16, 1932.*—Defendant Almarines sold to plaintiffs a house with the ground on which it was situated. The azotea of the house, however, occupied lot 1996 which was not included in the sale. Subsequently, the defendant Garcia obtained a certain judgment against Almarines, and levied upon lot 1996. At the sheriff's sale Garcia became the purchaser of the lot for the balance of the judgment, amounting to P1,664.48. The plaintiffs brought this action to compel Garcia to transfer to them the lot 1996 for its just value. The defendant insists that the plaintiffs should be required to pay the full amount that he bid for the lot. *Held:* This contention is untenable, as the amount bid is many times in excess of the true value of the property. Art. 361 of the Civil Code and related provisions are applicable to this case. This article gives the election of choosing between buying and selling to the owner of the land, who cannot be constrained to do neither or the other. Under this article the owner of the land has the alter-

native of paying for the construction on the land or of selling the land at a valuation fixed by the court. And until one or the other of the alternatives is chosen the person who has built on the land in good faith or the successor of such is entitled to continue in the occupation of the property. (Per Street, J.; Villa-Real, Hull, Vickers, Imperial, JJ., concur.) *Briefed by Q. MAKALINTAL.*

CRIMINAL LAW—PENALTY.—P. P. I., Plaintiff and Appellant, vs. Roman Sibayan, Accused and Appellee, G. R. No. 38823, September 7, 1932. *Facts:* Defendant was charged in the Court of First Instance with slight physical injuries under the old Penal Code. On motion of the defendant, the court dismissed the information because slight physical injuries under Art. 266 (1), Revised Penal Code, is punished with *arresto menor* and is cognizable by the justice of the peace. *Held:* The fact that Art. 266 (1), Revised Penal Code, has reduced to *arresto menor* the penalty prescribed by the old Penal Code does not deprive the court of its jurisdiction previously acquired over a crime committed before the Revised Penal Code came into effect. But Art. 22 of the Revised Penal Code must be taken into consideration in imposing the penalty. (In Division, Per Imperial, J., Street, Villa-Real, Hull, Vickers, JJ., concur.) *Abridged by P. M. KATIGBAK.*

WILLS—HOLOGRAPHIC WILL MADE IN A FOREIGN COUNTRY, VALIDITY OF.—In re Testate Estate of the deceased Francisco Varela Calderon. Francisco Carmelo Varela, proponent, vs. Miguel Varela Cal-

deron, et al., opponents, R. G. No. 36342, October 8, 1932.—The deceased, a Filipino citizen, resident of Manila and possessing movable property therein, went abroad and resided in Hendaye-Plage, France. He executed a will on April 14, 1930 in Paris. Sometime later he died in Switzerland. The proponent applied for the probate of the will, which the lower court granted. Opponents assign as error of the trial court in declaring that Exhibit "B" purporting to be the last will and testament of the deceased was a valid holographic will made and executed in accordance with the laws of the French Republic. The original was written in French and dated and signed by the testator's own hand, with the exception of a sort of attestation clause at the bottom of the document, which clause the opponents contend made the will open or public under the French law. *Held:* Under Article 970 of the French Civil Code, "a holographic will is not valid unless it is entirely written, dated, and signed by the testator. No other formality is required." Article 636 of our Code of Civil Procedure allows for probate a will made out of the Islands and which might be allowed and proved by the laws of the state or country in which it was made. As to the addition of a clause, this did not vitiate the will. It remains holographic, notwithstanding that it unites the qualities of an open or public will. The said clause should be treated as a mere surplussage not affecting the essential requisites prescribed by the French law. (Per Imperial, J., Avanceña, C. J., Malcolm, Villamor, Ostrand, Villa-Real, Santos, Hull, Vickers, and Butte, JJ., concurring.) *Briefed by W. Q. VINZONS.*

