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NOTES *and* COMMENT

Judges as Investigators Under the Philippine Law

During the last two years it has been customary for the Governor-General, for the heads of the Administrative Department of the Philippine Government to employ judges of first instance as investigators of charges which from time to time have been presented against officers of the government. Among the provisions of law used as authorities in the employment of judges as investigators in administrative proceedings is section 64, (c) it reads as follows: "To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted."

These administrative investigations are quite often so protracted that a judge designated to take charge of them is prevented from performing his regular duties in the bench. Not only this, but the heat of partisanship enters so profusely in the conduct of administrative inquisitions that the propriety of a judge sitting as a grand inquisitor becomes highly questionable. The judiciary, we are continually reminded by constitutional mentors, must be removed from politics. It should not be soiled with the filth of partisanship. A judge immersed in an administrative investigation where he can be relatively arbitrary in his rulings is subjected to the temptation of going back to his judiciary office with a disposition of subordinating law to discretion. This is a dangerous tendency in the one place where the maxim "government of laws and not of men" must closely approximate reality. A judge possessing the temper of an administrative inquisitor is a round peg in a square hole.

From the viewpoint of legality, apart from that of propriety, there is everything to say against the employment of judges of first instance or supreme court judges to take charge of administrative investigation. Section 64 of the Administrative Code above quoted cannot be interpreted to authorize the Governor-General to designate a judge as investigator. In this jurisdiction the principle of separation of powers is part and parcel of the

fundamental law. (U. S. v. Bull, 15 Phil. 7; Severino v. Governor-General, 16 Phil. 336; Borromeo v. Mariano 41 Phil. 332; Abueva v. Wood, 45 Phil. 612; Ocampo v. Cabangis, 15 Phil. 627.) A judge conducting an administrative investigation is illegally removed from the judiciary and placed in the executive department. For the functions as an investigator are not judicial. They are executive. The Supreme Court of these Islands in a much belated assertion of the right of judges to remain judges declared invalid a provision of the franchise under which the Manila Electric Company operates, on the ground that it grants the Supreme Court administrative functions. In the course of the opinion the court says:

"The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions.

"The Organic Act provides that the Supreme Court of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law (Sec. 26). When the Organic Act speaks of the exercise of 'jurisdiction' by the Supreme Court, it could only mean the exercise of 'jurisdiction' by the Supreme Court sitting as a court, and could hardly mean the exercise of "jurisdiction' by the members of the Supreme Court, sitting as a board of arbitrators. There is an important distinction between the Supreme Court as an entity and the members of the Supreme Court. A board of arbitrators is not a 'court' in any proper sense of the term, and possesses none of the jurisdiction which the Organic Act contemplates shall be exercised by the Supreme Court."

The investigation conducted against officials in the City of New York have invoked a judicial pronouncement on the absence of power on the part of the executive department to use the members of the judiciary as investigators. In the case of Richardson and Connolly v. Scudder, 247 N. Y. 401, a petition for a writ of prohibition was filed against Judge Scudder of the Supreme Court of New York for the purpose of restraining him from investigating the charges against Connolly, the president of the Borough of Queens. The ground of the petition was this, the law authorizing the Governor of New York to designate a judge as investigator was unconstitutional and void. The Court of Appeals of New York, through the then Chief Justice Cardozo, granted the writ of prohibition, and, in the course of the decision, said:

"We think there has been an attempt by section 34 of the Public Officers Law, both in its original and in its amended form, to charge a justice of the Supreme Court with the mandatory performance of duties non-judicial. He is made the delegate of the Governor in aid of an executive act, the removal of a public officer (*Matter of Guden*, 171 N. Y. 529). At the word of command he is to give over the work of judging, and set himself to other work, the work of probing and advising. His findings when made

will have none of the authority of a judgment. To borrow Bacon's phrase, they will not 'give the rule or sentence.' They will not be preliminary or ancillary to any rule or sentence to be pronounced by the judiciary in any of its branches. They will be mere advice to the Governor, who may adopt them, or modify them, or reject them altogether. From the beginnings of our history, the principle has been enforced that there is no inherent power in Executive or Legislature to charge the judiciary with administrative functions except when reasonably incidental to the fulfillment of judicial duties. (People v. Hall, 169 N. Y. 184; *Matter of State Indust. Comm.*, 224 N. Y. 13, 16). The exigencies of government have made it necessary to relax a merely doctrinaire adherence to a principle so flexible and practical, so largely a matter of sensible approximation, as that of the separation of powers. Elasticity has not meant that what is of the essence of the judicial function may be destroyed by turning the power to decide into a pallid opportunity to consult and recommend. (*Cf.* Frankfurter and Landis, Power of Congress, etc.; a Study in the Separation of Powers, 37 Harvard Law Review, 1010, 1020). The question arose as far back as 1792. An act of Congress required the Circuit Courts of the United States to examine into the pension claims of soldiers and seamen of the Revolution, and to certify their opinion to the Secretary of War with a view to corrective legislation. The judges of the several circuits concurred in a determination that the duty was not judicial (Hayburn's case 2 Dall. 409). In 1851 the Supreme Court of the United States considered that determination and approved it, declining jurisdiction under an act not widely different (*U. S. v. Ferreira*, 13 How. [U. S.] 40, 44). There was an opinion by Taney, C. J., which has become a landmark of the law (*Gordon v. U. S.*, 117 U. S. 697. * * * Nowhere has the doctrine thus established been applied more steadily or forcefully than in the courts of New York. (*Matter of Davies*, 168 N. Y. 89; *Matter of State Ind. Comm., supra*). The function of the judges 'is to determine controversies between litigants' (*Matter of State Ind. Comm. supra*). They are not adjuncts or advisers, much less investigating instrumentalities, of other agencies of government. Their pronouncements are not subject to review by Governor or Legislature (*Dinan v. Swig*, 223 Mass. 516). They speak 'The rule or sentence.'

"The statute was thus an encroachment upon the independence of judicial power even in the form in which it stood until recently amended. Still more clearly is it such an encroachment in its form as now reframed. The judge is made a prosecutor. He is to have his counsel and assistant counsel and experts and detectives. He is to follow trails of suspicion, to uncover hidden wrongs, to build up a case as a prosecutor builds one. If he were the district attorney of the county, he would do no more and no less. What he learns is not committed to a record available to all the world. It is locked within his breast to be withheld or disclosed as his discretion shall determine. No doubt he is to act impartially, neither presenting from malice nor concealing from favor. One might say the same of any prosecutor. The outstanding fact remains that his conclusion is to be announced upon a case developed by himself. Centuries of common-law tradition warn us with echoing impressiveness that this is not a judge's work. We should be sorry to weaken that

tradition by any judgment of this court.

"Superficial analogies are suggested, but superficial only. A magistrate before whom there is laid an information of the commission of a crime may take the positions of the informant and prosecutor and of any witnesses produced (Code Crim. Pro. sec. 148). His inquiry is judicial. If he finds that a crime has been committed and that there is reasonable cause to believe that the defendant has committed it, he issues a warrant of arrest (Code Crim. Pro. sec. 150, subd. 2). He does not keep to himself the knowledge thus acquired, but embodies it in depositions which are exhibited to the defendant like any other public record. A justice of the Supreme Court upon proof by affidavit that the moneys of a town or village have been unlawfully or corruptly expended, shall make a summary investigation of the affairs of such town or village, and the accounts of such officers, and in his discretion may appoint experts to make such investigation and may cause the result thereof to be published in such manner as he may deem proper (Gen. Municipal Law [Cons. Laws, ch. 24] sec. 4). The validity of that statute has been assumed, though never questioned or determined (*Matter of Taxpayers of Plattsburgh*, 157 N. Y. 78; *Matter of Town of Hempstead*, 36 App. Div. 321; 160 N. Y. 685; *Matter of Davies, supra*). There are adversary parties. On the one side are the taxpayers, not less than twenty-five in number, submitting the petition; on the other the suspected officer, to whom notice must be given. Like an examination by a magistrate, the inquiry is preliminary or ancillary to action unmistakably judicial. 'If such justice shall be satisfied' that any of the moneys of such town or village are wasted or misapplied, 'he shall forthwith grant an order' restraining such unlawful use. An Appellate Division, charged with a duty to supervise the conduct of its officers, the members of the bar, orders an inquiry into abuses believed to have developed. It may act to its own motion upon a showing of wrongdoing by one member of the bar. There is authority for the view that it may act upon a like showing of wrongdoing by an indeterminate group, whether the group be large or small (*Matter of the Petition of the Assn. of the Bar*, 222 App. Div. 580; *State ex rel. Reynolds v. Circuit Court for Milwaukee County*, 193 Wis. 132; 214 N. W. Rep. 396; *Rubin v. State*, 216 N. W. Rep. 513). Once more, as with an examining magistrates, inquiry is pursued in aid of a judicial function. We have no occasion to determine with finality whether jurisdiction was legitimately assumed in all these cases or in any of them. However far they go, they do not reach the case at hand. No doubt there are peripheral zones where the judicial and the administrative merge into each other (C. W. Pound, The Judicial Power, 35 Harv. L. R. 787, 789). Other instances can be cited (Greater N. Y. Charter, sec. 1534; People ex rel. Mitchel v. Cropsey, 177 App. Div. 663). The hinterland may be plain when the frontier is uncertain."

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.]

CONTEMPT OF COURT—EFFECT OF LACK OF JURISDICTION OVER MAIN PROCEEDING IN WHICH CONTEMPT TOOK PLACE.—*In re "Fideicomisio del Sto. Cristo de Burgos", Sixto de los Angeles v. Melanio Santos, et al., G. R. No. 34904, Nov. 12, 1932.*—Defendants were fined for contempt by the lower court and appeal. In connection with the main action, also appealed, the Supreme Court held that the lower court had no jurisdiction to entertain the case. *Held*: The contempt order must be reserved as having been made in an action where the court was lacking in jurisdiction. (In Division of Five, per Street, J.; Villa-Real, Hull, Vickers and Imperial, JJ., concur.) *Briefed by* F. C.

CRIMINAL LAW—MUNICIPAL TREASURERS AGENTS OF AUTHORITY.—*P. P. I. v. Gerardo S. Ramos, G. R. No. 36756, Nov. 4, 1932.*—The defendant assaulted a municipal treasurer on the occasion of the performance of the latter's duties. *Question*: Is a municipal treasurer a person in authority or merely an agent of such person? *Held*: A provincial treasurer, within the province where stationed, is a person in authority; and the municipal treasurer, being an ex officio deputy of the former in the collection of internal revenue, is but an agent of a person in authority within the meaning of the word as used in the Penal Code. (In Division of Seven or More, per Imperial, J.; Avanceña, C. J., Street, Malcolm, Ostrand, Villa-Real, Abad Santos, Vickers and Butte, JJ. concur.) *Briefed by* F. C.

CRIMINAL LAW—ADULTERY—AGGRAVATING CIRCUMSTANCE.—*P. P. I. v. Severina Canaynay, et al., G. R. No. 36561, Nov. 7, 1932.*—Defendants were convicted of adultery. The adulterous acts were committed in the house of the offended spouse. *Held*: The fact that the crime took place in the dwelling of the husband is an aggravating circumstance and the penalty provided for by law must be imposed in its maximum degree. (In Second Division, per Imperial, J.; Street, Villa-Real, Hull, and Vickers, JJ., concur.) *Briefed by* F. C.

CIVIL PROCEDURE—WHAT CONSTITUTES COMPLIANCE WITH SECTION 103, ACT 190.—*La Granja, Inc. v. Silvino Catral, Francisca de Pagalilauan, et al., G. R. No. 36522, Nov. 18, 1932.*—Defendants appealed from a decision compelling them to pay the plaintiff jointly and severally the amount stated in the promissory notes executed by the appellants. The note and the copy of the mortgage were copied in the complaint and made a part thereof. The attorney for the appellants made oath to their answers, stating that the facts alleged therein were true according to the data furnished him. As a special defense, they alleged that they were induced by Catral to sign the mortgage on the assurance that they would not be liable. Pagalilauan al-

so contended that she signed the document without her husband's consent. But, in the answer of the defendants, there was no specific denial under oath of the genuineness and due execution of the instrument attached to the complaint.

Held. The answer of the appellants is not a compliance with Sec. 103, Act 190, which provides that when an action is brought upon a written instrument and the complaint contains or has annexed a copy of such instrument, the genuineness and due execution of the instrument shall be deemed admitted unless specifically denied under oath in the answer.

TRANSPORTATION—RUINOUS COMPETITION.—*Batangas Transportation Co. vs. Orlanes & Banaag Transportation Co., G. R. No. 36245, November 25, 1932.*—The Public Service Commission granted a permit to the defendant to operate an auto bus line from San Luis, Batangas, to Bantilan via Mozon, Lipa and Rosario. At the time of the application, the plaintiff was already operating a line between Lipa and Bantilan via Rosario. From that order of the Public Service Commission, the plaintiff appealed.

Held: This court is concerned with the substance than the form. To permit the defendant to operate on a line already covered by the plaintiff would result in a ruinous competition. Half-empty motor buses engaged in ruinous competition, destroying our provincial roads, causing disaster to each other is not a sign of enlightened competition and such practices are bound to bring injury to the public.

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

STATUTE OF LIMITATIONS—IMPLIED ORAL CONTRACTS.—*Jose Rodrigo vs. Potenciana de Yupangco etc., G. R. No. 35826, November 29, 1932.*—Plaintiff, while acting as attorney issued a check in payment of the claim against the deceased, his client, on August 16, 1922. The deceased died in 1929 and on September 5, 1929 the plaintiff presented his claim to the Committee on Claims in the intestate proceedings for the settlement of the estate of the deceased, which claim was rejected because it had already prescribed.

Held: This action is on an implied contract not in writing and it comes within the purview of section 43 of the Code of Civil Procedure, and prescribed after six years from August 16, 1922; the action was not brought until after the death of the deceased in 1929, and consequently, the limitation prescribed a year earlier and was then lost. As to the testimony of the plaintiff, who was the only witness in his behalf, par. 7 Sec. 383 of the same Code is in point.

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

CRIMINAL PROCEDURE—EFFECT OF MATERIAL AND IMMATERIAL VARIANCE—JEOPARDY—*P. P. I. vs. Ang Hok Lim and Pablo Jegajo, G. R. No. 36007, November 21, 1932.*—Defendants were convicted in the lower court for violating section 2703 of the Revised Administrative Code in that they misrepresented, to avoid payment of customs duties that the four cases which really contained silk contained dried fish. The Supreme Court in another case acquitted Ang Hok Lim of the charge on account of a material variance between the complaint and

the evidence. In this case Ang Hok Lim entered the plea of jeopardy. *Held*: The effect of material variance between the allegations of the information and the proof is to entitle defendant to an acquittal on the particular indictment, but he is liable to be tried for his crime. If the accused is acquitted by direction of the court on the ground of material variance, he can not plead the acquittal as a bar, for he has never been in jeopardy, and when tried on a new indictment the crime then alleged is not the same crime as in the former indictment.

If the variance is immaterial, it should be disregarded; and if defendant is in fact acquitted on the ground of immaterial variance, he can not be prosecuted again for the same offense, just because the court was mistaken in judging it to be a material variance. (Per Hull, J.; Street, Villa-Real, Vickers and Imperial, JJ., concurring. In division.) *Briefed by* E. A. MANIKAN.

GOVERNMENT PROPERTY—EFFECT OF REGISTRATION.—*The Government of the Philippines vs. Segundo Medina, G. R. No. 36302, November 14, 1932.*—The defendant who rented an *estero* from the Municipality of Hagonoy, province of Bulacan, closed the same at a point near where said *estero* is emptying into the Manila Bay by means of constructing a dike across the same thus blocking the same for navigation. From the order of the lower court instructing him to reopen said *estero* he appealed contending that the Government is not the proper party in interest.

Held: The Government of the Philippine Islands has such an interest in navigable streams and rivers that they are the party plaintiffs. Like public forests and public streets, rivers and esteros are not registerable properties. Evidence in the case shows beyond doubt that said estero was navigable previous to the closing by the defendant. Judgment affirmed. (Per Hull, J.; Street, Villa-Real, Vickers and Imperial, JJ. concurring. In division of five.) *Briefed by* E. A. MANIKAN.

WIFE'S POWER OVER PROPERTY.—Effect of Act No. 3922 upon Article 1387 of the Civil Code—*Bonifacia Lopez vs. Teofilo Chiong, G. R. No. 36658, Nov. 22, 1932.*—Plaintiff, wife of the defendant, was authorized by the lower court to alienate, encumber or dispose of her paraphernal property mentioned in the petition. They have no children and since 1929 defendant left his wife and successively lived with his concubines. Defendant on appeal contends that the lower court erred in giving authority to dispose of her property without limitations.

Held: The judicial authority given to the wife was justified under the circumstances of the case. Defendant's appeal is only an academic question now inasmuch as by the passage of Act No. 3922 by the Philippine Legislature which took effect on September 12, 1932, article 1387 of the Civil Code was amended in the sense of authorizing a married woman, who is of age, to alienate, encumber or mortgage or dispose in any manner her paraphernal properties or to appear in court to litigate with regard to said properties without permission or help of the husband. (Per Imperial, J.; Street, Villa-Real, Hull and Vickers, JJ., concur. In division.) *Briefed by* E. A. MANIKAN.

VIOLATION OF ORDINANCE—INTERPRETATION OF SECTION 830, REVISED ORDINANCE OF THE CITY OF MANILA. —*P. P. I. vs. Lucio Silva, et al., G. R. No. 37198, Nov. 23, 1932.*—In a game of bowling, the accused Lucio Silva was the bowler and his co-accused bet among themselves and with him on the result of the game in the following manner: The bowler, before throwing his balls, announced the number of pins he would drop. If he dropped more or less than the number he announced, he lost; otherwise he won with those who bet for him. The accused were prosecuted under Section 830 of the Revised Ordinances which provides: "It shall be unlawful for any person to make bets or place wagers of money or anything of value on the result of any athletic contest or game where the physical condition, speed, skill, or endurance of the contestants shall be the deciding factor." *Held*: Clearly, bowling is an athletic game. The contention that said section relates only to games where there are opposing contestants is supported by a strict and literal interpretation of the ordinance, but the language of the ordinance is broad enough to include the acts of the defendants. Judgment affirmed. (Per Butte, J.; Malcolm, Villamor, Ostrand, Santos, JJ., concurring.) *Briefed by* Q. MAKALINTAL.

LIABILITY OF GUARDIAN AD LITEM.—*Simcon Mandac vs. Castora Aquino, et al., G. R. No. 36873, Nov. 12, 1932.*—Castora Aquino as guardian *ad litem* of her minor children in a cadastral case, made a compromise by which the oppositors withdraw their opposition to certain lands claimed for the children of the guardian *ad litem*. In consideration of said withdrawal the guardian *ad litem* of said children promised to pay ₱459.83. This is an action *in personam* brought against the guardian *ad litem* for judgment on said debt. Question—May the guardian *ad litem* be made personally liable? *Held*:—A guardian *ad litem* acts only in a representative capacity and his duties and obligations are within the particular suit for which he is appointed. He is not a general guardian of the estate. He acts only within the case for which he was appointed. Therefore, this suit to enforce the debt contracted on behalf of the minors in the cadastral case should have been brought against the minors. In such a suit the same or a different guardian *ad litem* may be appointed if there is no general guardian. (In First Division. Per Butte, J.; Avanceña, C. J.; Malcolm, Ostrand, Santos, JJ.; concurring.) *Briefed by* HECTOR BISNAR.

TRUSTS—ESSENTIAL REQUISITE FOR THEIR CREATION—*In re Fedeicomiso de "Sto. Cristo de Burgos", Sixto de los Angeles, Petitioner and appellee vs. Consolacion E. Santos et al, Oppositor and appellants, G. R. No. 34781, November 12, 1932.*—The petitioner seeks his appointment as trustee of the image in question known as "Sto. Cristo de Burgos". It appears that Juan Dizon last heir of the Dizon family which owned the image, left a will bequeathing the image to Gabriela Santos. The question is whether the will created a trust. It was suggested in the argument that the beneficiaries were intended to be the persons of the Catholic creed in San Mateo, Rizal, but the will does not express it nor declare any beneficiary whatsoever. The words which have apparently been supposed to make the trust are merely explanatory of the motive which let the

testator to make the legacy in favor of Gabriela Santos, the reason being that the testator had confidence in her and that she had rendered long service to him. The sentence wherein he declared that she could in turn leave the care and management of the image to the person whom she should consider suitable in case of her death is merely advisory and in nowise limited the full legal title which had been vested in her. *Held*:—It is absolutely necessary to the creation of a trust that there should be named a beneficiary, or, as commonly said in American and English law, a *cestui que* trust. As there was no beneficiary there was no trust. (In division of five. Per Street, J.; Villa-Real, Hull, Vickers, Imperial, JJ.; concurring) *Briefed by* HECTOR BISNAR.

MEANING OF IMPORTATION TO LAW —*P. P. I. vs. Ang Hok Hin., G. R. No. 36006, November 19, 1932.*—The defendant was consignee of merchandise which according to the inward foreign manifest was dried fish but which on inspection was found to be silk. He was prosecuted under Section 2702 of the Administrative Code which penalizes any person who shall fraudulently or knowingly import or bring into the Philippine Islands, or assist in so doing, any merchandise, contrary to law. Question whether fraud in the invoicing of imported articles when such article is not a prohibited one is importation contrary to law. Under Section 2702 of the Administrative Code. *Held*: Section 2702 was evidently taken from Section 3082 of the Revised Statutes and at the time it was enacted the current construction in the United States of that Section was that it was limited primarily to smuggling. Following the doctrine laid down in U. S. *vs.* Kee How. 33 Fed. Rep. 333 and U. S. *vs.* Clafin, 13 Blalchf 184, the offense of bringing merchandise into the United States "contrary to law" does not include frauds or illegalities concerning the invoicing of the same or the payment of duties thereon which can only occur after the importation is accomplished and the merchandise brought within the cognizance of customs officers. The defendant was acquitted for variance between the complaint and proof. (In Banc. Per Hull, J.; Street, Malcolm, Villamor, Ostrand, Villa-Real, Santos, Vickers, Imperial, JJ., concurring. Butte, J.; with whom Avanceña, C. J., concur dissents in a separate opinion.) *Briefed by* HECTOR BISNAR.

CRIMINAL LAW—WHAT CONSTITUTES A DEPLORABLE ACCIDENT.—*The People of the Philippine Islands vs. John Spirig., G. R. No. 36692, December 3, 1932.*—Gaspar with other companions, was playing ball in a vacant lot on the right side of the road. The ball rolled across the road to the left side and Gaspar ran out to recover it. As soon as Gaspar recovered the ball, he turned and started across the road when he was struck by the defendant's car, which was then only about three meters distant from him on the left side of the road. The accused testified that he did not see the boy until he was immediately in front of his car, whereupon he put on his brake and stopped the car; that he was running at a speed of about twenty miles an hour and stopped the car within fourteen meters. *Held*: The defendant should be acquitted. The facts constitute a deplorable accident which cannot be attributed beyond reasonable doubt to the criminal negligence of the accused. (Per Butte,

J., Avanceña, C. J., Malcolm, Ostrand, Santos, JJ., concurring.) *Briefed by* J. P. DE LEON.

CONSTITUTIONAL LAW—JUSTICES ACTING AS ARBITRATORS.—*Manila Electric Co., Petitioner, vs. Pasay Transportation Co., Inc., et al., G. R. No. 37878, Nov. 25, 1932.—Facts*: Sec. 11, Act 1446, granting the petitioner the franchise, provides that whenever any person or corporation is granted a right of way over the Pasig bridge of the petitioner the term of use and amount of compensation thereof "shall be fixed by the members of the Supreme Court, sitting as a board of arbitrators, the decision of a majority of whom shall be final." This is a petition under the authority of said section. Can the members of the Supreme Court sit as a board of arbitrators?

Held: Sec. 11, Act 1446, deprives the courts of jurisdiction because in making final the decision of the members of the Supreme Court, sitting as a board of arbitrators, a public utility which is not a party to the franchise (Act 1446) is deprived of a recourse to the courts.

The members of the Supreme Court, sitting as a board of arbitrators, exercise either judicial functions administrative or *quasi* judicial functions. Under the first case the decision of the board of arbitrators may be brought to the courts, for any other construction will deprive the courts of jurisdiction. And this is anomalous, for eventually the Supreme Court will be reviewing the decision of its members, sitting as a board of arbitrators. Under the second case, the members of the Supreme Court will be performing functions not lawfully confined to them. Sec. 11 Act 1446, is, therefore, void. (In Banc, Per Malcolm, J., Avanceña, C. J. Street, Villamor, Ostrand, Villa-Real, Santos, Hull, Vickers, Imperial and Butte, JJ., concur.) *Abridged by* P. M. KATIGBAK.

TAXATION.—EFFECT OF INHERITANCE TAX.—*Luis W. Dison, Plaintiff-Appellant, vs. Juan Posadas, Jr., Collector of Internal Revenue, Defendant-Appellant, G. R. No. 36770, Nov. 4, 1932—Facts*: *By a* donation *inter vivos* the deceased transferred all his property to the plaintiff, his only son. The defendant levied an inheritance tax on the transfer. Hence this action to recover the amount paid as tax. Plaintiff contends that he is not an heir of his father under sec. 1540, Administrative Code, because he did not inherit anything from him, he having disposed of all his property during his lifetime. He also contends that sec. 1540, in so far as it levies tax on gifts *inter vivos*, violates sec. 3 of the Organic Act which reads: "That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill." The title of chapter 40, Administrative Code (which includes sec. 1540), makes no reference to tax on gifts. *Held*: Section 1540, Administrative Code, includes those who, by our law, are given the status and rights of heirs, regardless of the quantity of property they may receive as such heirs. Section 1540 plainly does not tax gifts *per se* but only when those gifts are made to those who shall prove to be the heirs, devisees, legatees or donees *mortis causa* of the donor. (In Banc. Per Butte, J., Avanceña, C. J., Street, Malcolm, Ostrand, Santos, Vickers, Imperial, JJ., concur; Villa-Real, J., concur in the result; Villamor, Hull, JJ., did not take part.) *Abridged by* P. M. KATIGBAK.

APPEALS—NECESSITY FOR PAYMENT OF APPEAL FEES.—*Flavia Lazaro, petitioner vs. The Hon. Pastor M. Endencia, Judge of the Court of First Instance of Pangasinan, and Catalina Andres, Respondents, G. R. No. 38291, Nov. 16, 1932.*—*Facts*: Original petition for the writ of mandamus. Respondent, Andres, brought an action for forcible entry and detainer against the petitioner in the justice of the peace court. The justice of the peace dismissed the action. May 29, 1932, respondent filed notice of appeal and deposited ₱8.00, instead of ₱16.00, as required by sec. 76, Act 190, as amended by Act 3615. June 7, 1932, fourteen days after notice of judgment, she deposited the additional ₱8.00 to complete the required docket fee. Did the Court of First Instance acquire jurisdiction over the appeal? *Held*: Payment of the full amount of docket fee is an indispensible step for the perfection of an appeal, which in case of forcible entry and detainer must be within five days from notice. For failure to do so the appeal is not perfected and the Court of First Instance acquires no jurisdiction. Writ of prohibition (which is the proper remedy) is granted. (In Banc, Per Hull, J., Avanceña, C. J., Street, Malcolm, Ostrand, Villa-Real, Santos, Vickers, Imperial, and Butte, JJ., concur.) *Abridged by* P. M. KATIGBAK.

ACTION FOR FEES—LACK OF INTEREST NOT A DEFENSE.—*Clemente Zulueta vs. Trinidad Ledesma et al., G. R. No. 35731, Dec. 2, 1932.*—The defendants were made co-respondents in a certiorari proceeding. They engaged the plaintiff to take charge of their defense. The judgment rendered was favorable to them. In this action for services rendered in the certiorari proceeding the defendants deny liability on the ground that they were not the party really in interest. *Held*: The defendants are liable. The right of an attorney to a compensation does not depend on the client's having any interest in the case, but on a contract of employment either expressed or implied. If the argument of the appellant's counsel were correct, then whenever a defendant in a civil action is absolved from the complaint because his attorney has proved to the court that he has no interest in the transaction, said attorney could not be entitled to recover any compensation at all, even though his brilliant effort may have been the cause of the client's release from the alleged liability. (First Division. Per Ostrand, J., Malcolm, Villamor, Santos, and Butte, JJ., concurring.) *Briefed by* J. P. DE LEON.

PACTO DE RETRO SALE—VENDEE'S RIGHT TO RECOVER PRICE FROM VENDOR-LESSEE FOR LOSS OF LAND.—*Bernardino Corcino vs. Segundo Rubio, G. R. No. 36612, October 7, 1932.*—Defendant sold a parcel of land for the sum of ₱600 to the plaintiff with *pacto de retro* for three years. The parcel continued to be in the hands of Rubio with the understanding that he would pay 40 cavanes of palay every year. In the same year, cadastral proceedings were instituted covering the land in question, the defendant claiming the land which then registered in the Registry of Deeds as the property of the defendant and his wife without mention of the sale in favor of plaintiff. Litigation arose for the recovery of the land and payment of rents. Afterwards, action was brought by one Esteban Alvarez against the defendant herein, and the land in question was levied and

sold at execution to Alvarez, the attachment having been recorded in the Registry. Later, the defendant and his wife executed a document transferring the Torrens title to the plaintiff and acknowledging that the latter had become the absolute owner, but it could not be registered because the attachment in favor of Alvarez had already been recorded. Action was brought, the trial court holding that in the eyes of the law the sale had been consummated and if plaintiff lost the property, it was due to his own fault. *Held*: If defendant had not claimed the property as his own in the cadastral proceedings and if he had not registered it in his own name before the attachment by Alvarez, he would not have lost his right to the land. But he deprived the plaintiff of his property and he must pay back the price. (In division. Per Ostrand, J., Malcolm, Villamor, Santos, Butte, JJ., concurring.) *Briefed by* W. Q. V.

NEGOTIABLE INSTRUMENTS—SUIT AGAINST ACCEPTOR NOT NECESSARY TO JOIN DRAWER.—*Westminster Bank Limited, Petitioner vs. Hon. Luis P. Torres, Judge, and K. Nassoor Inc.*—Original action for certiorari and mandamus. Petitioner is a joint stock company incorporated in England. K. Nassoor, Inc., is a domestic corporation. Suit was instituted by petitioner upon five bills of exchange each drawer by N. Jureidini Ltd., of Manchester, England, against K. Nassoor, Inc., of Manila, payable at a certain number of days after sight to petitioner or order. Each of said bills was accepted unconditionally by respondent. They covered a shipment of goods and the documents covering the goods were turned over by petitioner's agent upon acceptance by respondent, who thereupon received the goods covered by the invoices. Upon presentation of the bills of exchange at maturity, payment was refused. Upon trial, K. Nassoor, Inc., moved that plaintiff be ordered to include in the action, as party plaintiff or defendant, the firm of N. Jureidini Ltd., claiming that plaintiff is not the owner of the drafts but is merely a holder for collection and defendant having a valid set-off and counterclaim against the drawer, the latter must be joined to avoid multiplicity of suits. The motion was granted, hence this action for certiorari. *Held*: Under Sec. 51 of the Negotiable Instruments Law, the petitioner as the payee named in, and as the holder of the bills of exchange, is entitled to sue in its own name. K. Nassoor Inc., by its unconditional acceptance of the instruments and by receiving the merchandise covered by them became obligated to the petitioner. (Sec. 62). It may be true that both the Manchester Bank and K. Nassoor, Inc., may have, today or in the future, claims against Jureidini Ltd., but it may also be true that in the claims of the Bank against N. Jureidini Ltd., K. Nassoor, Inc., will have no interest, and in the claims of K. Nassoor, Inc., against N. Jureidini Ltd., the bank will have no interest. To make a hodge-podge of all such matters within the compass of one suit is unknown to the law, either of England or of this jurisdiction. The orders complained of are clearly improper and their issuance constitutes an abuse of judicial discretion for which certiorari is the appropriate remedy. (In Banc. Per Hull, J., Malcolm, Villamor, Ostrand, Villa-Real, Santos, Vickers, Imperial, Butte, JJ., concurring.)—*Briefed by* W. Q. V.

CRIMINAL LAW—VIOLATION OF ELECTION LAW—*P. P. I. vs. Bruno Bacordo and Marciano Padillo.—G. R. No. 36061.—Nov. 28, 1932.*—Appeal from a judgment finding the appellants guilty of a failure to perform a duty imposed by sec. 433 and penalized by sec. 2639 of the Administrative Code, for having failed, as election inspectors, to include names of duly qualified electors in the list made by them. *Held*: Their defense that the omission was made by the secretary of the board of inspectors is untenable, for it was their duty to see to the correctness of the list, and when they certified the several copies of the incorrect list to the proper officials, they failed to comply with the duty imposed upon them by sec. 433. Neither can the contention that sec. 2639 deals principally with offenses connected with the casting and counting of ballots and not to acts connected with registration be admitted, since the language of the statute is general and there appears no reasonable ground why it should not be interpreted in the broader sense. Affirmed. (Division of five. Per Street, J., Villa-Real, Hull, Vickers, Imperial, JJ., concur.) *Briefed* by E. FERNANDEZ, JR.

CIVIL LAW—PREFERRED CREDIT—*Yutivo Sons Hardware Co. vs. Robustiano Rosales et al.—G. R. No. 36628.—Nov. 22, 1932.*—Appeal from an order sustaining the demurrer. Plaintiff sold on credit to Rosales building materials which the latter used in constructing a house which he subsequently mortgaged to the defendant Cebu Mutual Bldg. & Loan Ass. and over which the defendant Phil. Nat. Bank obtained a preventive attachment. It now seeks to have its credit declared preferred over any claims of the defendant corporations against Rosales. *Held*: The relief prayed for cannot be granted on the ground that the preference granted to the plaintiff by par. 1, art. 1922 of the Civil Code was not inscribed nor made to appear in the transfer certificate of title of Rosales over the land on which the house was built before the liens in favor of the defendant corporations were created. Affirmed. (Division of five. Per Imperial, J., Street, Villa-Real, Hull, Vickers, JJ., concur.) *Briefed by* E. FERNANDEZ, JR.