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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.]

EVIDENCE—WEIGHT OF TESTIMONY OF ACCOMPLICE.—*P. P. I. vs. Renulfo Baliuag et al. G. R. No. 36107, Dec. 5, 1932.*—Appeal from a conviction for theft of large cattle on the ground that the uncorroborated testimony of an accomplice is insufficient to support the judgment. *Held*: It is not necessary that the testimony of an accomplice should be corroborated at all points, and indeed, if the proof is sufficiently convincing, his uncorroborated testimony may support a conviction. It depends upon the force of the evidence supplied by the accomplice. Affirmed. (Division of five. Per Street, J., Villa-Real, Hull, Vickers, Imperial, JJ., concur.) *Briefed by* E. FERNANDEZ, JR.

P. P. I. vs. Renulfo Baliuag et al. Renulfo Baliuag, Defendant and Appellant, Division of five G. R. No. 36107, Dec. 5, 1932.—

STREET, J: This appeal has been brought to reverse a judgment of the Court of First Instance of the province of Cagayan, finding the appellant, Renulfo Baliuag, guilty of the offense of theft of large cattle and sentencing him to undergo imprisonment for 2 years, 4 months and 1 day, prisidio correccional, requiring him to indemnify the heirs of Eugenio Genoveza in the amount of sixty pesos, with subsidiary imprisonment in case of insolvency, and requiring him to pay the costs. The court also ordered the forfeiture of the shotgun used in killing the animal which was stolen.

On the afternoon of May 10, 1930, a white cow belonging to the estate of Eugenio Genoveza, deceased, disappeared in the municipality of Faire, of the province of Cagayan, and that this animal had been slaughtered and its flesh removed became apparent from the relics, consisting chiefly of head and horns that was later found at the place where the slaughter had occurred. The true explanation was soon forthcoming from Protasio Tangoro, who, though first joined as one of the

co-accused, was afterwards omitted from the complaint to be used as a witness.

From the testimony of this witness we learn that on the afternoon of May 10, 1930, the appellant, Renulfo Baliuag, invited Protasio to go out on a bird hunt. The two accordingly went out and having reached a hill in the sitio of Cabalasaan, in the municipality of Faire, the appellant detached himself, telling Tangaro to wait for awhile. The appellant then proceeded alone down to a field where the cow referred to was grazing, and he therefor shot her. This was late in the afternoon. The appellant and the witness then departed, with the understanding that they would return to the slain animal after eight, eating supper with some companions. Accordingly, between eight and nine o'clock, the accused and Protasio Tangaro, with others, returned to the spot where the body of the slaughtered cow was lying, and after skinning the body, they divided the flesh. After this they all went to their respective homes, the appellant advising them to eat the meat as soon as they could to avoid discovery. The head and horns of the slaugtered animal remained on the spot, and was found two days later by Carlos de Dios, a herdman in charge of the cattle pertaining to the estate of Genoveza. The horns exhibited the peculiarity that they curved down. The animal was valued at sixty pesos.

The present appeal is chiefly planted on the circumstance that the conviction of the appellant rests principally on the testimony of Protasio Tangaro who, it is supposed was an accomplice in the act of killing this animal; and in this connection it is argued that the proof of guilt of the appellant is not sufficient to support his conviction.

It is not necessary that the testimony of an accomplice should be corroborated at all points, and indeed, if the proof is sufficiently convincing, the uncorroborated testimony of an accomplice may support a conviction. It depends upon the force of the evidence supplied by the accomplice. In this case the fact that the animal was slaughtered was clearly proved, and its identity is established by evidence independently of the testimony of the accomplice. It results that the conviction was not improper.

The offense committed was theft of large cattle, punishable under No. 4 of article 520 of the Penal Code, in relation with No. 4 of article 518 of the same Code, as amended by Act No. 3244. There is present no qualifying or modifying circumstance, and the appropriate penalty under the provisions cited, as modified by the Revised Penal Code is 4 years, 2 months and 1 day, prision correccional. The penalty of 2 years, 4 months and 1 day imposed by the lower court was, evidently in the nature of a clerical error.

It being understood, therefore, that the penalty imposed on the appellant shall be 4 years, 2 months and 1 day, prision correccional, with accessories prescribed by law, the judgment of conviction is affirmed. So ordered with costs against the appellant.

The days after the publication of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below. Judgment modified and affirmed. Conforming: Villa-Real, Hull, Vickers, Imperial.

CIVIL PROCEDURE—LIABILITY OF SURETIES ON BOND TO RELEASE ATTACHED PROPERTY.—*Texas Co. vs. Diego Buenconcejo, defendant, Da-*

miano Saclauso and Dimal Salazar, Bondsmen.—G. R. No. 36493, Dec. 6, 1932.—Plaintiff sued Buenconcejo to recover a sum of money and obtained a writ of attachment on the latter's trucks to release which defendant bondsmen executed a bond obligating themselves to redeliver said trucks or their value if judgment be rendered for the plaintiff. Upon such judgment having been rendered, bondsmen redelivered the trucks and asked for a discharge. From an order granting the discharge plaintiff appealed, contending that the bondsmen were bound to return the property free from the third party claims filed both at the time of the original attachment and after the return but before the sale pursuant to a writ of execution, and in the same condition as when released and not in its greatly depreciated state. *Held*: Courts must construe the bond as written. It does not require the bondsmen to clear the title of existing lien at the time of the attachment, nor does it contain provisions regarding depreciation. Affirmed. (Division of five. Per Hull, J., Street, Villa-Real, Vickers, Imperial, JJ., concur.) *Briefed by* E. FERNANDEZ, JR.

CRIMINAL LAW—DOUBLE REGISTRATION OF ELECTOR.—*P. P. I. vs. Aborot; P. P. I. vs. Segovia, Cabardo, and Cuesta, G. R. Nos. 36136, 36137, 36182, 31683, and 36184, Dec. 13, 1932.*—Appeal from a conviction of double registration in different precincts, in violation of sec. 2647 of the Administrative Code, as it stood prior to the passage of Act 3894. *Held*: Said Act amended sec. 2647, Adm. Code, by adding a provision to the effect that, where the elector shall have voted at only one of the places where he was lawfully registered, it will constitute a good defense. Defendants acquitted. (Division of five. Per Street, J., Villa-Real, Hull, Vickers, Imperial, JJ., concur.) *Briefed by* E. FERNANDEZ, JR.

CRIMINAL LAW—PROOF OF HABITUAL DELINQUENCY —TWICE A RECIDIVIST NOT A QUALIFYING CIRCUMSTANCE.—*P. P. I. vs. Domingo Siojo. G. R. 36835, Dec. 17, 1932.*—Appeal from a conviction for qualified theft with additional penalty for habitual delinquency. At the trial, prosecuting attorney attempted to introduce in evidence appellant's record, but desisted when appellant admitted in open court that he had been previously convicted four times of theft. The facts show that he has been more than twice a recidivist. *Held*: Atho there is an admission that appellant had previously been convicted four times of theft, there is no showing that the judgment within the period of ten years from appellant's last conviction of theft, or from his last release. While under the law in force at the time the crime was committed appellant could be found guilty of qualified theft because he has been more than twice a recidivist, yet under art. 310 of the Revised Penal Code, the fact that the offender has been twice or more a recidivist does not qualify the crime of theft. Being more favorable to appellant, it should be applied in this case (art. 22, Revised Penal Code). Modified. (In banc. Per Santos, J; Avanceña, C. J., Villamor, Villa-Real, Hull, Vickers, Imperial, Butte, JJ., concur.) *Briefed by*. E. FERNANDEZ, JR.

CHATTEL MORTGAGE—NOVATION.—*Manila Overland Sales Co., Inc., Plaintiff and Appellee, vs. Emiliano Morelos and Lim Chu Sing, Defendants and Appellants. G. R. No. 34981, Dec. 1932.* — Defendants executed a joint and several pro-

missory note in payment of four cars they purchased from the plaintiff. A chattel mortgage was constituted on the cars to secure the payment of the note. Defendants defaulted in the payment of the note and the mortgage was foreclosed. The cars were sold to the plaintiff as the highest bidder. This is an action for the recovery of the balance. Defendants alleged that the chattel mortgage was a novation of the promissory note which released Lim Chu Sing; that the execution sale was null, the price being inadequate. *Held*: The mortgage is a mere accessory contract which leaves the joint and several promissory note in force. Moreover, "In order that an obligation be extinguished by another, it is necessary that it be so positively declared, or that the old and the new are in all points incompatible" (Manresa, Vol. 8, 434.) As to the second question the sum paid for the cars are not so inadequate as to shock the conscience. (In Division of Seven or More Per Malcolm J,; Street, Villa-Real, Santos, Hull, Vickers, Imperial and Butte, JJ., concur) *Abridged by* P. M. KATIGBAK.

CONFESSION — ADMISSIBILITY. —*P. P. I. Plaintiff and Appellee, vs. Santiago Rodriguez et al., Defendants; Victorino Varon, Defendant and Appellant. G. R. No. 37172, Dec. 1932,* —: All three defendants were charged with robbery of an inhabited house. Two of defendants pleaded guilty. Appellant did not. But he had a signed confession. There is no evidence to corroborate his guilt except the confessions of the other two defendants. Appellant contends that his confession was not voluntary. Were the confessions of his codefendants implicating him in the crime admissible against him? *Held*: "* * * But the ground for the admission of such evidence clearly requires that such acts or declarations must have been during the progress of the conspiracy and in pursuance of the ends for which it had been formed, and not after the transaction had ended; and further, before such evidence can be admitted it must appear by competent evidence that the conspiracy actually existed and that the accused were members of the conspiracy." (Bishop's Criminal Procedure, vol. I, sec. 1248, and many cases cited.) (First Division, Per Butte, J.: Avanceña, C. J., Santos J., concur; Malcolm, Ostrand, JJ., dissent.) *Abridged by* P. M. KATIGBAK

PROCEDURE—WHEN ADMINISTRATION OF ESTATE NOT NECESSARY—. *Mercedes Ver v. Geronimo Ver et al., G. R. 36865, Dec. 19, 1932.*—This is an appeal from the decision of the Court of First Instance discharging the administrator of the estate of a deceased. It appears that an administrator was appointed for an estate to represent the heirs and the estate in a certain civil action then pending. Later the appointed administrator presented a motion asking to be discharged, alleging that the estate had no debts, that the estate had been eliminated in the civil action, and that the same had already descended to the heirs. The discharge was granted hence this appeal. *Held*: In the absence of debts existing against the estate the heirs may enter upon the administration of the estate immediately and they may make partition of the same by voluntary agreement or by judicial decree without any necessity for the intervention of a judicial administrator. (Division of Three, per Butte, J., Avanceña, C. J., Villamor, J., concurring.) *Briefed by* J. P. DE LEON.

FICTITIOUS SALE—EVIDENCE SUFFICIENT TO PROVE.—*Urbano Ramirez v. Pedro Vazquez et al, G. R. 36146, Nov. 21, 1932.*—On July 28, 1926, Pedro Vazquez obtained a judgment against Susana Cervantes, the owner of the land in question. A levy was made upon the land and it was sold in an execution sale, the judgment creditor purchasing the same and placed in possession. Upon learning of the writ of execution the plaintiff filed his third party claim and brought an action to annul the attachment alleging that the land was his by purchase from the owner Susana Cervantes made on Sept. 11, 1926 prior to the issuance of the writ of execution. The question hinges in the determination of whether or not the sale to the plaintiff was fictitious. *Held*: It will be seldom that a record will be found to contain direct proof demonstrating a simulated sale. The courts must rely on circumstancial evidence almost entirely. Extant in the record before us are certain circumstances which force us to conclude that the sale was fraudulent and fictitious. In the first place, Susana Cervantes and Pedro Vazquez and others had been litigious individuals, as it was not at all unnatural for the losing party to attempt to defraud the winning party. Secondly, it would be leaving a great deal to the imagination to assume that the son-in-law, Urbano Ramirez, a clerk receiving P40 a month, who had not long been in the province would have in his possession sufficient funds to complete the transaction. (Division of Five, per Malcolm, J., Avanceña C. J., Ostrand, Santos, and Butte, JJ., concurring.) *Briefed by* J. P. L.

ELECTION LAW—LIABILITY OF INSPECTORS FOR CORRECTNESS OF LIST FURNISHED BY THE MUNICIPAL TREASURER.—*P. P. I. v. Bruno Bacordo and Marciano Padillo, G. R. 36061, Nov. 28, 1932.*—The appellants were duly appointed election inspectors and as such it was their duty to prepare a new, revised, and correct list of all qualified voters for their precinct. The appellants prepared and certified the list as correct, but in reality they left out the names of nineteen qualified electors purposely, hence this prosecution for the violation of section 2639 of the Administrative Code. It is contended for the appellants that section 2639 of the Administrative Code under which the appellants were convicted deals principally with offenses connected with the counting of the ballots after the election has taken place, or with offenses connected with the casting of ballots, and hence it is argued that the provision punishing one who fails to perform any duty or obligation imposed by the Election Law, should not be interpreted as applicable to acts connected with registration. *Held*: The contention is untenable, since the language of the statute is general and there appears to be no reasonable ground why it should not be interpreted in the broader sense. (Division of Five, per Street, J., Villa-Real, Hull, Vickers, Imperial, JJ., concurring.) *Briefed by* J. P. DE LEON.

EVIDENCE—BURDEN OF PROOF.—*The Asiatic Petroleum Co. (P. I.) Ltd. v. Teofila Abellana de Hermosisima et al, G. R. No. 36629, Dec. 22, 1932.*—Defendant-appellant was a surety to Teofila Abellana, and brought this appeal on the ground that his obligation was due to a contemporaneous parol agreement.

Held: In order to create the belief that a contemporaneous parol contract existed, the burden of establishing that defense was on the defendant who alleged it. Besides, at most it would not be a defense, but could be set up only as a counterclaim. JUDGMENT AFFIRMED.

(In Division of Five, Per Hull, J., Concurring Street, Villa-Real, Vickers, Imperial, JJ.) *Briefed by* DOMINADOR P. PIDILLA.

II

EVIDENCE—FORCE AND EFFECT OF CERTIFICATE OF BAPTISM AS PROOF OF FILIATION.—*Intestate of the deceased Maria Certeza. Gonzalo v. Certeza vs. Delfina Angeles et al, G. R. No. 36963, Dec. 19, 1932.*—Petitioner Gonzalo v. Certeza was declared the only heir to the entire property of the intestate of Maria Certeza; hence this appeal, on the ground that the defendants were nephews and nieces of the deceased. To show this relation, defendants presented a baptismal certificate in which was stated that the defendants' mother Ana Maria Certeza was the daugther of Manuel Certeza and Natalia Yson Bartolome parents of the decedent.

Held: The certificates of baptism of the appellants proves no more than the fact of their baptisms and can not be accepted as competent proof to show filiation, much less the assertion therein contained that the defendants' maternal grandparents were the deceased spouses Manuel Certeza and Natalia Yson Bartolome. (U. S. v. Orosa 7 Phil. 254; U. S. v. Arceo, 11 Phil. 548; U. S. v. Ybañez, 13 Phil. 699; Adriano v. De Jesus, 23 Phil. 358; U. S. v. Evangelista, 29 Phil., 226.) JUDGMENT AFFIRMED.

(Second Division, Per Imperial, J.: Street, Villa-Real, Hull and Vickers, JJ., concurring.) *Briefed by* DOMINADOR P. PADILLA.

III

CIVIL PROCEDURE—EFFECT OF JUDICIAL ADMISSION OF THE ALLEGATIONS IN THE COMPLAINT BY THE DEFENDANT.—*Bank of the Philippine Islands v. Fausta Teodoro, G. R. No. 36856, Dec. 21, 1932.*—Plaintiff, as receiver in civil case No. 24803, filed a complaint to recover from the defendat the sum of ₱93.83, the unpaid rents on the lands situated in Mariquina, and to order the ouster of the same. Defendant admitted the complaint and asked the court to give a judgment in the plaintiff's favor. However, the decision did not contain an order of ouster as prayed for in the complaint. So, on motion by the plaintiff, this judgment was amended and ordered the defendant to vacate the leased premises. Appeal was made on this amended decision on the ground that it was in excess of the court's jurisdiction, since the original complaint did not ask for the ouster, but only the amount of ₱93.83. *Held.* This defense is absolutely without merit. The original complaint expressly prayed for the ouster. The defendant, in admitting the complaint and asking a judgment in favor of the plaintiff, expressed his conformity with the order that she be obliged to vacate the premises leased. Judgment *Affirmed.* (In Division of Three, Per Avanceña, C. J.; Santos and Butte, JJ., concurring.) *Briefed by* DOMINADOR P. PADILLA.

ATTACHMENT—PREFERENTIAL CREDITS.—*Francisco Esteban vs. The Sheriff of Occidental Negros and Goodrich International Rubber Co., G. R. 36256, Nov. 22, 1932.*—Bon Marche Inc., a corporation engaged in the business of selling dry goods, automobiles and automobile equipments, occupied a building belonging to the plaintiff, at a rental of ₱250 a month. The Goodrich Rubber Co.

filed an action against Bon Marche Inc. for "automobile tires, tubes, and solid tires" sold to the latter. Upon this complaint a temporary attachment was executed by the defendant sheriff on all wares, merchandise and properties belonging to Bon Marche Inc. which he found in the plaintiff's building abovementioned. The plaintiff formally claimed before the sheriff for a preference of his credit for unpaid rentals of his building, occupied by Bon Marche. *Held*: There is no question that the plaintiff as an owner of the buildings used by Bon Marche Inc., has preferential rights over Good rich Rubber Co. in the goods levied upon by the sheriff for unpaid rentals. (Par. 7, Art. 1922, Civil Code.) This preferential right excluded all others and extends to the value of goods to which it has preference. It was not identified that the goods levied upon were those which had been sold by Goodrich Rubber Co. to Bon Marche Inc., and the former could not, for this reason, be considered as a preferred creditor of the latter, for such identification is a condition precedent to the right of preference. This right of preference in the nature of a lien given to the attaching creditor is subject to all liens or statutory preferences by which the property levied upon is affected at the time of the levy. (Per Hull, J.: Avanceña, Malcolm, Ostrand, Santos, and Butte, JJ., concur.) *Briefed by* Q. MAKALINTAL.

COURTS; PROMPT ADMINISTRATION OF JUSTICE; ATTORNEY AND CLIENT; DEFAULT JUDGMENT.—*Felipe Yangco vs. Simplicio Millar et al, G. R. No. 36039, Dec. 21, 1932.*—This case, for the possession of a certain parcel of land and for damages, has been in the courts for over fourteen years, whereas it is an ordinary suit which could easily have been decided in one or two days. Among other incidents to be noted is the obtaining of a judgment by default by the plaintiff which was afterwards vacated and the case restored to the original status. Nevertheless after a second amended complaint was filed, the defendant again incurred default for failing to answer the second amended complaint within the period prescribed by the rules of court, and accordingly the trial judge rendered a decision in favor of the plaintiff and against the defendant. It was shown that the papers containing the second amended complaint were sent by registered mail to the residence of the attorney for the defendant, that three notices were given the addressee, but that nobody claimed the letter. *Held*: The duty of an attorney does not end with making his appearance and then relying on government employee to look after his case, but includes the taking of such precautionary measures as will safeguard the interests of his client. It is further said that there was a sufficient compliance with the provisions of the rules of courts of first instance regarding notice.

Where it appears that a prior judgment by default against the defendant had been vacated upon motion, the entry of such prior judgment by default ought to have been sufficient to put the defendant upon his guard, so that he would have avoided a repetition of the same difficulty.

Public policy demands that at some definite date fixed by law, judgments shall become final even at the risk of occasional errors. Good practice demands that attorneys take an active part and interest in the advancement of their cases. (Per Malcolm, J.: Avanceña, Villamor, Santos and Butte, JJ., concur.) *Briefed by* Q. MAKALINTAL.

DEFENSE OF LACK OF JURIDICAL PERSONALITY.—*Ignacio Garcia Roxas vs. Club Nacional, G. R. No. 36577, Dec. 29, 1932.*—Plaintiff brought this action against the Club Nacional, formerly the Club Nacionalista, Inc., for certain books which the plaintiff sold the defendant. It was contended that the Club Nacional has no juridical personality, that it was never incorporated, and that it has been dissolved. The evidence shows that the members of the Club Nacionalista, Inc., intended to change the name of that corporation to "Club Nacional", and began to make use of that name. It further appears that there are funds deposited in the Philippine National Bank in the name of the Club Nacional, and that said funds have been attached at the instance of the plaintiff. *Held*: The Club Nacionalista was duly incorporated, and has never been legally dissolved. If the directors of said corporation began to make use of the name "CLUB NACIONAL", intending to reorganize the corporation under that name, the corporation is not absolved from the payment of its obligations lawfully contracted by its officers because the reorganization of the corporation was not completed. The Club National, on the other hand, cannot avail itself of the defense of lack of juridical personality for its situation is not that of an unregistered mercantile partnership that sues in its own name. If the Club Nacional be considered separate from the Club Nacionalista, it should be regarded as a civil partnership, and the plaintiff has a right to maintain an action against it, as falling under the provisions of Article 35 of the Civil Code. (Per Vickers, J.: Street and Hull, JJ., concur.) *Briefed by* Q. MAKALINTAL.

ATTORNEY'S FEES.—*Clemente Zulueta vs. Trinidad Ledesma et al, G. R. No. 35731, December 2, 1932.*—In an action by the plaintiff to recover attorney's fees, the defendants disclaim liability alleging that they were not the parties really interested in a certain certiorari proceeding, in which the attorney rendered his services, because the property involved in the certiorari proceedings had been transferred to another person. The facts show that the present defendants were the respondents in said proceeding and that they handed the summons in said proceeding to the herein plaintiff in order that he might take charge of the case. *Question*: Is interest in a case essential to charge a party for attorney's fees? *Held*: If the argument of the defendants were correct, then whenever a defendant in a civil case is absolved from the complaint because his attorney has proven to the court that he has no interest in the transaction, said attorney would not be entitled to recover any compensation at all, even though his brilliant efforts may have been the cause of the client's release from the alleged liability. 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. Hence, the defendants are liable. (In First Division. Per Ostrand, J.; Malcolm, Villamor, Santos, Butte, JJ., concurring.) *Briefed by* HECTOR BISNAR.

AGREEMENT OF PARTIES—RIGHT OF ONE OF THE PARTIES TO IMPUGN THE SAME.—*Damaso Zaraspe vs. Evaristo Perez, G. R. No. 36438, December 15, 1932.*—It was agreed by the plaintiff and the defendant that the boundary in question between their lands shall be determined by a commission of three, composed

of the Clerk of the Court, and the respective attorney of each; that the report of such commission shall be the only proof in said cause and that the decision of the majority shall prevail. *Question*: Can one of the parties ignore the decision of the majority and ask for a new trial? *Held*: As a general rule the decision of the arbiters is conclusive between the parties and their successors in interest since their decision is the adjudication of a tribunal selected by the parties, and the mere dissent of one of the parties cannot destroy the same. As the arbiters made their determination according to the terms of the agreement, the decision of the majority stands inasmuch as fraud is not alleged or proved. (In Second Division. Per Villa-Real, J.; Street, Hull, Vickers, Imperial, JJ., concurring) *Briefed by* HECTOR BISNAR.

WORKMEN'S COMPENSATION ACT—ALTERNATIVE PERIODS FOR BRINGING ACTION—*Catalina Morales, et al. vs. Macaria Garcia, G. R. No. 36819, December 22, 1932.*—Plaintiffs are the widow and minor children of Ponciano de Castro who was injured on October 12, 1929, in the course of his employment in the mill owned and operated by the defendant. After the death of Ponciano, the plaintiffs on October 21, 1929, gave notice to the defendant as required by Sec. 4 of Act 1874. On April 14, 1931, or more than a year later, the plaintiffs filed their complaint for compensation. The lower court dismissed the complaint because the action was not commenced within one year after the accident which caused the death of Ponciano de Castro. *Held*: Sec. 4 of Act 1874 provides: "No action for damages for injuries or death under this Act shall be maintained if a report thereof is not furnished to the employer within ninety days of the date, place, and cause of the injury or if the action is not brought within one year from the time of the accident causing the injury or death." To hold that all actions must be commenced within one year after the accident would make futile any notice given after the expiration of one year and yet such notices are clearly possible and contemplated by the subsequent provisions of the same section. The word "or" is to be given its ordinary meaning as a disjunctive particle that marks an alternative. Act No. 1874 should be liberally construed in favor of employees. Reversed. (Per Butte, J.; Avanceña, C. J., Villamor, J., concurring. Division of Three)—*Briefed by* W. Q. V.

MEANING OF "MERCHANT" WITHIN THE CHINESE EXCLUSION ACT.—*Ang Giok Chip vs. Insular Collector of Customs, G. R. No. 37196, Dec. 23, 1932.*—Petitioner claims as a resident Chinese merchant that he is entitled to the admission to these Islands of his wife and three minor children who were denied admission by a Board of Special Inquiry of the Bureau of Customs on the ground that petitioner had failed to prove that he was a merchant. On appeal the Acting Collector of Customs confirmed the decision, hence this petition for *habeas corpus*. Petitioner showed that he had two per cent interest in a Chinese copartnership of Seng Kee & Co. The value of petitioner's interest is placed at ₱4,500. It was also shown that he is employed by the firm as a Customs Broker, but it is not shown that he is actually engaged in buying and selling merchandise in connection with the business of Seng Kee & Co. The question is: Does ownership in a Chinese copartnership engaged in mercantile enterprise make such holder a merchant within the Chinese Exclusion

Act? *Held*: From a practical standpoint, the ownership of one share of stock cannot make a man a capitalist. The owner of one share of stock of a mining corporation does not make one a miner. If ownership of a minor share in a mercantile corporation would make a merchant out of a laborer, it is easy to see how Chinese copartnerships of the Philippines would expand and how impossible it would be to enforce the Chinese Exclusion Act. Mere ownership of a share is not conclusive that a person occupies that status. Judgment affirmed. (Per Hull, J., Avanceña, C. J., Street, Villamor, Villa-Real, Santos, Vickers, Imperial, Butte, JJ., concur. In Banc.)—*Briefed by* W. Q. V.

CRIMINAL LAW—APPLICATION OF AGGRAVATING CIRCUMSTANCES IN HABITUAL DELINQUENCY—*P. P. I. vs. Emilio Sanchez Mercado, G. R. No. 37054, Dec. 23, 1932.*—Defendant was convicted of the crime of robbery and sentenced to 3 years, 8 months, and 1 day of prision correccional and to indemnify the injured party. He was also sentenced to the additional penalty of 3 years for habitual delinquency. The only question to be considered related to the penalty. The Attorney General calls attention to the aggravating circumstances of nocturnity and recidivism and argues that the additional penalty for habitual delinquency should be in the maximum degree, his argument being that the principal penalty having been imposed in the maximum degree, the additional penalty must be in the same degree. *Held*: Mitigating and aggravating circumstances as defined in arts. 13 and 14 of the Revised Penal Code must be taken into consideration in determining the degree of the principal penalty and be given the definite effects prescribed in the Revised Penal Code. But said mitigating and aggravating circumstances do not determine the degree of the additional penalty to be imposed for habitual delinquency. Additional penalties for habitual delinquency under Art. 62, par. 5, are to be imposed according to the sound discretion of the court within the limits fixed by said article. Habitual delinquency is not a crime in itself, capable of exact definition. It is only a factor in determining a total penalty. It is imposible to lay down any mechanical criteria for fixing the additional penalty for habitual delinquency within the limits fixed by the article. Affirmed. (Per Butte, J.; Street, Villa-Real, Santos, Hull, Vickers, and Imperial, JJ., concurring; Avanceña, C. J., Villamor, J., dissenting. In Banc.) *Briefed by* W. Q. V.

EVIDENCE—COMPARATIVE WEIGHT. —*Simon Rubio et al. vs. Tomas Mina, G. R. No. 36562, December 20, 1932.*—Plaintiffs sought the registration of a piece of land inherited from their deceased father. Defendant opposed on the ground that he was a purchaser for value of a certain portion from certain heirs of the deceased. Oppositor presented witnesses to prove that part of the land in question was mortgaged to the plaintiff. *Held*: Where witnesses are presented by either party, those who have the opportunity to know the facts testified to must be given greater weight and credit than those who do not. Witnesses must testify from their own knowledge and not from others. The theory advanced by the opponents that part of the land was mortgaged was testified to by the widow of an heir who had moved from the place where the land was situated 9 years prior to the death

of the said heir. There was furthermore no proof evidencing said mortgage.

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

MOTION FOR RECONSIDERATION—POWER OF COURT TO GRANT.—*Fisk Tire Co., Inc. vs. E. C. Fernandez et al., G. R. No. 36934, December 17, 1932.* — Plaintiff instituted this action to recover the balance due for various shipments of goods. Counsel for defendants did not receive the notice of date of the trial because of his absence from his regular place of abode. Judgment by default was entered for plaintiff and allowed to recover the sum proved. Motion for reconsideration by defendant was denied. *Held*: The grant of a motion for reconsideration is perfectly within the sound discretion of the trial court. It is the duty of a practising attorney to so arrange matters that official or judicial communications sent by mail will reach him promptly. Failing to do so, he and his client must suffer the consequences of his negligence.

Appeal held frivolous and dilatory.

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

ATTORNEY'S FEES—WHO SHALL PAY.—*Ambrosia Almadin vs. Catalina Almadin, G. R. No. 36810, December 19, 1932.*—On the death of Sabina Almadin, defendant and her children were made universal heirs. The will was opposed by the plaintiffs and for this purpose employed the services of an attorney obliging themselves to pay 40% of whatever share they may get as a result of the opposition. For technical reasons, the will was not allowed to probate. Plaintiffs now seek to charge upon the defendant part of the fee equivalent to the share allotted to her by the intestate succession.

Held: To hold that defendant is to pay part of the attorney's fee contracted by plaintiffs would oblige her to pay the attorney's fee for both sides. In the contract executed by the plaintiffs, defendant had no interest nor privity whatsoever. Neither did she assume such an obligation. To so hold would make attorney's fee chargeable against the estate of the deceased which is untenable.

In this case there is no unjust enrichment by defendant for such rule applies only when the person benefitted has taken some action to get a benefit at the expense of another and not forced upon him.

(In division. Per Butte, J.; Avanceña, C. J., and Villamor, J., concurring.) *Briefed by* B. GOZON.