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RULES OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS

Adopted December 20, 1932
(Effective April 1, 1933)

SEAL

1. The seal of this court shall be of the usual size, and shall bear, running from left to right, on the outside edge, the words "Supreme Court of the Philippine Islands" and in the center the design of an eagle similar to that contained in the seal of the Supreme Court of the United States.

CLERK'S OFFICE

2. The clerk of this court shall keep his office at Manila. All papers authorized or required to be filed in said office shall be filed at Manila. The clerk shall mark on all papers the day and hour when they were filed.

3. In addition to the books which the clerk is now, by law, required to keep, he shall keep a judgment book, in which shall be recorded at length all the final judgments rendered by the court.

4. The Solicitor-General and attorneys *de oficio* shall be permitted to withdraw the record of any case during the period allowed for the preparation of briefs. No other records shall be taken from the clerk's office without an order of the court, except as provided in the rule relating to the printing of the record.

5. The clerk shall have power to administer oaths in all actions or proceedings pending in the court, and in all other cases where it may be necessary in the exercise of the powers of the court, except those cases in which the law requires the oath to be administered by a judge.

6. All unprinted documents presented to the Supreme Court of the Philippine Islands shall be written on paper of good quality twelve and three-eighths inches in length by eight and one-half inches in width, leaving a margin at the top and at the left-hand side not less than one inch and

one-half in width. *Papel Catalan* of the first and second classes, legal cap, and typewriting paper of such weight as not to permit the writing of more than one original and two carbons at one time, will be accepted, provided that such paper is of the required size and of good quality. Documents written with ink shall not be of more than twenty-five lines to one page. Typewritten documents shall be written double-spaced. One side only of the page will be written upon, and the different sheets will be sewn together, firmly, by five stitches in the left-hand border in order to facilitate the formation of the *expediente*, and they must not be doubled. The first page will bear the heading prescribed by Form I of section 784 of the Code of Civil Procedure.

7. All papers required by these rules to be printed shall be printed with black ink on unglazed paper, with pages six inches in width by nine inches in length, in pamphlet form. The type used shall not be smaller than ten point. The paper used shall be of sufficient weight to prevent the printing upon one side from being visible upon the other.

8. All documents presented to this court must bear the postal address of the attorney or party by whom they are signed.

All attorneys representing litigants in any civil or criminal case pending before this court shall leave their postal address in the clerk's office.

All notifications to attorneys or to parties who appear in person required to be made by the clerk shall be sent by mail to the postal address of said attorneys or parties. In case the postal address or office of the attorney or party shall be unknown, the clerk will mail the same to the best of his ability and in conformity with such data as he may then have at hand concerning the residence of said attorney or party. Attorneys and parties have no right to any other notice than that required by this rule.

TITLE OF CASES

9. In all cases originally filed in this court, the party instituting the action shall be called the "petitioner" and the opposing party the "respondent." In all cases removed to this court, the party bringing the case here shall be called the "appellant" and the adverse party the "appellee," but the title of the case shall remain as it was below in all actions or criminal cases.

The full names of all the parties to the proceeding shall be stated in the caption of the bill of exceptions or record on appeal.

ATTORNEYS

10. Attorneys and guardians *ad litem* of the respective parties in the court below shall be considered as the attorneys and guardians of the same parties respectively in this court until others are appointed and notice thereof is served on the adverse party.

MOTIONS AND NOTICES

11. No oral argument will be heard in support of motions, but a typewritten or printed statement of the grounds for the motion shall be submitted with the motion and served with the notice. Objections

to the allowance of the motion may be presented in like manner, within the period prescribed by Rule 13, computed from the date of the service of the motion, and upon receipt thereof, in due course, or upon the expiration of the proper period, the motion shall be submitted for decision, unless the court by special order shall set the motion for hearing.

12. Whenever by these rules a notice is required to be given by the parties, and the period thereof is not elsewhere prescribed, the time of the notice shall be governed by Rule 13. All notices of motions shall be given in writing by the moving party to the adverse party, shall state generally the nature and grounds of the motion, and shall be accompanied by copies of all affidavit or other papers presented to the court in support thereof. Proof of the service of such notice shall be filed, such proof to consist of a written acceptance of the service, or the affidavit of the person making the service that he has delivered a copy of the papers to the attorney for the adverse party, or has left it at his office or residence in the hands of some person, to be designated by name, employed or resident therein and of sufficient discretion to receive the same, or the certificate of a sheriff or other authorized process server that he has made such service. Service may also be made by sending a copy of the papers to the attorney for the adverse party by registered mail, and proof of such service shall be made by affidavit as to the mailing of the papers, and by the production of the registry return card or the letter unclaimed.

13. All notifications required by these rules shall, unless otherwise expressly provided, take effect five days from service. This period shall be computed from the day upon which the notice is served. The date of the mailing of motions, pleadings, or any other papers or payments or deposits required by the rules of this court, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court.

BILL OF EXCEPTIONS AND RECORDS ON APPEAL

14. (a) The clerk of the trial court shall transmit to this court the bill of exceptions, or record on appeal within ten days after its approval, together with a certified copy of the minutes of the proceedings. If the bill of exceptions or the record on appeal is not received by the clerk of this court within thirty days after the approval thereof, the appellee may, upon notice to the appellant, move this court to grant an order directing the clerk of the lower court forthwith to transmit such bill of exceptions or record, or to declare the same abandoned for failure to prosecute.

(b) It shall be the duty of the appellant in all civil cases, within fifteen days computed from the date of the notice of the clerk that the bill of exceptions or record on appeal has been received in this court, to pay the clerk of this court the fees for the docketing of the appeal. If the docketing fee is not paid within the period prescribed by this rule, the appeal shall be deemed abandoned and dismissed, and the clerk of this court shall return the bill of exceptions or record to the court below, accompanied by a certificate under the seal of the court, showing that

the appeal has been dismissed pursuant to section 500 of the Code of Civil Procedure and this rule. Upon the receipt of such certificate in the court below the case shall stand as though no bill of exceptions had been allowed or appeal taken.

(c) The appellant may, at his election, pay the docketing fee to the clerk of the lower court at any time before the transmission of the bill of exceptions or record on appeal, in which event the docketing fee shall be transmitted with the record or bill of exceptions.

(d) Whenever an appeal is allowed by a court of first instance, it shall be the duty of the clerk of such court, unless otherwise requested by the attorney for the appellant, to direct the stenographer or stenographers concerned to attach, and said stenographer or stenographers shall attach to the record of the case a transcript of the notes taken during the trial of the case. It shall be the duty of the stenographer who transcribed the notes in a case to prepare and affix an index of his transcript containing the names of the witnesses and the pages wherein their testimony is found, and a list of the exhibits and the pages wherein the exhibits are admitted or rejected by the trial court. When a party has made proper exception to a ruling of the court rejecting or excluding an exhibit, duly offered, such party may request that such offer and rejection or exclusion be noted in the bill of exceptions, and the clerk shall thereupon include the original of such exhibit in the record to be elevated to this court. Once the appellant has deposited the estimated cost of printing the bill of exceptions in this court, it shall be the duty of the clerk of this court, on ascertaining that the transcript and exhibits have not been elevated, to cause the same to be done in proper cases. The record of exhibits forwarded by the clerk of the trial court to the Supreme Court shall contain an index of the exhibits appearing therein, with reference to the page of the record at which each exhibit may be found, and whenever practicable the exhibits shall be collected in a separate folder.

PRINTING BILL OF EXCEPTIONS OR RECORDS ON APPEAL

15. Upon the receipt of a bill of exceptions or record on appeal the clerk shall make an estimate of the expense of printing fifty copies of the same, exclusive of the evidence, and shall notify the appellant thereof. The appellant shall pay the clerk the estimated cost of printing within fifteen days from the receipt of notice. At the time of paying the estimated cost of printing, the appellant may designate a printing establishment to do the printing, but if this be not done or if the printing establishment designated be not properly equipped for the work, the clerk shall assign the work to a printing establishment.

16. If the appellant shall fail to pay the estimated cost of printing, in accordance with the preceding rule, the court may, on motion of the appellee and notice to the appellant, or upon its own motion, declare the bill of exceptions or the appeal abandoned.

17. Upon payment by either party of the said estimated expense the clerk shall at once cause to be printed for the use of the court and counsel fifty copies of the bill of exceptions or of the record on appeal. The clerk shall send to the printer the bill of exceptions transmitted from

the court below or the transmitted record appeal in special proceedings, and shall see that same is returned by the printer. The clerk shall supervise the printing and read the proof.

18. Upon receipt of said printed copies the clerk shall at once send by registered mail or otherwise deliver to each of the lawyers in the case five copies thereof.

BRIEFS AND ASSIGNMENTS OF ERRORS

19. (a) All briefs shall be printed.

(b) The appellant's brief shall contain in the order herein indicated the following:

(1) A subject index of the matter in the brief with page references and a table of the cases alphabetically arranged, textbooks, and statutes cited with reference to the pages where they are cited, if the brief contains twenty or more pages.

(2) An assignment of the errors intended to be urged. Such errors shall be separately, distinctly, and concisely stated without repetition, and shall be numbered consecutively.

(3) Under the heading "Statement of Facts," a clear and concise statement in brief narrative form of the facts of the case, including the nature of the action, the character of the pleadings and proceedings, the substance of the proof in sufficient detail to make it clearly intelligible, the rulings and orders of the court, the nature of the judgment, and any other matters necessary to an understanding of the nature of the controversy on the appeal, with page references to the record.

(4) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found.

(5) Under the heading "Relief," a specification of the order, or judgment which the appellant believes should be entered by the Supreme Court.

(6) In all civil cases not brought up by bill of exceptions or record on appeal, and in all criminal cases, the appellant's brief shall contain as an appendix of a copy of the decision of the trial judge.

(c) The appellee's brief shall contain in the order herein indicated the following:

(1) A subject index of the matter in the brief with page references and a table of the cases alphabetically arranged, textbooks, and statutes cited with references to the pages where they are cited, if the brief contains twenty or more pages.

(2) Under the heading "Statement of Facts," the appellee shall state that he accepts the statement of facts in the appellant's brief, or under the heading "Counter-Statement of Facts," he shall point out such insufficiencies or inaccuracies as he believes exist in the

appellant's statement of facts, with references to the pages of the record in support thereof, but without repetition of matters in appellant's statement of facts.

(3) Under the heading "Argument," the appellee shall set forth his arguments in the case on each assignment of error with page references to the record. The authorities relied on shall be cited by the page of the report on which the citation is found.

20. No error in civil cases not affecting the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and relied upon in the brief, save as this court, at its option, may notice a plain error not specified. Appellants in criminal cases are not required to make assignment of errors, although it is advisable to do so. Appellees in election cases are permitted to make assignment of errors, and in such cases the appellant may reply thereto within fifteen days from service.

21. Act No. 657 providing that appeals in *habeas corpus* proceedings "shall take precedence over all actions pending in the Supreme Court"; section 273 of the Election Law, providing "that the Supreme Court shall hear election contests in preference to all other cases, and shall try and decide them as soon as possible whether it be a regular term of court or not"; the intention manifest in the Workmen's Compensation Law being to give preferential attention to cases brought under this law, and criminal cases in which the accused is not at liberty on bail, necessitating prompt disposition—in these four classes of cases the appellant shall be allowed thirty days within which to file his brief. In all other cases the appellant shall be allowed forty-five days within which to file his brief. Said periods shall commence to run from receipt of notice of the clerk requiring him to file fifty copies of his brief and proof of service of five copies thereof upon the appellee.

22. Within thirty days from receipt of the brief of the appellant in *habeas corpus*, election, workmen's compensation, and criminal cases as specially mentioned in Rule 21, and in all other cases within forty-five days, the appellee shall file fifty copies of his brief with the clerk, which shall be accompanied by proof of service of five copies thereof upon the appellant.

23. Motions for extension of time for the filing of briefs must be presented before the expiration of the time mentioned in Rules 21 and 22, or within a time fixed by special order of the court. No more than one extension of time for the filing of briefs shall be allowed, and then only for good and sufficient cause shown to be demonstrated by affidavit.

24. If the appellant, in any civil case, fails to serve his brief within the time prescribed by these rules the court may, on motion of the appellee and notice to the appellant, or on its own motion, dismiss the bill of exceptions or the appeal.

25. It shall be the duty of the clerk of the trial court upon the presentation of a notice of appeal in a criminal case, to ascertain from the appellant, if he be confined in prison, whether he desires this court to appoint an attorney to defend him *de oficio* and to transmit with record, upon a form to be prepared by the clerk of this court, a certificate of compliance with this duty and of the response of the appellant to his inquiry. If it appears from the certificate (a) that the accused is confined in prison, (b) without means to employ an attorney, and (c) desires to

be defended *de oficio*, then the clerk of this court will designate a member of the bar to defend him, such designations to be made by strict rotation, unless otherwise directed by order of the court. An appellant in a criminal case, not confined in prison, shall not be entitled to an attorney *de oficio*, unless the appointment of such attorney be requested in this court within ten days from receipt of notice from the clerk, and the right thereto demonstrated by affidavit.

26. In appeals in pauper cases and in criminal cases where the accused is represented by an attorney *de oficio*, it shall be the duty of the attorney for the appellant to file as many legible typewritten copies of the brief as there are members of the court participating in the consideration of the case. In pauper cases, the brief shall include an appendix containing the decision appealed from.

DEATH OF PARTY

27. Whenever it is suggested on the record of this court in a pending case, before the same is finally submitted, that a party to the cause is dead, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of sixty days, or within such time as may be granted. If such representative fails to appear within said time, the court may order the opposing party (whether he be appellant or appellee) to procure the appointment of a legal representative of the deceased, within a time specified by the court, which personal representative shall immediately appear for and on behalf of the interests of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The court may, when the interests of the parties can best be conserved thereby, appoint a guardian *ad litem* to represent the minor heirs of the deceased, or permit his heirs to intervene, without requiring the appointment of an executor or administrator.

CALENDARS AND HEARING

28. Ten days before the opening of every calendar term the clerk shall prepare for the use of the court and counsel a calendar of all cases ready for hearing at the respective terms.

29. After the service of the appellee's brief or the expiration of the time for such service the clerk shall place the case on the next calendar of the court.

30. On the second Monday of January and July, and on other dates as ordered by the court, the court will call the calendars and assign cases for hearing on specified days. Three calendars will be formed, one for the court *in banc*, one for the First Division, and one for the Second Division. The clerk shall notify the parties of the date when the calendars will be called. No other notice will be given of the date for the hearing of the cases assigned. However, upon agreement of the parties, a case may be submitted at any time upon printed briefs without oral argument. In *habeas corpus*, election, and workmen's compensation cases, and in criminal cases where the accused is not at liberty on bail, the cases shall not await the calling of a calendar but shall be set for hearing after the filing of the appellee's brief.

31. All matters submitted to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission: *Provided,* That only those members present when any matter is submitted on oral argument will take part in its consideration and adjudication, if the parties, or either of them, express a desire to that effect in writing filed with the clerk at the date of submission.

32. In any civil case, on appeal, wherein it does not affirmatively appear from the judgment entered in the court below that the amount in controversy exceeds ten thousand pesos, and in any civil case submitted to this court in the exercise of its original jurisdiction, it will be assumed that the parties have agreed that the amount in controversy does not exceed ten thousand pesos, unless it is made to appear by written statement, filed with the record and supported by appropriate affidavits, that the amount in controversy exceeds ten thousand pesos; such written statement to be filed at or before the date of submission for final disposition.

33. Each party shall be entitled to one hour and no more for oral argument upon bills of exceptions, appeals in special proceedings and in criminal cases, unless the case is one which may be disposed of by a division of three, in which event oral argument shall be limited to not more than half an hour for each party; but the court may, by special order, enlarge this time in particular cases upon motion by the interested party filed one day before the date assigned for oral argument.

34. If the appellee in any civil case fails to file his brief in time, he only be heard in reply to appellant's oral argument, but shall not be permitted to file a memorandum or brief at that time.

35. In original proceedings, memoranda will be admitted in lieu or in amplification of oral argument. In appealed cases, memoranda will not be admitted in lieu or in amplification of oral arguments, unless the court so requests, but a citation of authorities not already referred to in the briefs may be made.

36. Whenever it is necessary or proper in the opinion of this court that original papers of any kind should be inspected in this court on appeal, it may make such order for the transmission, safe-keeping, and return of such original papers as may seem proper, and the court may receive and consider such original papers in connection with the record.

JUDGMENT AND COSTS

37. Upon the promulgation of the decision, the clerk shall mail notice thereof to the respective parties or their counsel, and judgment shall be entered fifteen days after such promulgation. A certifified copy of the decision shall be furnished the respective parties or their counsel.

38. Immediately after entry of judgment the clerk shall remand the case to the lower court, unless notice is given, pursuant to Rule 46 of intention to petition the Supreme Court of the United States for a writ of certiorari, in which event the mittimus shall be stayed pending action by this court upon such notice.

39 .Applications for a rehearing or reconsideration shall be made *ex parte* on motion setting forth the grounds on which they are made, and filed within fifteen days after the promulgation of the decision of the court. No oral argument thereon shall be allowed. If rehearing is granted, the cause shall be reheard in conformity with the requirements for the first hearing. The mittimus shall be stayed during the pendency of a motion for a rehearing or reconsideration . More than one motion for a rehearing or reconsideration shall not be filed in any case without express leave of the court.

40. As provided in section 487 of the Code of Civil Procedure, costs shall ordinarily be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. When the judgment appealed from is affirmed, the costs shall ordinarily be taxed against the appellant. When the judgment appealed from is reversed, the costs shall ordinarily be taxed against the appellee. No costs shall be allowed against the Government of the Philippine Islands when the Government is the unsuccessful party. In order to discourage frivolous appeals, double or treble costs shall be imposed on appellants in such cases, and the court may order costs in such cases to be paid by the attorney prosecuting the bill of exceptions.

41. Costs shall be taxed by the clerk on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by the lower court. If taxed after the entry of the judgment, payment of the costs shall be enforced by execution issued by the clerk of this court, addressed to the sheriff of the court below.

42. When the record in this court contains any unnecessary, irrelevant, or immaterial matter, the party at whose instance the same was inserted or at whose instance the same was printed, shall not be allowed as costs any disbursement for preparing, certifying, or printing such matter.

43. Upon remanding the case, the clerk shall transmit to the court below a certified copy of the decision with a certificate of the judgment rendered in the action by the Supreme Court.

ORIGINAL JURISDICTION

44. When the original jurisdiction of this court is invoked in the cases of certiorari, mandamus, prohibition, and *quo warranto* sufficient copies of the petition shall be filed and served upon the respondents. Immediately upon the filing of the petition, the clerk shall report the same to the court, and upon a *prima facie* showing the court shall order the respondent to answer the petition, not demur to it, within tens days from the receipt of a copy thereof.

45. In original proceedings in *habeas corpus* in this court in criminal cases the officer shall serve a copy of the writ and petition on the Solicitor-General at the time he serves the writ on the respondent, and for this purpose the petitioner shall file with his petition two copies thereof.

CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

46. (a) Whenever it is made to appear by notice in writing that any party to a civil case in which final judgment has been rendered by this court intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and it appears that the case is one which, by reason of the amount involved or the nature of the questions of law presnted, may be removed to the Supreme Court of the United States by writ of certiorari, and it further appears that the party intending to make application for such writ desires to stay the enforcement of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States, if such is granted, this court shall grant a stay, for a term not to exceed ten days, within which the moving party may give a supersedeas bond, and shall designate one of its members to determine the sufficiency of such bond.

(b) Within the time limited by the order the moving party shall cause to be delivered to the designated justice a bond subscribed by an authorized surety company or by two or more individuals, as solidary sureties, conditioned for the performance of the judgment which it is sought to stay, in the event that the moving party shall fail, for any cause whatever, to obtain a writ of certiorari from the Supreme Court of the United States or of its affirmance by that court, wholly or in part, should the writ of certiorari be granted, whether such affirmance is upon the merits of the appeal or is the result of the dismissal of the proceeding for any cause whatever.

(c) Before the bond tendered by the moving party is accepted by the justice authorized to approve it shall give the adverse party ample opportunity to be heard as to the legal sufficiency of the bond and the solvency of the sureties.

(d) The filing of the supersedeas bond, approved as herein provided, shall operate as a stay of the mittimus or of the execution of the judgment until further order of this court.

(e) If at any time prior to the granting of the writ of certiorari or to its denial by the Supreme Court of the United States it shall be made to appear, upon petition of the opposing party or otherwise, that the applicant for the writ is not making diligent efforts to submit his petition for a writ of certiorari by complying with the requirements of the law and of the Rules of the Supreme Court of the United as relating to such writs, this court may revoke the supersedeas.

(f) When the defendant in a criminal case gives notice of his desire to apply to the Supreme Court of the United States for a writ of certiorari to review a judgment of conviction by this court, in a case subject to such

review, and prays for a stay of execution pending such application, and it appears that he has been granted bail by the trial court during the pendency of his appeal, the stay may be allowed on filing a new supersedeas bond. Nevertheless, if it shall be made to appear by the Solicitor-General, upon whom copy of the notice shall be served, that the circumstances are such that the accused should be taken into custody, the accused shall be held in detention pending the certiorari proceedings.

(g) In the offense of which the applicant has been convicted in this court is not bailable, a stay may be granted, but the accused will be held in detention during the pendency of the certiorari proceedings.

(h) If the accused has been convicted of a bailable offense, but has been held in detention during the pendency of his appeal to this court, a stay may be granted but a request for release on bail will not be entertained unless the writ of certiorari is allowed by the Supreme Court of the United States.

(i) Any stay granted in a criminal case may be revoked, upon petition of the Solicitor-General for any of the reasons specified in paragraphs (e) and (f) of this rule.

REGULATIONS GOVERNING THE INTERNAL BUSINESS OF THE COURT

47. (a) The Chief Justice at the opening of the court in January and July of each year shall assign the Justices of the court to its divisions and shall fill vacancies occurring in the divisions. The Chief Justice shall also allot the cases submitted to the court and other matters coming before the court among its members.

(b) One week before the hearing of any case, copies of the bill of exceptions or record of appeal, if any, and of the briefs shall be distributed among the members participating.

(c) When the court *in banc* is equally divided in opinion the case shall be reheard, and if on rehearing the court still remains equally divided, the judgment or order appealed from shall stand affirmed; and in cases within the original jurisdiction of the court, the action shall be dismissed.

(d) Only decisions of the court *in banc* and in a division of five shall be published in the Official Gazette and the Philippine Reports when so requested by the author of the decision. Memoranda of all other decisions not so published in full shall be made by the reporter and published in the Official Gazette and included in the Philippine Reports. The syllabi for the decisions shall be prepared by the reporter in cooperation with the author of the decision, in accordance with the system adopted for the Philippine Digest.

48. These rules shall take effect the first day of April, 1933.

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.]

CIVIL PROCEDURE—OWNERSHIP BY PRESCRIPTION—TAKING OF POSSESSION.—*Moises T. Solidum vs. Simplicio Laserna, G. R. No. 36579, January 16, 1933.*—Action of revindication to recover a small parcel of land. Before September, 1927, when defendant entered upon the property and gathered the products therefrom, plaintiff Solidum was apparently in possession of the same. Defendant's claim to the property is based upon a composition title obtained by his predecessor in interest. Plaintiff's title to the property originally came from Baldomero Castor who, in a public document, sold the land in question to Mariano Valedio on December 5, 1910. Mariano Valedio, on August 9, 1919, ceded the same parcel of land to Solidum who took possession and thereafter exercised all the rights of ownership over the land until he was dispossessed by defendant. *Held:* It results that the plaintiff has acquired the title to the land by adverse possession exercised by himself and his predecessor in interest, even supposing that the legal title and this line of transmission was not good from the beginning. (Per Street, J.; Avanceña, C. J., and Santos, J., concur. In Division of Three.) *Briefed by* E. A. MANIKAN.

CIVIL PROCEDURE — SURVIVAL OF ACTION.—*Agustin Liboro vs. Hon. Ceferino Villa-Real, G. R. No. 38061, Jan. 16, 1933.*—Petitioner brought an action against Gregorio Gonzales to recover ₱4,350.00 as damages to his coconut trees caused by the negligence of the latter. Pending action Gregorio Gonzales died and subsequently his attorney moved to dismiss Liboro's complaint. Respondent judge dismissed the case and ordered petitioner to present his claim against the estate of the deceased to the committee on claims. Hence this petition for the writ of mandamus to compel the respondent judge to reinstate the case. *Held:* Section 703 of the Code of Civil Procedure provides that action to recover damages to real property shall survive and may be commenced against the executor or administrator. Undoubtedly, this is an exception to the latter part of section 119, which provides that if the action is for the recovery of money, debt, or damages against the deceased, it shall be discontinued and the claim be prosecuted thereafter in accordance with section 686 of the same Code. Writ granted. (Per Vickers, J.; Villamor, Villa-Real, Hull, and Imperial, JJ., second division.) *Briefed by* E. A. MANIKAN.

LAND REGISTRATION — ELEMENTS OF FRAUD UNDER THE LAW.—*Isabel Romero et al., Applicants and appellants, vs. Pilar Sy-Juco, Oppositor and appellee. G. R. No. 36202, January, 1933.*—After an ocular inspection of the premises by the parties and the judge, a settlement was effected whereby two lots of oppositor were given to the applicant. Pursuant to this settlement the corresponding

decree of registration was entered. Before the expiration of one year from the issuance of the decree, appellee petitioned for review on the ground that the applicants committed fraud when they stated in their application that they were actually occupying the lots when in fact appellee was in possession thereof. The trial judge revoked the decree theretofore entered in favor of the applicant. Was there fraud on the part of applicants? *Held:* To obtain a decree by fraud means to induce the court to issue the decree by false representations, but here the decree was issued, not because of any misrepresentation of the appellants but because the judge upon seeing the premises, believed it proper to exclude these lots from appellee's claim, and the appellee, through her attorney, consented to said exclusion. To be a fraud within section 38, Land Registration Law, the misrepresentation must have been the cause of the issuance of the decree and not merely incidental (Gov't. *v.* Del Rosario, 28 Of. Gaz. No. 50). Besides the parties were represented in court and heard according to law and no fraud can result from that. (Villarosa *v.* Sarmiento, 46 Phil. 824; and other cases cited.) (In Division, Per Ostrand, J., Santos and Butte, JJ., concur.) *Abridged by* P. M. KATIGBAK.

LAND REGISTRATION—ACQUISITION OF REGISTERED LAND BY ADVERSE POSSESSION.—*Juan Feliciano v. Felix de Leon, R. G. No. 36092, Jan. 17, 1933.*—Action to recover the value of 2,000 cavanes of palay obtained by the defendant from the land belonging to the plaintiff. The land involved was registered in the name of the plaintiff under the Land Registration Act (Act No. 496.) The defense was that the defendant acquired title to the land by adverse possession. *Held:* This contention is entirely untenable in view of the explicit provision of Sec. 46 of Act 496 to the effect that no title by prescription can be acquired in derogation of that of the registered owner. Judgment affirmed.

(First Division, Per Ostrand, J., concurring Avanceña, C. J., Street, J.) *Briefed by* DOMINADOR P. PADILLA.

PRINCIPAL AND AGENT—VALIDITY OF AGENT'S ACTS.—*Pantaleon Puzgala vs. Rafaela Dominguez et al., R. G. No. 36540, Jan. 12, 1933.*—The plaintiff authorized Jose Avanceña to sell the two parcels of land in question; but the defendant purchased them with a right of repurchase. Hence, this action to annul the sale on the ground that the agent was authorized to sell the lands absolutely, and not with a right of repurchase. *Held:* The sale was valid. If the sale had been absolute, it would have been valid. If the principal did not like to repurchase he could just let his right lapse. It is true that the agent can not contract any more obligations than those the principal authorized him to contract for him; but in the instant case, the agent did not contract any more obligations than those he was authorized by his principal to make because the stipulation to repurchase was not an obligation on the part of the principal, but a right. Judgment affirmed. (First Division, per Ostrand, J., concurring Street, Santos, JJ.) *Briefed by* DOMINADOR P. PADILLA.

LAND REGISTRATION — EFFECT OF HOMESTEAD PATENT. — *Benito Romero vs. Marcelo Braulio et al. G. R. No. 36899, January 23, 1933.*

—The defendant obtained a homestead patent to a tract of land which he subdivided afterwards. Plaintiff bought one of these parcels and the deed was duly registered. Plaintiff now seeks to register said land in accordance with the Land Registration Act, but was denied by the lower court on the ground that a piece of land already covered by a homestead patent is already a registered land. *Held:* A homestead patent, unlike a Torrens title, is not a good title against the whole world. It is not correct to say that Sec. 122 of Act 496 gives a homestead patent the same effect as a Torrens title. It follows therefore that the mere fact that a tract of land is under a homestead patent does not prevent the owner of that land from registering it under the Torrens Act. The purpose of the Torrens Act is to obtain a title indefeasible in character and good as against the whole world. (In division. Per Butte, J., Avanceña, C. J., Street, Ostrand and Abad Santos, JJ., concurring.) *Briefed by* B. GOZON.

EVIDENCE—ADMISSIBILITY OF CARBON COPIES.—*Nazario Trillana vs. Marcos Bernardo, G. R. No. 36905, January 30, 1933.*—Petitioner seeks to register all of lot No. 1 and oppositor objects on the ground that he bought a portion of said lot from third persons who had bought it from the petitioner. Oppositor presented a document of sale consisting of two pages, the first page consisted of a carbon copy of the original and the second page the original of the true document and bearing the signatures of the parties. During the trial, petitioner did not dispute his signature but merely alleged that he did not remember having signed such document. *Held:* A carbon copy of an original is as good as the original itself when the original can not be produced without the fault of the party introducing. Where a document alleged to have been signed by a party is presented to him for verification of his signature, he should not merely say that he did not remember having signed said document but he should make a denial and introduce at the same time some proofs of his statement. This is especially true when several witnesses are presented by the introducing party, proving the execution of the document and the fact of its being signed by the party sought to be charged. The document was held to contain genuine signatures and therefore admissible in evidence. (In division. Per Butte, J., Street and Ostrand, JJ., concurring.) *Briefed by* B. GOZON.

ATTORNEY AND CLIENT—MALPRACTICE—DUTY OF ATTORNEYS.—*Yu Ku Yo vs. Adriano Ignacio. Per. Rec. No. 2681. February 2, 1933.*—Respondent was charged with malpractice in that after receiving his fee from his client, and inducing him to believe that he had a meritorious case, he abandoned the appeal which he promised to undertake. The defense was that the money received was to be used to defray the expenses of the appeal and having failed to complete the amount, he thought that the appeal would already be cancelled. There was a receipt, however, signed by the respondent which recited that he received said amount as payment for the expenses of the appeal. *Held:* The legal profession is one of trust and confidence, and therefore exacts from its members strict accountability for every undertaking had with their clients. Respondent was admonished to observe more candor and care in his

relations with his clients and was required to return the amount received. (In banc. Per Abad Santos, J., Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, Hull, Vickers, Imperial and Butte, JJ., concurring.) *Briefed by* B. GOZON.

MORTGAGE.—*Mariano Chong Tiaocpo v. Chua Bu, G. R. No. 36485, Jan. 18, 1933.*—Plaintiff and defendant entered into a written agreement which in part provided that upon the failure of the defendant to pay an existing indebtedness on the day stipulated title to certain property belonging to him would thereupon pass to plaintiff without the necessity of another writing. When the time for payment arrived, and the debt had not been paid, a verbal agreement was made between the parties by which Chua Bu rented the property mentioned from the plaintiff. Defendant having failed to pay the agreed rental, the present action of detainer was brought. *Held:* Although it is true that the written agreement was in the nature of a mortgage and that the mere failure to pay the debt could not operate *ipso facto* to transfer the property it being a rule of equity jurisprudence that "once a mortgage always a mortgage," nevertheless, it was not unlawful for the parties by a later contract of rent to recognize the validity of the transfer, and the defendant is estopped from denying the title of his lessor. (Division of Three, per Street, J.; Ostrand and Abad Santos, JJ., concur.) *Briefed by* F. C.

LEGAL ETHICS — CONVERSION OF CLIENT'S FUNDS.—*Maximina Tan v. Miguel Raffiñan, Per. Rec. No. 1227, Jan. 22, 1933.*—Respondent, a practicing lawyer of Cebu, deposited to the credit of his wife a check for ₱1,000 representing moneys due to his client, the petitioner herein. This deposit was constantly thereafter drawn upon by the wife for her own purposes. Still later, Attorney Raffiñan delivered to his client a check for ₱1,000 signed by his wife and endorsed by him, but when said check was presented for payment, it was dishonored by the bank. Since that time Maximina Tan has been holding the check. *Held:* Respondent is guilty of conversion to his own use of funds belonging to his client. License suspended for six months, such suspension to continue thereafter until client is completely paid. (In banc, per Butte, J.; Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real and Imperial, JJ., concur.) *Briefed by* F. C.

WILLS—EXECUTION.—*Ceferino Ferraris v. Teresa Ferraris, G. R. No. 36841, Jan. 10, 1933.*—*Facts:* Testator made his will and signed it before calling the attesting witnesses together. But the testator on producing the will admitted in the presence of the witnesses that the will was signed by him and requested them to sign as witnesses thereto. *Held:* The will not having been signed by the testator in the presence of the witnesses can not be admitted to probate. Sec. 618 of the Code of Civil Procedure, either as it originally stood or after its amendment by Act 2645, requires the signing by the testator to be made in the presence of the attesting witnesses. (In Division of Three, per Street, J.; Ostrand and Abad Santos, JJ., concur.) *Briefed by* E. FERNANDEZ, JR.

LAND REGISTRATION—REFUSAL TO ISSUE WRIT OF POSSESSION—EFFECT UPON VALIDITY OF TITLE.—*Alejandro Arciaga v. Alberta Lopez et al.,*

G. R. No. 36833, Jan. 27, 1933.—The plaintiff and the defendant entered into an agreement whereby the defendant consented to withdraw his opposition to plaintiff's petition for Torrens Title on the strength of plaintiff's promise that after the land has been registered in his name, he would execute a deed of transfer of that portion claimed by the defendant. When the intention of the plaintiff to violate said agreement became evident the defendant filed a civil action to compel the plaintiff to live up to the *convenio* above referred to, which suit is now pending. Pending suit by the defendant, the plaintiff applied for a writ of possession which was granted. Upon petition of the defendant to set aside the order granting the writ and after a proper showing the same was revoked, hence this appeal. *Held:* The lower court properly revoked the writ of possession. The validity or finality of the judgment in the land registration case, by which the plaintiff obtained his Torrens Title is in nowise reviewed, modified, or impaired by the action of the court in refusing for the time being to issue the writ of possession under the circumstances stated. (Division of Three, Per Butte, J., Avanceña, C. J., Santos, J., concurring.) *Briefed by* J. P. L.

ADMINISTRATION — ACTION TO COMPEL DELIVERY OF ESTATE PROPER NOTWITHSTANDING ACCOUNTS OF FIRST ADMINISTRATOR NOT SETTLED. —*Toribia Millora, administratrix of the intestate Jose Millora v. Josefa Mejia et al., G. R. No. 35415, Jan. 30, 1933.*—The defendant was appointed administratrix of the property of her husband, who died intestate. Later for reasons which do not appear clearly in the evidence she was removed and the plaintiff was substituted in her place. The present action has for its purpose to compel the defendant to comply with the order of the judge requiring her to deliver the property in her possession to the plaintiff. The defendant contends that the present action is premature and improper because the court has not approved or disapproved the accounts of her administration yet. *Held:* This contention is untenable because the present action has been instituted precisely to make effective the order of the court obliging the defendant to make delivery to the plaintiff of all the property left in her possession belonging to the intestate estate. (Division of Five, Per Villamor, J., Vickers, Villa-Real, Hull, and Imperial, JJ., concurring.) *Briefed by* J. P. DE LEON.

CIVIL PROCEDURE—WRIT OF ATTACHMENT—SUFFICIENT GROUND.—*W. F. Stevenson & Co., Ltd. v. Uy Bing Piao & Yap King, G. R. No. 36825, Jan. 25, 1933.*—This is an appeal from a judgment denying the appellant damages for issuance of a writ of attachment alleged to be wrongful. The plaintiff petitioned for a writ of attachment based on the ground that the defendant-appellant has disposed or about to dispose his property. The proof upon which the plaintiff based the ground of attachment consists in the declaration of his attorney in which he maintained that an agent of the plaintiff was sent to the office of the defendant to collect payment of his debt through the delivery of the abaca which consisted of 250 bales. The defendant not only refused to pay his debt but also manifested his intention to sell his abaca to another person. *Held*: Upon this fact

it is clear that the defendant did really show his intention to sell his abaca to another, coupled with the circumstance that it is very difficult to understand why the plaintiff resorted to the attachment of this property knowing that the defendant has other kinds of properties. All that the plaintiff wanted was to retain the abaca to answer for the account of the defendant and naturally when he learned of the intention he thought it was his right to have the same attached. This is a sufficient ground and consequently the plaintiff can not be held liable. (Division of Three, Per Imperial, J., Villa-Real, Vickers, JJ., concurring.) *Briefed by* J. P. DE LEON.

LAND REGISTRATION — *Agripina Valdez vs. Felix de la Cruz et al, R. G. No. 36759, Jan. 18, 1933.*— The plaintiff was mortgagee of a certain parcel of land. After the mortgagor's death, in a certain suit against his heirs, the land was sold at public auction and purchased by the present defendants, who took over the possession. It appears, however, that the heirs of the mortgagor assigned to the present plaintiff the said land in payment of the debt secured by the mortgage and noted down in the original certificate of title. The sale at public auction was not recorded. The plaintiff sought to recover the possession of the land. Held: "We have here a case of a double sale wherein preference must be given to Agripina Valdez, not only because she alone recorded the transfer to her, but also because she it was who obtained the transfer certificate of Torrens title." Per Ostrand, J.; Street, Santos, JJ., concur. (*Briefed, by* Q. MAKALINTAL.)

LAND REGISTRATION-FREE PATENT. —*Paz Calimbas vs. Arsenio Joco, R. G. No. 36431, Feb. 1, 1933.*—A certain parcel of land was registered in the name of Anselmo Angeles, in whose intestate proceeding the said land was awarded to the plaintiff herein. Five years after the issuance of title, one Roman Buenaventura had a Free Patent issued in his name over a portion of the same lot. Later on Roman sold the Free patent to the defendant here. This is an action to recover the said portion which remained in the possession of the defendant. *Held*: The Torrens title is much stronger than a Free Patent issued five years later. Furthermore, as stated in Sec. 35 of the Land Registration Act, "every decree of registration shall bind the land, and quiet title thereto, subject only to exceptions stated in the following section. Such exceptions are not to be found in the aforesaid Free Patent. Judgment for the plaintiff. Per Ostrand, J.; Avanceña, Santos JJ. concur. (*Briefed by* Q. MAKALINTAL.)

ADVERSE POSSESSION—LAND BELONGING TO THIRD PERSON OCCUPIED AS HOMESTEAD UNDER THE BELIEF THAT IT WAS PUBLIC LAND—*Government of the Philippine Islands vs. Juan Franco, et. al. G. R. No. 35700. January 27, 1933.*—A claimant, believing certain parcels of land of third persons to be public land, occupied the same and applied for homestead patent for said lands. The claimant's possession of the lands from 1917 to 1929 was exclusive, uninterrupted and adverse against the world except the Government of the Philippine Islands. Question—Is the claimant entitled to the benefit of prescription under Sec. 41 of the Code of Civil Procedure? *Held*: Under Sec. 41 of the Code of Civil Procedure, in order to vest title by prescription, the pos-

session must have been actual. open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. While the possession of the claimant was not adverse to the Government, the better considered decisions hold that a person who takes possession of land in the erroneous belief that it was public land, with the intention of holding and claiming it under the homestead law may acquire title thereto by adverse possession as against the true owner. It is axiomatic that prescription cannot be asserted against the sovereign, and it is futile for any claimant of real property to claim adverse possession against the Government. It results that it is never necessary in order to acquire title by adverse possession against an individual owner that the person asserting adverse possession should have held adversely to the Government. (In First Division. Per Street, J.; Avanceña C. J., Ostrand, Santos, Butte, JJ., concurring.) *Briefed by* HECTOR BISNAR.

ADVERSE POSSESSION; TITLE BY PRESCRIPTION.—*The Government of the Phil. Islands vs. Juan Franco et al., G. R. No. 35700. January 27, 1933.*—The Director of Lands filed a petition in a cadastral case to settle and adjudicate the title to two parcels of land. There appeared as claimants Victor Rivera and his coheirs, it being claimed that they acquired possession of said lots by inheritance and that they and their predecessors possessed the land for sixty years. The Director of Lands asserted the right of the Government for Juan Franco, who has submitted his final proof for the purpose of securing a homestead patent thereto. It appeared that in 1917, Franco entered upon the property and begun to clear and cultivate the lots, building a house upon it which he has been using as a habitation for himself and family. Application for homestead was accepted and registered in the Bureau of Lands. His possession was exclusive and uninterrupted until 1929 when Victor Rivera entered upon the property and attempted to plant a portion of the ground already prepared by Franco. *Held:* Whether Franco claiming in subservience to the Government is entitled to the benefit of prescription under sec. 41, C. C. P. The language of the law is very explicit, and if attention be fixed entirely upon the letter of the law, it might seem that the right of the homesteader could not be sustained, since he did not claim adversely to the Government, and his possession, it might seem, was not adverse to the whole world. There is some authority for this view, but the better doctrine, revealing the drift of the later cases, now holds that a person who takes possession of land in the erroneous belief that it is public land, with the intention of holding and claiming it under the homestead law, may acquire title thereto by adverse possession as against the true owner. It is axiomatic that prescription cannot be asserted against the sovereign, and it is therefore futile for any claimant of real property to claim adverse possession against the Government. In order to acquire title by adverse possession against an individual owner, it is never necessary that the person asserting adverse possession sh' uld have held adversely to the Government. Title of Franco is good. (Per Street, J.; Avanceña, C. J., Ostrand, Abad Santos, Butte, JJ., concurring. Division of Five.) *Briefed by* W. Q. V.

MORTGAGE—VALIDITY OF SECOND MORTGAGE WITHOUT FIRST MORTGAGEE'S CONSENT.—*Bank of the Phil. Is. vs. Ty Camco Sobrino, et al.,*

G. R. No. 36524, February 6, 1933.—Ty Camco is the registered owner of two parcels of land. He executed a deed of first mortgage on these parcels in favor of the Phil. Nat. Bank, with condition that the mortgagor shall not incumber the same with a second mortage (among other things) for more than a year without the written consent of the mortgagee, and if he does so, the latter may forthwith foreclose the mortgage in accordance with law. Later, Ty Camco executed a deed of second mortgage in favor of Cu Yeg Keng and Simon Bona without the written consent of the Bank. Subsequently a third mortgage was given to the Bank of the Phil. Islands with a written consent of the Phil. National Bank. Petition that the inscription of the second mortgage be declared null and void and cancelled. Trial Court held that the petition was equivalent to questioning the validity of the second mortgage, which could only be done in an ordinary action, and not under Sec. 112 of the Land Reg. Act (No. 496). *Held*: While our practice is not as clear as it should be, we believe the trial court to be correct. The mortgage contract should be read in its entirety. It is at once seen that while the making of the second mortgage except with the written consent of the mortgagee is provided for, the contract continues and states the penalty for such a violation, namely, it gives to the mortgagee the right to foreclose the mortgage immediately, not the right to treat it as null and void. The second mortgage is valid. Affirmed. (Per Hull, J.; Avanceña C. J., Street, Villamor, Ostrand, Villa-Real, Santos, Vickers, Imperial, Butte, JJ., concur. In Banc.) *Briefed by* W. Q. V.

WILLS—FUNDS PAID TO WIDOW AND CHILDREN FOR SUPPORT NOT RECOVERABLE—*F. M. Taptico & Co., Ltd. vs. Marina Yulo et al. G. R. No. 35876, Feb. 9, 1933.*—In 1910, plaintiff loaned Gregorio Yulo a sum of money taking as security mortgage on properties of Yulo and wife, Filomena Ortiz. When wife died in 1912, mortgage was not yet paid, and plaintiff and Yulo continued their transactions. Estate of wife settled, bearing part of indebtedness to plaintiff. Conjugal partnership property divided between Yulo and the heirs of Filomena. Yulo died in 1923. Plaintiff filed his entire claim with committee which was granted upon appeal to this court. Present action was instituted to include the heirs of Gregorio Yulo and Filomena Ortíz, the latter because they claim certain parcels of land over which plaintiff has equal rights by virtue of indebtedness incurred and in connection with the mortgage. *Held*: The claim that while the judgment was against the estate of Yulo only, that it was for the indebtedness for which the estate of the deceased wife was also jointly and severally liable, cannot be sustained. No proof was adduced that the later sums obtained were not for the personal use of Gregorio Yulo. At no time did plaintiff bring suit against the administrator of the estate of Ortiz. Although the decision in favor of the plaintiff was against Jose Lopez Vito who was also administrator of the conjugal partnership, no authority is cited in support thereof. As to the funds paid out of a solvent estate by order of court to the widow and minor children for their support during its settlement, the same need not be repaid because the estate has become insolvent. (Per Hull, J.; Street, Vil-

lamor, Vickers, Imperial, JJ., concur. In division of five.) *Briefed by* W. Q. V.

AGENCY—SCOPE OF AGENT'S POWER—*Pantaleon Pungala vs. Rafaela Dominguez et al. G. R. No. 36540, Jan. 18, 1933.*—Appeal from a judgment dismissing plaintiff's complaint to annul a contract of sale of real estate executed in favor of the defendant by plaintiff's agent under a power of attorney authorizing him to sell the property in question, the ground of the action being that this agent was not authorized to sell the property in question, the ground of the action being that the agent was not authorized to sell with a reservation of right to repurchase but conditionally *Held*: Plaintiff's agent did not violate the rule that the agent cannot contract more obligation than he was authorized by his principal, because the stipulation to repurchase was not an obligation on the part of the plaintiff, but a right. Moreover, plaintiff ratified his agent's act by subscribing the oath supporting a complaint presented by his agent against the purchaser to compel the latter to allow the redemption, which case was, however, dismissed for failure to prosecute. Affirmed. (In division, Per Ostrand, J.; Street, Abad Santos, JJ., concur.) *Briefed by* E. FERNANDEZ, JR.