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NOTES *and* COMMENT

THE CONSTITUTIONALITY OF THE ACT REORGANIZING THE SUPREME COURT

Without much debate and discussion Act No. 4023 reorganizing the Supreme Court and raising the number of justices to eleven was passed and approved Dec. 8, 1932. Although Chief Justice Avanceña was said to have been consulted by the judiciary committee of the lower house, the bill as enacted bears the unwholesome effects of unintelligent legislative direction, showing conclusively once more the legislature's need of a trained legislative counsel possessing a mastery of constitutional law. Four important features of the Act will be noted:

1. Quite unobtrusively the Philippine Legislature, reflecting, we suppose, the old agitation in the United States to curtail the power of the courts to declare laws unconstitutional, inserted a provision requiring the concurrence of seven justices to pronounce an Act of the Philippine Legislature invalid. It will be observed that no State legislature of the American Union has ever attempted to so restrict the exercise and application by the courts of the doctrine of judicial supremacy. Reforms of this nature have been effected by amendments to the constitution and so far have been adopted in only two or three states, Ohio and North Dakota being the notable examples. The expediency and necessity of such limitations have been exhaustively discussed by political scientists and the courts affected have been

quick in their condemnation. In Ohio the constitutional amendment requiring the concurrence of at least all but one of the judges of the supreme court to declare a statute unconstitutional in cases where the lower court upheld its validity produced anomalous results. (118 Ohio St. 295, 165 U. E. 902)

Undoubtedly the sovereign body may prescribe the number of judges necessary to hold a law invalid. The people of a state may do so and nothing in the Federal constitution forbids. (State of Ohio Akron Merto. Park Dist., 74 L. ed., 710; 66 A. L. R. 1460). But it is not at all clear that the legislature alone can do it. (Willoughby on the Constitution of the U. S., 2nd ed., Sec. 25.) Direct authority on the subject can not be found although an old case, unreasoned and rather obscure, (Clapp v. Ely, 27 N. J. L. 622), may be cited to show the tendency of courts to resist legislative prescription in respect to the number of justices necessary for the decision of cases.

The question relates not so much perhaps to the jurisdiction of the Supreme Court and the manner of its exercise as to its position as a part of an independent and co-ordinate branch of the Philippine government where "the separation of powers is as complete as in most governments." The Philippine Supreme Court had, on more than one occasion (Ocampo v. Cabañgis, 15 Phil. 626; Borromeo v. Mariano, 41 Phil. 322), to assert the independence of the judiciary which, by the way, seems to be a sore point with the local tribunal as may be judged by the case of Alberto v. Nicolas, 51 Phil. 370, later reversed on appeal by the United States Supreme Court. Obviously the requirement of the concurrence of seven justices, already noted, in practice and in effect lames the judicial power to declare laws unconstitutional as will be more easily perceived if it be supposed that the legislature had required a unanimous vote, for in the latter case it would have become next to impossible to secure from the Supreme Court a declaration of invalidity. The duty of the courts to declare a law invalid if it should contravene the fundamental law of the land is constitutional, as clear as the duty of the legislature to enact laws, and of the executive to execute them. Can the legislative branch, then, strengthen itself and its acts at the expense of the judiciary by hedging the constitutional functions of the latter with limitations such as the present Act endeavors to do? If the legislature can do this its power

must be found in our organic law, and none can be found. The legislature may organize but may not encroach upon the judiciary.

2. But the legislature has not only strengthened itself but has also performed a similar service in favor of the executive branch as will be seen from the following provision of Act No. 4023:

> "Whenever the validity of an Act of the Philippine Legislature, or the *interpretation* of an Act of Congress or Treaty of the United States is involved, the case shall likewise be heard and determined by the Court sitting in banc, the concurrence of a majority of at least seven judges being necessary for the pronouncement of judgment. When the necessary majority as herein provided cannot be had, the Court shall so declare, and the validity of the Act involved, *or the interpretation of the Act or Treaty adopted by the official or officials charged with the duty of carrying it into effect,* shall be deemed upheld." (Italics ours)

What are the consequences of this provision? Let us take an extreme case to illustrate the anomalous situations that may arise under it. Suppose the Governor General or the Insular Auditor should, in interpreting the Jones Law, act in a manner not warranted by that instrument in the opinion of six justices and supposing further that only seven or eight justices participate in the decision of the case wherein the legality of the acts of the officials mentioned is put in issue (since under the provisions of Act No. 4023 seven justices constitute a quorum), what happens? The opinion of six justices will avail nothing against the opinion of the other one or two. And yet had the question been brought before the Court of First Instance, the decision of a single judge would have sufficed to correct an unconstitutional act!

3. The Act instead of authorizing in a general way as did the former law, the sitting of the Court in divisions, is more detailed and the result as will be seen later is not wholly happy. It creates two main divisions: the "First Division" composed of five justices, which is empowered to hear criminal cases only, and the "Second Division" also composed of five justices, which is empowered to hear civil cases not otherwise required to be heard in *banc.* However, to secure an equal distribution

of cases, other cases properly pertaining to one Division may be given to the other, upon order of the Court. On this point, it might be stated, the wording of the Act is not entirely free from obscurity, but the Spanish text is quite clear. That the Legislature may validly authorize the Court to sit in divisions is now beyond dispute. (U. S. v. Limsiongco, 41 Phil. 99; Buenviaje v. Director of Lands, 49 Phil. 939.) Still, the question as to whether the provisions governing in minute detail the business of the Court should be given mandatory effect, or merely directory, may yet arise.

4. Expressive of legislative optimism but incapable of fulfillment is the following provision:

> "The Supreme Court shall, as a body, sit in *banc,* but it may sit in two divisions of five judges or in divisions of three judges to transact business, and two or *more* divisions may sit at the same time." (Italics ours)

But as the Act stands, no more than two divisions can sit at the same time. The main reason for the passage of the Act was to speed up the disposal of cases, and to carry out this object, the legislature must have intended to create three divisions which may sit at the same time. And again legislative purpose is defeated by over-solicitousness and detail.

Let us now investigate why three divisions can not sit at the same time. It will be recalled that the Act creates two main divisions: the "First Division" and the "Second Divsion", with cases of a definite nature pertaining to each. The divisions of three are created thus:

> "Any three of the judges composing the First Division may sit as a division of three judges, which shall have power to hear and determine all criminal cases in which the judgment of the lower court imposed not more than ten years imprisonment or not more than ten thousand pesos fine * * *."
>
> "Any three of the judges composing the Second Division may sit as a division of three judges, which shall have power to hear and determine all civil cases in which the amount in controversy does not exceed ten thousand pesos, or in which the right to a municipal office is involved * * *."

And the only other manner in which the Court may sit is in *banc,* for which seven justices constitute a quorum. The following possibilities and no other may be done under the Act:

1. The Court sits in banc, all judges participating.

2. The Court sits in banc with seven or eight justices participating leaving three or four judges who may sit as a division of three, with one judge unassigned as the case may be.

3. The Court sits in two divisions of five with one judge unassigned (probably on vacation leave).

4. Two divisions of three sitting. This leaves two judges of the First Division, two judges of the Second Division, and another judge—all unassigned. Searching the Act under consideration, no authority can be found for these unassigned judges to sit as a Division of Five or Division of Three.

FRANCISCO CARREON.

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.]

CHINESE EXCLUSION LAW—FINALITY OF ADMINISTRATIVE DECISION.—*Co Guan, on behalf of Co Hong vs. Acting Insular Collector of Customs, G. R. No. 37482, Feb., 1933. Facts:* Application for a writ of habeas corpus. Co Hong sought admission into the Islands as a minor son of Co Guan, a resident merchant. He was denied admission on the ground of discrepancies of testimony and because his appearance reveals him to be 18 years not merely 14 as alleged. Petitioner alleges abuse of discretion.

Held: An inference of this character is competent evidence and entitled to weight. It is of no consequence whether such evidence is weak or strong, conclusive or inconclusive. If it is evidence at all, the Department of Customs may rely upon it, and a finding based thereon. There can be no abuse discretion on the part of the customs officials in questions of fact if there is any evidence to sustain their decision. (First Division, Per Street, J.; Avanceña, C. J.; Ostrand, Santos, Butte, JJ., concur.)—*Abridged by* P. M. KATIGBAK.

CONTRACTS—PENAL CLAUSE IN INVOICES.—*Leopoldo R. Aguinaldo vs. Go Check, doing business under the firm and style "Hap Ho Seng," Appellant G. R. No. 37052, Feb., 1933. Facts:* Plaintiff sold merchandise to defendant payable within 30 days with a stipulation that in case of default in payment, appellant was to pay 1% per month on the amount due plus 20% in case of litigation. The defense was that the penal clause was never entered into between the parties. The penal clause appeared in all invoices signed by the appellant.

Held: "Where a person signs a document, he is not permitted to show that he did not know its terms, and in the absence of fraud he will be bound by its terms." (13 C. J. 277). "A contract may be formed by accepting a paper containing terms. If an offer, is made by delivering to another a paper containing the terms of a proposed contract, and the paper is accepted, the acceptor is bound by the terms; and this is true as a rule whether he reads the paper or not." (13 C. J. 277; Watkino v. Rymill, 10 Q. B. D. 183.) (Division, Per Abad Santos, J.; Ostrand, Butte, JJ. concur.)—*Abridged by* P. M. KATIGBAK.

CRIMINAL LAW—REDUCTION OF TERM OF SENTENCE.—*Jose San Agustin, Petitioner-Appellant, vs. The Director of Prisons, Respondent-Appellee, G. R. No. 38225, Feb., 1933. Facts:* Petition for a writ of habeas corpus based on the Revised Penal Code. It appears that petitioner was convicted of estafa on July 14, 1926. On July 30, 1927 he was again convicted for falsification of commercial documents. It also appears that the first sentence was completely served on May 18, 1931, before the Revised Penal Code took effect.

Held: The Revised Penal Code cannot reduce the first sentence because it was already served. The service of the second sentence should be commenced on May 19, 1931, as the two penalties should be served successively. In this case the petitioner is not entitled to the benefit of the Revised Penal Code. (In Division, Per Ostrand, J.; Santos and Butte, JJ., concur.)—*Abridged by* P. M. KATIGBAK.

EVIDENCE—COMPARISON OF SIGNATURES.—*Pedro Celdran vs. Isidoro Limquiaco et al., G. R. No. 36969, Feb. 15, 1933.*—Action to foreclose a mortgage executed to secure payment of two promissory notes made by defendant. Defendant claims payment of the first note and an extention of time of payment of the second, and as proof thereof, presented an instrument purporting to have been signed by plaintiff.

Held: The fact that a plain comparison of the signatures of the plaintiff contained in the instrument with his genuine signature discloses a glaring dissimilarity, that he denied having signed the instrument under oath, and the further fact that a receipt had been given whereby it was acknowledged that only the sum of ₱960 was paid instead of ₱8000, render highly improbable the fact that he paid the entire indebtedness.

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

LIENS—PRIORITY OF JUDGEMENT AND ATTACHMENT.—*The Municipal Government of Aparri vs. Tomasa Victorino Vda. de Limgenco et al., G. R. No. 36564, Feb., 15, 1933.*—

On December 2, 1929, plaintiff secured a judgment against Lim Quingay while on January 10, 1930, defendant secured an attachment on his properties. Final judgment was rendered on July 16, 1930 for defendant. Plaintiff secured a temporary injunction restraining the sheriff from selling the properties attached.

Held: Notwithstanding the provision of Art. 1924, par. 3 of the Civil Code, the judgment existing in favor of the plaintiff even though of prior date cannot defeat the sale of the properties of the judgment debtor to satisfy an execution already issued. Injunction not being the proper remedy, the injunction issued was vacated. (In Banc. Per Hull., J., Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, Santos, Vickers, Imperial and Butte, JJ., concurring.)—*Briefed by* B. GOZON.

ACTIONS—LATCHES IN SAME—PRESCRIPTION.—*F. M. Yaptico & Co. vs. Marina Yulo et al., G. R. No. 55876, Feb. 9, 1933.*—Action against the heirs of Filomena Ortiz for an indebtedness incurred during her lifetime and secured by a mortgage of the property of said deceased and her husband Yulo. After her death, plaintiff continued his business with Yulo. In 1923, Yulo died and plaintiff obtained judgment for his credit against the estate of Yulo. Plaintiff now turns against the heirs of Ortiz on February 1, 1930. Ortiz died in 1911.

Held: Considering the fact that plaintiff at no time presented his claims against the estate of Ortiz nor against her administrator, and it was not till after 20 years from her death that this action was brought, it is obvious that plaintiff is guilty of latches so far as her estate is concerned. It would be in-

equitable and unjust to permit him to revive any such rights as he might have had and now enforce them against the heirs of Ortiz. Funds paid out of a solvent estate by order of the court of the widow and minor children for their support during its settlement need not be repaid because the estate has become insolvent. (Frey v. Eisenhardt. 116 Mich. 160; 74 NW 501.) (In division. Per Hull, J.; Street, Villamor Vickers and Imperial, JJ., concurring.)—*Briefed by* B. GOZON.

PROPERTY—CHANGE OF COURSE OF RIVER.—*Serapio Campo et al., Plaintiffs and appellants vs. Manuel Bion, Defendant and appellee, R. G. No. 36918, Jan. 28, 1933.*—The plaintiffs claim that the defendant had usurped a portion of their land, which they claim to be their own by right of accession as a result of the change of the river and which the defendant now occupies. But it appears from the exhibits and testimonies of witnesses that the land in question had already existed there even before the change of the course of the river. *Held:* From the evidence adduced it is manifest that the theory of the plaintiffs as to their right by accession must fail in view of the fact that the land had already been there before the natural change of course took place. (First Division. Per Ostrand, J.; Street, Butte, JJ., concurring.)—*Briefed by* J. P. DE LEON.

DIVORCE LAW—RECOGNITION OF DIVORCE GRANTED ELSEWHERE.—*Manuela Barretto Gonzalez vs. Augusto Gonzalez, G. R. No. 37048, March 7, 1933.*—Plaintiff and defendant are citizens of the Philippines and residents of Manila. They were married here in 1919, and subsequently, the husband went to Reno, Nevada, and secured in that jurisdiction an absolute decree of divorce on the ground of desertion, and then came back to the Philippines. This action was brought by the wife to ratify the decree of divorce. *Held:* This cannot be done. The public policy of this state on the question of divorce is clearly set forth in Act 2710 and in the decisions of this court. At all times the matrimonial residence of the parties was here and the residence acquired by the husband in Nevada was not bona fide and did not confer jurisdiction upon the Nevada court to dissolve the bonds of matrimony. Litigants by mutual agreement cannot compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be affected by decrees of foreign courts in a manner which our Government believes is contrary to public order and good morals. (Per Hull, J.)—*Briefed by* Q. MAKALINTAL.

SPECIAL BOARD OF INQUIRY—BASIS OF ITS DECISIONS AS TO APPLICANT'S AGE.—*Mariano Ko Seng, in representation of Ko Bu Yan v. Insular Collector of Customs, G. R. No. 38068, March 7, 1933.*—The special board of inquiry, appointed to investigate the right of Ko Bu Yan to enter the Islands, concluded, from the personal appearance of the latter, that he was only about 8 years of age, contrary to the declaration of the supposed father that he was about 15 years old. Ko Bu Yan was denied admission and the Insular Collector sustained the decision of the special board. An application for a writ of habeas corpus having been denied by the Court of First

Instance, appeal was taken. *Held:* It is well settled here that a special board of inquiry does not abuse its discretion when it bases its decision upon the age of the applicant determined from the latter's personal appearance. The case of U. S. v. Bergantino, 3 J. F. 121, is not applicable. (In Division of Five, per Avanceña, C. J.; Street, Ostrand, Abad Santos, and Butte, JJ., concur.)—*Briefed by* F. C.

LEGAL AUTHORITY OF PUBLIC SERVICE COMMISSION.—*Manila Yellow Taxicab Co. vs. Public Service Commission and E. Vesnan, G. R. No. 38903, March 7, 1933.*—The only question presented in this case is the legal authority of the Public Service Commission to grant special or provisional permits where some testimony has been taken, but before the applicant has completed her evidence and no opportunity have been given the oppositors to submit their evidence and before the Commission has determined whether or not the certificate of public convenience and necessity should in fact be granted. *Held:* Our statutes require the finding based on evidence by the Public Service Commission that public convenience and necessity require the granting of the certificate to would-be operators of public utilities. There is no express authority of law for the granting of special or provisional permits, nor can such power be said to be implied from the powers granted to the Commission in view of the expressed limitations and conditions precedent in the lawful exercise of their powers. The orders complained of must be vacated. (Per Hull, J.) —*Briefed by* Q. MAKALINTAL.

ADULTERY—CONSENT AS A DEFENSE.—*P. P. I. v. Ursula Sensano, G. R. No. 37720, March 7, 1933.*—Ursula Sensano and Mariano Ventura were married in 1919. Subsequently, the husband left his wife and went to another province without writing to his wife or sending her support. The wife met the co-accused in this case and went to live with him, as a result of which she was convicted of adultery. After serving her sentence she appealed to the municipal council and the President and the Justice of the Peace to send her back to her husband, but the husband would not accept her and said she could do as she pleased. She went back to her co-accused, and after seven years, the husband presented another complaint for adultery. *Held:* Apart from the fact that the husband in this case was assuming a mere pose when he signed the complaint as the "offended" spouse, we have come to the conclusion that the evidence in this case and his conduct warrant the inference that he consented to the adulterous relations existing between the accused and therefore he is not authorized by law to institute this criminal proceeding. (Per Butte, J.)—*Briefed by* Q. MAKALINTAL.

CRIMINAL LAW—AGENT OF AUTHORITY.—*P. P. I. vs. Marcos Villacencio, R. G. 36687, Nov. 19, 1933.* —It appears that on the morning of November 13, 1931, the defendant herein went into the baggage room in the Customs House, where only passengers, uniformed baggage boys and Customs House employees were allowed to enter. Vicente Flores, one of the customs guards at the pier, requested the defendant to leave the place, and upon his refusal to do so, Flores arrested him and escorted him outside for the purpose of bringing him before the chief of the guards of the pier.

Once outside, however, the defendant struck Flores at the right ear and then tried to escape, but was overtaken and detained by another customs guard. The question is whether the customs guard is an agent of authority. *Held:* He is. The facts proved constitute the crime defined and penalized under paragraph 1, of Article 151, of the Revised Penal Code. (Division of Five. Per Abad Santos, J.; Avanceña, C. J., Malcolm, Ostrand, Butte, JJ., concurring.)—*Briefed by* J. P. DE LEON.

EXPROPRIATION PROCEEDINGS—POWER OF THE COURT TO CHANGE COMMISSIONER'S REPORT.—*The Municipality of Alfonso v. Marcelo Varias, et al., G. R. No. 36896, March 7, 1933.*—Certain lands were expropriated for school purposes. The court rejected the report of the commissioners on the value of the lands, because the evidence was not properly considered in determining the true value and damages suffered. *Held:* Action proper. (Sec. 4, Act 294; Sec. 246, CCP.) This court has repeatedly held that the court of first instance or this court may modify the report of the commissioners and substitute its own estimate of value based upon the record submitted to it. (City of Manila v. Estrada, 25 Phil. 208; City of Manila v. Neal, 33 Phil. 291; Mun. Council of Nueva Caceres v. Isaac, 41 Phil. 909; Provincial Government of Bulacan v. Aduna, 42 Phil. 248) *Affirmed.*

(In Division of Three, Per Butte, J.; Concurring Street, Ostrand, JJ.) —*Briefed by* DOMINADOR P. PADILLA.

PUBLIC SERVICE LAW (Act 3108) —POWER OF THE PUBLIC SERVICE COMMISSION TO ISSUE PROVISIONAL PERMITS.—*Fausto Barredo, Francisco Javier, Ana Vda. de Corominas, Julio Danon, Manila Yellow Taxicab Co., and Acro Taxicab Co. vs. The Public Service Commission, Ramos Silos, Panfilo Sevillano and Austin Taxicab Company, G. R. No. 39953, March 7, 1933.*—The Public Service Commission, without any evidence to support the application for the issuance of provisional permits of public convenience. and necessity, granted the petition of Silos, Sevillano, and Austin Taxicab Company for such special permits. This certiorari was brought to annul such order. *Held*: granted. There is no special provision of law authorizing such action. The powers of the Public Service Commission are found in the legislation creating that body. Their powers are limited to those expressly granted or necessarily implied from those granted. In our basic law certificates of public convenience can only be granted after hearing and this court on review is compelled to set aside orders, when it clearly appears that there was no evidence before the Commission to support reasonably such order. Evidence must first be taken before issuing such orders. (In Division of Five, Per Hull, J.; Concurring Villamor, Villa-Real, Vickers, Imperial, JJ.)—*Briefed by* DOMINADOR P. PADILLA.

CIVIL PROCEDURE—TIME TO FILE BILL OF EXCEPTIONS.—*Escolin vs. Leonardo Garduño, Judge, et al., G. R. No. 37214, February 28, 1933.*—Petition for mandamus to compel respondent to sign and certify the bill of exceptions of petitioner. Respondent Judge, on opposition of respondent Alvarez, disapproved petitioner's bill of exceptions and ordered the latter to amend it within twenty days from receit of a list of objections and suggestions from Alvarez's attorneys. Petitioner, instead of complying with such order,

filed a petition asking that the afore-mentioned objections be put in the court's calendar for discussion and at the same time praying for the suspension of the running of the twenty days until the objections to his bill of exceptions were resolved. After the lapse of one year, the respondent Judge denied said petition on the ground of the lapse of twenty days period. Reconsideration of the denial was asked and refused with petitioner's due exception. Petitioner contends that the filing of his petition suspends the period of twenty days fixed by the trial court. *Held*: In Lim vs. Singian and Soler (37 Phil. 817) this court has held that the appellant must file his bill of exceptions within ten days from the time of giving notice of his intention to do so, or within such additional time as the trial court may, by express order, have allowed in response to a petition for enlargement filed before the expiration of the statutory period of ten days. The view that the statutory period for the filing of the bill of exceptions may be tacitly extended by the trial court has been expressly repudiated in that case. (Per Abad Santos, J.; Avanceña, C. J., Villamor, Villa-Real, Hull Vickers, Imperial and Butte, JJ. In Banc.)—*Briefed by* E. A. MANIKAN.

WILL AS EVIDENCE OF OWNERSHIP—PROOF TO ESTABLISH ESTOPPEL.—*Sancho Batallones vs. Sotero Batallones, G. R. No. 36295, Feb. 11, 1933.*—Appeal by plaintiff from judgment dismissing action brought by him as legal representative of the deceased Basilia Batallones to recover real estate. *Held*: The contention that ownership was proved by the fact that the land in question was included in the last will and testament of Basilia as part of her estate is untenable. "The probate of a will establishes its due execution by the testator and is conclusive thus far; but as to the title or his right to devise the property named in the will, it binds nobody who has any adverse interest'". Holman v. Perry, 4 Met. 492. The evidence presented to prove that defendant was estopped from denying Basilia's title because altho present when the will was read he made no objection thereto either at that time or at the time of the probate, is not clear, precise and unequivocal. Affirmed. (In division, per Abad Santos, J.; Avanceña, C. J., Street, J. concur.)—*Briefed by* E. FERNANDEZ, JR.

PUBLIC UTILITY—EFFECT OF PRIORITY OF APPLICATION.—*Negros Transportation Co. vs. Roman Mirasol, G. R. No. 37414, Feb. 16, 1933.*—From the orders of the Public Service Commision dividing the hours of the parties herein to operate on the same routes, oppositor appeals claiming that as he was the first to ask the Public Service Commission for the route and hours in question he has a prescriptive right thereto. *Held:* Priority of application gives no such rights; and on the whole case the division of hours made was fair. *Affirmed.* (In division, per Hull, J.; Villamor, Villa-Real, Vickers, Imperial, JJ. concur.) —*Briefed by* E. FERNANDEZ, JR.

CIVIL LAW—SUPPORT.—*Angela Ibarra vs. W. J. Odom, G. R. No. 38033, Mar. 8, 1933.*—Plaintiff sued defendant, her husband, for ₱300 monthly allowance, and specified sums representing the money she was forced to borrow because of the reduction of her allowance by her husband, travel expenses from San

Francisco to Manila, and attorney's fees. From a judgment of the lower court awarding her a monthly allowance of ₱300 and denying the other sums prayed for, plaintiff appeals. *Held:* Plaintiff has shown no legal reason for her having left the marital domicle; hence, under art. 149 of the Civil Code the husband has the right to support her by paying an allowance or maintaining her in his own home. The reduction of the allowance of ₱300 is proper in view of the reduced income of the husband; and inasmuch as he has always been willing to pay an allowance of ₱300 the wife has no right to recover the other sums specified in the complaint. Modified. (In division, Per Hull, J.; Villamor, Villa-Real, Vickers, Imperial, JJ., concur.)—*Briefed by* E. FERANANDEZ, JR.

CRIMINAL LAW—HOMICIDE THRU RECKLESS IMPRUDENCE—WHEN INCOMPETENT HEARSAY EVIDENCE IS ADMISSIBLE.—*P. P. I. vs. Esteban Reyes, G. R. No. 37725, Mar. 8, 1933.* —While hunting appellant directed his companion at a certain spot while he encircled the deer they had seen. The appellant fired at the deer which was running between him and his companion. Altho Government's case consists largely of incompetent hearsay evidence, defendant made no objection but instead, adopted most of it. Appellant is guilty of the charge. Affirmed. (In division, per Butte, J.; Ostrand, Santos, JJ., concur).—*Briefed by* E. FERNANDEZ, JR.

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