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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.]

LAND REGISTRATION LAW—CONTEMPT FOR VIOLATION OF POSSESSION—*P. P. I. vs. Catalino Mina, G. R. No. 32465, May 5, 1934.*—The accused was a losing party in a land case; thereafter, he was found in contempt but was let off with an admonition not to trespass on the land in the future; three years later the accused again usurped a portion of the land, giving rise to the present criminal action for contempt. At the trial, evidence was taken including the testimony of a surveyor, who showed that the accused was in fact occupying a portion of complainant's land. Lower court found defendant guilty. *Held:* Section 232 of the Code of Civil Procedure as amended by Act No. 3170, applies to Land Registration Proceedings. Courts of First Instance have the right to find a person guilty of contempt for a violation of a writ of possession. Affirmed. (In division of three, per Malcolm, J.; Imperial, Butte, JJ. concurring.) *Briefed by* CELESTINO C. JUAN.

CRIMINAL LAW — ESTAFA — ELEMENTS OF—*P. P. I. vs. Yu Ming Guat, G. R. No. 39605, May 5, 1934.*—The defendant, manager of the Yu Tek Co. Inc. was charged with estafa, defrauding the government to the sum of ₱1,708.28. Owing to the reverses in business, the corporation was not able to pay the sales tax corresponding to the last three quarters of 1928. In January, 1929 the government availed itself of the remedy of distraint and siezed some of the personal property of the corporation to satisfy the Internal Revenue Tax then due. The accused then proposed to the agents of the Bureau of Internal Revenue that he be given thirty days within which to pay the amount due the government, as he expected funds from Shanghai on account of the sugar he had in that city for sale. This was accepted and it was agreed that on the 22nd of January, 1929, the property distrained should be released and that the accused should issue the check Exhibit B on that date, postdating it February 22, 1929. The accused told the agents that he had no funds in the Bank at that time but that he hoped to have funds by the 22nd of February 1929. When the check was presented to the Bank after the said date, it was dishonored. Low-

er court found defendant guilty. *Held:* The essential elements of estafa are deceit employed to defraud another and injury caused thereby. Both elements must be present. In this case there was certainly no deceit. The agents of the government accepted the check Exhibit B knowing that it was doubtful whether or not the defendant could have sufficient funds on February 22, 1929, to cover said check. Reversed. (In division of three, per Goddard, J.; Malcolm, Diaz, JJ. concurring.) *Briefed by* CELESTINO C. JUAN.

TRIAL PRACTICE—NEWSPAPER ARTICLE AS EVIDENCE OF THE FACTS THEREIN STATED; NEW WITNESS—REQUISITES—*P. P. I. vs. Chua Chiao and We Si Cui, G. R. No. 39416, May 5, 1934.*—The accused were charged of the crime of less serious physical injuries and were found guilty of slight physical injuries. They asked for a new trial on the ground of newly discovered evidence, based on a newspaper article published in a Chinese newspaper, a day after the offense, which stated that the assault had been committed by an unknown Filipino. The motion was denied. Defendants assigned that as error. In the Supreme Court affidavits of alleged new witnesses were submitted by defendants as another ground for new trial. *Held:* Certainly such a publication is not evidence of the fact therein recited, and a motion for a new trial and assignment of error on denial thereof deserves no consideration. There is no sufficient showing that with due diligence such witnesses could not have been presented at the original trial. Motion for new trial denied. (In division of three, per Hull, J.; Imperial, Butte, JJ. concurring.) *Briefed by* CELESTINO C. JUAN.

REAL ESTATE MORTGAGE—REGISTRATION OF—SECTION 72 ACT NO. 496 CONSTRUED—*Director of Lands, Application v. Heirs of Pablo Abadezco et al., Claimants, Rodrigo Montinola, Appellant, Agustina Consolacion et al., Appellees, G. R. No. 36155, May 8, 1934.*—Appellees, husband and wife, executed a real estate mortgage of registered land in favor of appellant. Subsequently, appellant presented to the register of deeds said mortgage deed for registration. Register of deeds not only refused the registration on the ground that appellant failed to present a duplicate certificate of title of the land mortgaged, but also refused to proceed in accordance with the provisions of section 72 of the Land Registration Act, with a view of compelling mortgagor to surrender the duplicate certificate of title of the land mortgaged for annotation. Appellant petitioned lower court to compel register of deeds to act as requested. Petition denied. Hence this appeal. Two questions are raised in this appeal, to wit: First, can the register of deeds be compelled to register the deed in question? Second, can the mortgagor be compelled to surrender her duplicate certificate of title for the proper annotation thereon of the mortgaged deed? *Held:* These questions must be answered in the affirmative. The provisions of the Land Registration Act must be construed in such a way as to give effect to the paramount purposes for which the said act was enacted. One of the purposes of the said act is to provide for a system of registration of every disposition, voluntary or involuntary, conditional or absolute, of registered land. Such being the case, the provisions of section 72 of the Land Registration Act (Act No. 496) relating to the registration of attachments, liens, or adverse claims, must be construed

to include the registration of a mortgage deed affecting registered land. (In division, Per Santos, J.; Butte, Diaz, JJ., concurring.) *Briefed by* JOSÉ O. HIZON.

ADMINISTRATIVE CODE—MEANING OF "BUSINESS"—SECTION 2722, ADMINISTRATIVE CODE.—*P. P. I. v. Partab Singh, G. R. No. 40127, May 12, 1934.*—Defendant-appellant was convicted in the lower court under Sec. 2722 of the Administrative Code for engaging in the business as money lender without having previously paid the privilege tax as required by the Internal Revenue Law. Five transactions as evidenced by Exhibits A, C, E, G, and I, were proved to have been made by him during the period between 1927 and 1930, and were distributed as follows: One transaction in 1927; one in 1928, two in 1929, and one in 1930. The defendant is a night-watchman by occupation. *Held:* 9 C. J. 1103 contains the following:

"* * * the law uses that term (business) to indicate a regular and legal employment—not one that is occasional, irregular or illegal. Stephenson v. Primrose, 8 Port. (Als.) 155, 167, 33 Am. 281.

"* * *. The term, as used in a statute forbidding the engaging in the business of hawking and peddling, is continuous in its character, not necessarily implying a single act or any number of sets, * * *. Sterne, v. State, 20 Ala. 42, 46.

"* * * Heagland v. Segur, 38 N. J. L. 230, 237, (where the court said: 'It is a word which frequently used as synonymous with occupation, and signifies more than the mere doing of acts which are usually done by persons engaged in the pursuit of a particular calling).'"

Defendant acquitted. In division of three, per Goddard, J.; Villa-Real and Imperial, JJ., concurring. *Briefed by* M. G. SOLIMAN.

FORECLOSURE OF MORTGAGE—NATURE OF PROCEEDINGS; JURISDICTION OF THE COURT.—*Cresenciano Exconde vs. Felix Quesendo,, G. R. No. 36374, May 10, 1934.*—This is a suit for the foreclosure of a mortgage. The defendant admitted the existence of the mortgage debt but challenged the validity of the mortgage. The Lower Court declared the mortgage null and void for lack of proper registration but sentenced the defendant to pay the mortgage debt. The defendant-appellant contested the jurisdiction of the court to try and render such judgment. *Held:* The contention is untenable, being based upon a misconception of the nature of an action for the foreclosure of a real estate mortgage. This action partakes of a dual nature. It is both an action *in personam* and an action *in rem*. It is sometimes called an action *quasi in rem*. In so far as it seeks to enforce the payment of the principal obligation, the debt, it is an action *in personam;* and in so far as it seeks to foreclose the lien on the property mortgaged, it is an action *in rem*. When a foreclosure proceeding is prosecuted by personal service, as in the present case, the invalidity of the mortgage will not deprive the court of its jurisdiction to enter a judgment for the payment of the sum found due the plaintiff upon the obligation sought to be enforced. Affirmed. Division of three, per Abad Santos, J., Butte and Diaz, JJ., concurring.) *Briefed by* F. M. ESCARRILLA.

PROBATE JURISDICTION—THE COURT ONCE TAKING, TO RETAIN JURISDICTION.—*International Harvester Co. of Philppines vs. Francisca Bayra Viuda de Villanueva, As Administratrix of the Estate of Enrique C. Villanueva, G. R. No. 39683, May 16, 1934.*—Enrique C. Villanueva, a resident of Oriental

Negros died intestate and letters of administration were duly issued by the Court of First Instance of that province. Plaintiff, having a claim against the estate, presented the same to the committee on claims and appraisal, and the said committee approved it. The plaintiff, then, commenced this suit in the Court of First Instance of Manila to recover the claim which the committee allowed. Defendant demurred on the ground of lack of jurisdiction, and from the judgment overruling, the demurrer, defendant appealed. *Held:* By virtue of Sec. 602 of the Code of Civil Procedure, the Court of First Instance of Oriental Negros, having first taken cognizance of the settlement of the estate of E. Villanueva, has jurisdiction over the disposition of the present suit, to the exclusion of all other courts. (In division of three, per Hull, J.; Malcolm and Villa-Real, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

TRIAL PRACTICE—NEW TRIAL—WHEN TO FILE AN AMENDED ANSER.—*Schmid & Oberly., Inc., vs. Mariano Ezpeleta, G. R. No. 39698, May 16, 1934.*—After postponement of the trial for lack of a judge, the attorney representing the defendant who was absent, moved for a continuance in order that his client could be personally present and to enable him to file an amended answer. The motion being denied, the trial proceeded, the defendant's attorney abstaining from presenting evidence. Upon judgment for plaintiff, the attorney for the defendant moved for a new trial, setting forth a number of special defenses. From the denial of this motion, he instituted this appeal claiming that the trial court abused its discretion in proceeding to trial in the absence of the defendant. *Held:* "With an attorney present who did not object to the testimony presented and abstained from attempting to develop any facts favorable to the defendant, the court did not abuse its discretion in not granting a new trial." Defendant had ample time to introduce a full answer and, if the amended answer is to bring in new matters, it should be filed in advance of the date of trial to apprise the opposing party of the nature of the defenses. (In division of three, per Hull, J.; Malcolm and Villa-Real, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

ATTORNEY'S FEES—POWER OF THE COURT TO REVOKE PREVIOUS ORDER; QUANTUM MERUIT; WHEN PROOFS ARE UNNECESSARY.—*Testamentaria del finado Manuel Zamora y Paterno; Gregorio Perfecto, Apelante, contra El Banco de las Islas Filipinas, Administrador-Apelado, G. R. No. 39901, May 17, 1934.*—Atty. Perfecto presented a petition in the testamentary proceedings of Manuel Zamora asking for the sum of ₱4,650, the alleged balance of the professional services rendered by him. The administrator opposed petition because ₱20,350 had already been paid to him. Judge hearing the testamentary proceedings, granted petition. Subsequently the judge who granted the petition was appointed to the Public Service Commission, and before his successor a motion for reconsideration was made. Succeeding judge revoked the previous order and denied the petition. Petitioner appealed and raised the following legal questions: (1) Whether the order of another judge is valid taking into account that its effect was to annul and revoke the first order decreed by the former judge. (2) Whether judge correctly applied the doctrine of *quantum meruit* in appraising the reasonable value of the petitioner's services. (3) Whether judge cor-

rectly denied the motion for reconsideration asking for time to introduce evidence to support the petitioner's claims. *Held:* The rule established in this jurisdiction is different from the rule prevailing in some states of the United States. When a case is transferred to another competent judge said judge can modify or leave without effect an order of his predecessor; furthermore, when another judge presides even temporarily in any court, said judge can properly amend or revoke an order decreed by the judge formerly presiding in said court. In both cases it is not an obstacle that the orders were final and definite. The reasons are: (1) That the judge who modifies or revokes the order exercises the same jurisdiction and judicial functions as his predecessor. (2) That the judge hearing the case in the exercise of his sane discretion declared the amount already received the reasonable value of the services rendered. Such discretion should not be disturbed. (3) That the services rendered were not denied and it is evident that the presentation of proofs was unnecessary and superfluous. Affirmed. (Second Division of three, per Imperial, J., Villa-Real and Hull, JJ., concurring.) *Briefed by* F. M. ESCARRILLA.

SLANDER—*P. P. I. vs. Vicenta Munar, G. R. No. 39741, May 21, 1934.* —In the market place of the city of Baguio the defendant engaged in an angry conversation with Miss Aline Page, in the course of which, and in the presence of many persons she used the lurid and picturesque expressions set out in the information to describe the character and personal status and habits of Aline and her mother. *Held:* "One who will thus seek to impute vice or immorality to another, the consequence of which might gravely prejudice the reputation of the person insulted, in this instance, apparently an honorable and respectable lady and her young daughters, all prominent in social circles, deserves little judicial sympathy. Certainly, it is time for the courts to put the stamp of their disapproval on his practice of vile and loud slander, which so debauches and degrades womanhood. Shrews must be taxed in the modern Philippines just as they were in the lines of Shakespeare. The words of the Good Book in Proverbs xxi, can also be read with profit." (U. S. vs. Tolosa, 37 Phil. 166. 166, 168). (Per Butte, J.; Santos and Diaz, JJ., concur.) *Briefed by* L. V. MONASTERIAL.

THIRD PARTY CLAIM AT SHERIFF'S SALE—*Jacinto Francisco vs. Angel Marave et al., G. R. No. 37838, May 21, 1934.*—Norberto Marave, for the sole purpose of enabling his son Angel Marave to administer the land here in dispute and to secure a license for the possession of a firearm, permitted and directed that the tax declaration covering said land should stand in the name of Angel. This was done without any deed of conveyance from father to son. Subsequently, Angel became a judgment debtor in a certain action and the same land was embargoed as land belonging to him. With notice of a third party claim filed by Norberto Marave, the plaintiff purchased the land at the sheriff's sale. The Supreme Court in reversing the judgment of the lower court which granted the ownership and possession of the land in the plaintiff, *held:* It is elementary law that the purchaser at a sheriff's sale acquires no better title than that of the judgment debtor. He cannot close his eyes to a third party claim. He purchases subject to any and all rights that the third party claimant may establish nor will he be

permitted to prejudge these rights by attempting to raise an estoppel against the claimant based upon antecedent act or declaration of the claimant not addressed to him. (Per Butte, J.; Santos and Diaz, JJ., concur.) *Briefed by* L. V. MONASTERIAL.

PRESUMPTION OF CRIMINAL INTENT MAY BE REBUTTED—*P. P. I. vs. Sotero Cuenca, G. R. No. 39960, May 21, 1934.*—Defendant solemnized several marriages without being duly authorized by the Director of the Philippine National Library as provided in Act No. 3613. He admits having celebrated the marriages but denies that he solemnized them with the criminal intent of violating the aforementioned act. He proved that he celebrated the marriages only after he received official communication from his superior ecclesiastical authorities (through whom he presented his application to the Director of the Philippine Libray) informing him that he has been duly authorized to solemnize marriages. *Held:* When a person performs an act which the law denounces as a crime, it will be presumed that he did so with criminal intent. In no case may he plead ignorance of the law, but he may rebut the presumption of criminal intent. From the evidence submitted by defendant, we conclude that he has satisfactorily rebutted the presumption that his acts were performed with criminal intent. (Per Butte, J.; Villareal and Diaz, JJ., concur.) *Briefed by* L. V. MONASTERIAL.

ELECTION LAW—APPOINTMENT OF ELECTION INSPECTORS WHEN DOMINANT PARTY IS DIVIDED INTO FACTIONS—*John Bolon, vs. The Municipal Council of Cebu et al., G. R. No. 41719, May 22, 1934.*—In the last general elections in the City of Cebu the Democratas polled the largest number of votes, and the Nacionalista Consolidado the next largest number of votes. The municipal council named two inspectors and two substitutes for each election precinct for the Partido Democrata, and one election inspector and one substitute for the Nacionalista Consolidado. The trial judge followed the plan of dividing the inspectors for the Partido Democrata between the Democrata Pros and the Democrata Antis. This was alleged as error. *Held:* We cannot say that the action taken by the trial judge was wrong. He divided the representation of the dominant party, the Partido Democrata, between its two groups, the Democrata Pros and the Democrata Antis. He then determined who was the legitimate representative of the Partido Nacionalista Consolidado and assigned minority representation to that party. The plan followed by the trial judge conforms to the rules of the Election Law as sanctioned by this court. (Ysip vs. Mun. Council of Cabiao, 1922, 43 Phil. 352; Altavas et al. vs. Mun. Council of Capiz et al., 1934, XXXII O. G. 1080; De la Fuente vs. Mun. Board of Manila, 1934, G. R. No. 41640). (Affirmed Per George A. Malcolm, J., Villa-Real, Imperial and Goddard, JJ. concurring.) *Briefed by* JOSÉ C. BAUTISTA.

CRIMINAL PROCEDURE—DISCHARGE OF CODEFENDANT AND USED AS GOVERNMENT WITNESS—WHEN ACT NO. 2709, SECTION 2, INAPPLICABLE—*P. P. I., Plaintiff-Appellee, v. Feiipe Agasang et al., Defendant-appellants, G. R. No. 40976, May 23, 1934.*—Defendants-appellants were convicted in the trial court of the crime of homicide. They appealed and assigned as error the dismissal of a codefendant on motion of the fiscal when the attending circum-

stance to wit: "said codefendant appeared to be the most guilty", did not warrant his dismissal. *Held:* The assignment of error is not well founded. Here, the fiscal moved for the dismissal on the ground that he had no evidence against him and not on the ground that he may be a witness for the government there being some evidence of his guilt. The fiscal acts within his legal authority in dismissing a person and using him as a witness when he is convinced that his proofs cannot be sustained against such person. Act No. 2709 section 2, therefore, is inapplicable. (In Division, Per Butte, J.; Santos, Goddard, Imperial, Diaz, JJ., concurring.) *Briefed by* José O. Hizon.

Section 2753 of the Revised Administrative Code as Amended by Section 4, Par. (b), of Act No. 3077 Construed—*P. P. I. vs. Prisco Oronia, G. R. No. 39984, May 24, 1934.*—The defendant was convicted under Section 2753 of the Revised Administrative Code as amended by Act 3077 which punishes: "Any person who shall interfere, violate or abet in the interference or violation of any valid decision, resolution or order of the Bureau of Lands affecting the concession or disposition of any portion of the public domain or shall resist in any manner whatsoever the enforcement of such decision or resolution." Esteban Aves, the complaining witness, being in possession of 16 hectares of homestead land was forcibly ejected from three hectares of land included in his homestead by the defendant who claimed that he acquired the land by purchase from Leoncio Ration. After an investigation, the Director of Lands decided the case in favor of Aves. The defendant resisted the enforcement of this decision and argues that said par. (b) of Section 2753 as amended is applicable only to persons claiming rights in public land "when the nature of the ownership of the land is not in issue". He contended further that said section is unconstitutional as encroaching upon jurisdiction of courts of First Instance and deprives a person of property without due process of law. *Held:* There is no language in this paragraph which gives the statute such a restrictive effect. The statute is addressed to "any person" who shall resist or violate any such valid decision or order. As to the constitutional objection, it is frivolous. The defendant has ample remedy to determine question of title in the civil courts which he did not avail of. Affirmed. (Per George Butte, J. Villa-Real and Diaz concurring.) *Briefed by* José C. Bautista.

Civil Law—Presumption of Conjugal Property Rebutted—*Flaviana Macaraeg et al. vs. Francisco Desiderio et al., G. R. No. 39370, May 26, 1934.*—Plaintiff Flaviana Macaraeg with her husband Venancio Montaos claim interest in certain parcels of real estate by way of inheritance from their grandfather by his first marriage. Defendants claim the property by way of inheritance as children of the second wife of grandfather. There is in the record a possessory information dated 1895, by mother of defendants who was the second wife of the grandfather of plaintiffs in which, with his consent, she claimed to be the owner of a number of parcels of land. Plaintiffs' right depends upon the presumption that property acquired during the lifetime of their grandfather was conjugal. Defendants claim that the lands in question belonged to the paraphernal property of their mother. *Held:* Lower Court did not give proper weight to the possessory information execut-

ed in 1895. In that document the predecessor in interest of plaintiffs admitted that the properties referred to were paraphernal properties of his then wife. Therefore, the presumption that properties acquired during marriage are conjugal is overcome and instead they were the paraphernal properties of the second wife, as the documnt had not been impaired in any way. (In division of three, per Hull, J.; concurring, Imperial and Goddard, JJ.) *Briefed by* RAFAEL CAÑIZA.

VIOLATION OF ORDINANCE—WHAT IS NOT A PUBLIC PLACE OR PLACE OPEN TO PUBLIC VIEW—*P. P. I. vs. Felipe Lopez, G. R. No. 40033, May 28, 1934.*—Appeal from conviction by Court of First Instance of Manila for violation of section 821 of the Revised Ordinances of the city which provides: "Intoxication—No person shall be drunk or intoxicated, or behave in a drunken, boisterous, rude, or indecent manner in any public place, or place open to public views; or be drunk or intoxicated, or behave in a drunken, boisterous, rude, or indecent manner in any place or premises, to the annoyance of another person." The information charged defendant with acting and behaving in a rude and indecent manner towards one Potenciana Canlas without her consent and to her great annoyance. She testified that the familiarities mentioned in the information were indulged in by defendant in the presence of her mother in her home. *Held:* "The acts were not committed in any public place or place open to public views but in the privacy of a home by an invited guest." Reversed. (In division of three, per Butte, J.; Santos and Diaz, JJ., concurring.) *Briefed by* A. P. COBACHA.

EVIDENCE—INDEPENDENT COLLATERAL AGREEMENT MAY BE PROVED BY PAROL EVIDENCE; ATTACHMENT —REQUISITES—*Germann & Co. Ltd., plaintiff-appellant vs. Paciencia Benito Inc., defendant-appellee, G. R. No. 39588, May 31, 1934.*—Plaintiff brought this action to recover over ₱8,000.00 which it had made by way of advances and supplies to defendant. Sometime in 1931, defendant who had a mill for the pressing of copra, approached plaintiff with a view to a milling contract. Defendant's mill not being in good condition, needed repairs. Plaintiff made advances of money and supplies so that the mill could operate. These advances were kept by plaintiff in current account. After some negotiations, a milling contract in writing was entered into by the parties. Nothing was said in this contract about the so-called current account. The items specified in the milling contract were entirely different from the items that made up the so-called current account. The defense is to the effect that all the dealings of the parties were covered by the written contract. Defendant also claimed damages to the unlawful attachment of their properties at the commencement of the suit. Trial court dismissed the complaint and allowed the counterclaim in the amount of ₱1,500.00 as damages due to wrongful attachment. *Held:* There is no dispute as to the correct amount of the so-called current account. Defendant has profited to the amount represented by it. Doubtless these advances would not have been made, had the milling contract not been in contemplation by the parties, but we believe it is much sounder to argue that the omission of the current account from the formal contract means that the contract did not contemplate covering such an item.

"While a written contract merges into itself all prior parol negotiations with reference to that contract, it does not necessarily merge all other contracts actually entered into between the parties, although relating to the same property in order to exclude evidence or oral agreement on the ground that the parties later entered into a written contract. A written agreement does not exclude a distinct collateral oral agreement." (13 C. J. 598) We are constrained to hold that the current account is a collateral agreement not covered by the written contract. With reference to the counterclaim, the affidavit under which the attachment was issued is defective, as it failed to recite the grounds required by the Code of Civil Procedure before an attachment should issue. It is further shown by proof that plaintiff made no real effort to ascertain whether the defendant was in fact disposing of its properties. It is proved that defendant suffered some damages, although the amount had not been shown. We, therefore, see no reason to disturb the finding of facts by the trial court, that such damages amounted to ₱1,500. Modified. (In division of three, per Hull, J.; Villa-Real, Malcolm, JJ. concurring.) *Briefed by* CELESTINO C. JUAN.

LAND REGISTRATION—NATURE OF CADASTRAL PROCEEDING—*Director of Lands vs. Candido Abando, et al., G. R. No. 38600, June 12, 1934.*—Ramos, in the name and on behalf of his brother Reyes, filed a formal and verified application for a certain lot in a certain cadastral case. Upon opposition, trial court struck out the said application on the ground that Ramos had no interest direct or indirect in said lot and that under Cadastral Act, Art. 9, answers or applications in cadastral cases can only be made by claimant or duly recognized attorney-at-law. Supreme Court reversed decision citing case of *Heirs of Dulay vs. Araneta Diaz, G. R. No. 33187. Held:* "A cadastral proceeding is not an ordinary action. It is instituted by the government, and its purpose is not to deprive the land owners of their rights, but to determine and affirm such rights so as to prevent future disputes in that respect. The claimants in the proceeding are usually persons of very limited means, and it clearly appears that the legislature has taken that fact into consideration and has endeavored to reduce the land owners' expenses as far as practicable. * * * Section 9 of the Cadastral Act means exactly what it says, and its obvious intent is that any person of age and discretion may represent the claimant in filing his answer and that a written power of attorney is not required. In so providing, the legislature acted wisely; to insist on written power of attorney would only increase the expenses of the land owner and, considering the plain object of the answer, would be of little or no value." Judgment reversed. (In first division of three. Per Butte, J.; Santos and Diaz, JJ., concurring.) *Briefed by* J. S. GONZALES.

THEFT — RULE WHEN STOLEN GOODS ARE FOUND IN THE POSSESSION OF THE DEFENDANTS.—*Government of the Philippine Islands vs. Villariza and Lupangue, G. R. No. 40024 June 13, 1934.*—C. Mata was employed by defendant Villariza to deliver a certain sack of rice and for this purpose loaned a carabao from Carbunco which carabao was later proved to belong to Arcuino and not to Carbunco. There is not the slightest evidence which shows that Villariza, Mata or Car-

bunco knew that they had an animal belonging to another person nor did Mata have any cause to believe that Carbunco was keeping a stolen carabao in his herd. The carabao was found in the possession of Lupangue who was keeping it under instructions from Villariza. *Held:* The true rule is that proof of possession of recently stolen goods taken together with proof of the commission of the theft may be sufficient to establish the guilt of the accused if there is nothing in the record to raise a doubt as to the guilty character of the possession. (U. S. *v.* Catimbang, 35 Phil. 367). In the case at bar Mata's possession was innocently obtained so that there is nothing in the record to charge Villariza with notice that he was receiving stolen property. There is a strong doubt as to the guilty character of his possession. Acquitted. (Per Butte, J.; Abad Santos and Diaz. JJ., concurring.)—*Briefed by* CELSO MOLINA.

PUBLIC SERVICE COMMISSION — POWER TO GRANT EX PARTE ORDERS. —*Manila Electric Company et al. vs. Rafael Trias, Victoria Garcia et al., G. R. Nos. 41126, 41127 and 41128, June 14, 1934.*—The Public Service Commission granted to small operators of vehicles called auto-calesas a certificate of public convenience and necessity in spite of the opposition of operators of older forms of transportation. Later, these small operators obtained an *ex parte* order from the commission granting to them the right to substitute four-wheeled vehicles for three-wheeled vehicles. These appeals seek a review and reversal of the *ex parte* order of the commission. *Held:* We cannot pass by in silence a practice of the Public Service Commission used in this case of granting *ex parte* orders permitting a substantial change or right subject to protest within thirty days. If it is a matter in which other competitors are interested, there can be no question that a hearing should precede a grant. It is as irregular as the former practice of granting a temporary or provisional permit which this court has held illegal and improper in the case of *Manila Yellow Taxicab Co. vs. Public Service Commission* (G. R. No. 38908). * * * There is no legislative branch of authority in force in this jurisdiction, nor in any of the cases that have been brought to our attention has there been any benefit by attempting to circumvent the law requiring a hearing or to short-cut the proceedings by issuing *ex parte* orders subject to objection. (In division of five. Per Hull, J.; Malcolm, Villareal, Imperial, and Butte JJ., concurring.) *Briefed by* J. S. GONZALES.

FORCIBLE ENTRY AND DETAINER—OWNERSHIP AND DAMAGES.—*Lidia Salafranca and Cayetano Tinado vs. Aurelio Servando, G. R. No. 39395, June 15, 1934.*—The simple issue in this case as to the possession of the land in question by the plaintiffs and of their illegal dispossession by the defendant has been beclouded by a mass of evidence involving the claims of title of the plaintiffs and the defendant to said land. The preponderance of the evidence clearly established that the plaintiffs, through their tenant were in possession of said lot when the defendant, declaring that his wife was the owner of the land, by force entered thereon and committed various acts of waste ejecting the tenant of the plaintiffs. Whereupon, plaintiffs brought this action of forcible entry and detainer with

damages against defendant. Lower court, however, decided in favor of defendant. *Held:* The plaintiff had the material possession of the land and was unlawfully ousted from this possession. But it is not for the court to decide that he is the owner of the land, because its ownership is not a subject matter of this action. He may not be the owner. The damages claimed by the plaintiffs for the unlawful waste committed by the defendant cannot be allowed for the reasons which are well set out in the case of *Santos v. Santiago and Angeles* (38 Phil. 575). To allow such damages would presuppose ownership of the lot in the plaintiffs. Judgment reversed and the defendant ordered to vacate lot and to restore the possession of same to plaintiffs. (In first division of three. Per Butte, J.; Hull and Diaz, JJ., concurring.)—*Briefed by* RODOLFO PALMA.

FORECLOSURE OF MORTGAGE—MORTGAGE SECURITY NOT RENOUNCED BY BRINGING AN ACTION FOR PERSONAL JUDGMENT.—*Tomas Matienzo et al., plaintiffs and appellees vs. Guadalupe San Jose et al., defendants and appellants, G. R. No. 39510, June 16, 1934.*—Raymundo Isaac and Antonina Alay mortgaged certain parcels of land to Dr. M. B. Calupitan on February 16, 1930, to secure a debt for ₱1,000. On April 12, 1930, Dr. Calupitan assigned and transferred this mortgage to the defendant San Jose. On May 8, 1930, after maturity of the debt, San Jose brought a civil action against the mortgagors for a personal judgment for the debt without asking for the foreclosure of the mortgage. Judgment was rendered in her favor on Dec. 3, 1930. It also appears that the said mortgagors on Dec. 26, 1929, and prior to the above transactions, had sold the same lands with *pacto de retro* within 10 years to the plaintiff Matienzo, but said sale was not recorded until more than one year after the registration of the mortgage in favor of Dr. Calupitan. This action was brought to enjoin the defendants from proceeding with the attachment and execution sale. *Question:* Did San Jose renounce her mortgage security when she failed to ask for foreclosure of the mortgage and content herself with a personal judgment? *Held:* The case of *Veloso v. Heredia*, 35 Phil. 306, is not applicable because that case involved special proceedings governed by Sec. 708 of the Code of Civil Procedure. Apart from special proceedings regulated by statute, an unsatisfied personal judgment for a debt is no bar to an action to enforce a mortgage or other lien given as security for such debt. But, the claimant can have only one satisfaction whether he obtains it thru personal judgment or by foreclosure of mortgage or partly by each. The right which the vendor reserved under the sale with *pacto de retro* are subject to attachment and sale in judicial process in satisfaction of the judgment held by San Jose. The purchaser at the sheriff's sale would have acquired those rights subject to the prior rights of San Jose under the mortgage, and, after satisfaction of the mortgage, subject to the rights of Matienzo under the sale with *pacto de retro*. Writ denied. Judgment reversed. (In division, per Butte, J.; Hull and Diaz, JJ., concurring.)—*Briefed by* J. P. SANTILLAN.

FORCIBLE ENTRY AND DETAINER—INVOLVES ONLY THE ISSUE OF POSSESSION.—*Pedro Pendero, and Lorenzo Menzon, plaintiffs and ap-*

pellees vs. Ponciano Lopica, defendant appellant, G. R. No. 39494, June 16, 1934.—Action for forcible entry and detainer. The trial judge rendered his decision in favor of the plaintiffs on the ground that they had a superior title. *Held:* The clear preponderance of evidence sustains the defense of appellant that he had been in continuous possession of the land involved since at least the year 1923. As to which of the parties has superior title is not to be decided in this simple action of forcible entry and detainer which involves only the issue of possession by the plaintiff and dispossession by the defendant on the date recited in the complaint. Judgment reversed. (In division of three, per Butte, J.; Abad Santos, Diaz, J., concurring.)—*Briefed by* J. P. SANTILLAN.

CRIMINAL LAW — ARSON — WHAT ACTS CONSTITUTE ARSON AS PUNISHED BY ARTICLE 323, PAR. 4, REVISED PENAL CODE.—*P. P. I. vs. Porfirio Chaves, F. R. No. 39924, June 19, 1934.*—Accused entered into contract with complainants herein by the terms of which the latter rented the former's theater for a period of ten years for theatrical performances, moving pictures and the like. The accused being entitled to a certain per cent of the gross admission receipts as compensation, it was stipulated that complainants were to give not less than fifteen performances every month and for every night that he failed to give a performance in breach of the agreement, he was to pay an indemnity or a fine of ₱10. When business was low, an acme aparatus and several rolls of films used in the theater disappeared. In a search made on the premises and in the river near the lot of the defendant, various burned parts of the projector of acme and films were discovered. Hence, action by prosecution alleging that the accused committed crime to make complainants pay him ₱10 each night for which they failed to give the agreed performance. Appellant argued that lower court erred in holding him guilty of the crime of arson (incendio) as defined by Art. 322 of the Revised Penal Code. *Held:* Acts of accused constituted the crime of arson (incendio) punished by Art. 323, paragraph 4, of the Revised Penal Code. Argument of the appellant, which is based on the assumption that the crime of *incendio* as defined in the Spanish Penal Code and the Revised Penal Code of the Philippines is the same as arson in the Anglo-American common law, which is usually defined as the willful and malicious burning of the house or outhouse of another, is untenable. Besides the expression *incendio de cosas no comprendidas en los artículos anteriores* occurring in Art. 322, the expression *cualquier otro objeto de valor* in Art. 323 should be noted. Nor could the defendant be held merely for malicious mischief (daños) under Art. 327 because this article expressly excludes *daños* which are the result of arson (incendio) covered by the preceding chapter (Articles 320-326) of the revised code. (In first division of three, Butte, J.; Goddard and Diaz, JJ., concurring.)—*Briefed by* RODOLFO PALMA.

REFEREE'S REPORT—WHEN BINDING UPON THE PARTIES—WHEN REVIEWABLE ON APPEAL.—*Ignacio Mariano, et al. vs. Marcelo Padilla, et al., G. R. No. 30701, June 26, 1934.*—Appeal by defendants from a decision based on report of referee who was appointed by agreement of the parties. Referee filed

his report March 11, 1933. Adopted by court July 13, 1933. Defendants did not challenge referee's findings by timely and specific exceptions thereto. *Held:* "By failure to make such exceptions, the defendant is bound by the findings of the referee and he can not be heard to dispute their truthfulness or escape the legal consequences flowing therefrom. Questions relating to the report of a referee can be reviewed only where the record discloses the exceptions taken thereto. (Santos *v.* De Guzman and Martinez, 45 Phil. 642)." Affirmed. (In division of three per Goddard, J.; Butte and Diaz, JJ., concurring).—*Briefed by* A. P. COBACHA.

LAND REGISTRATION CASE—POWER OF COURT TO REVISE AN ORIGINAL CERTIFICATE OF TITLE—EFFECT OF LACK OF PUBLICATION AND NOTICE. —*Crisanto Lichauco et al. vs. De Cayetano Corpus et al., G. R. No. 39512, June 29, 1934.*—On May 1, 1903, the Court of Land Registration pursuant to Act No. 496 adjudicated a certificate of title to appellants over the *hacienda* "El Porvenir" based upon the plan made by Surveyor Rocefull in 1886. Later, on October 31, 1922, the appellants submitted a new survey of the *hacienda* and petitioned the court to issue a new certificate of title in their favor based upon the new survey. This new plan increased the area of the *hacienda* by more than 291 hectares. Without due publication and notice the court, by virtue of its decrees dated November 24, 1922, December 20, 1922, and March 1, 1923, issued a new certificate of title to the appellants. Trial court declared the final decree of March 1, 1923, null and void. *Held:* Section 112, Act No. 496, did not confer jurisdiction on the court to make the said decree of March 1, 1923. In substance and effect the appellants asked and obtained a reopening and a revision of the original decree of registration of 1905, which is expressly prohibited by section 112. Plainly, the decrees of 1922 and 1923 attempted to adjudicate the title to some 291 hectares of land not included in the original petition. Such a proceeding without a new publication and new notice is void. Affirmed. (In division of five, per Butte, J.; Santos, Hull, Goddard and Diaz, JJ., concurring). —*Briefed by* CRISOSTOMO F. PARIÑAS.

EXPROPRIATION PROCEEDINGS — SHOULD ALLOWANCE OF TAXES AND ASSESSMENTS PAID BY ORIGINAL OWNER FROM DISPOSSESSION TO ADJUDICATION OF TITLE BE MADE?— *The City of Manila, plaintiff-appellant, vs. Maria Elio Vda. de Roxas and Cu Unjieng e Hijos, defendant-appellees, G. R. No. 39671, June 29, 1934.*—The City of Manila appeals from the orders of the Court of First Instance of Manila awarding to two private property owners whose lands were taken by expropriation proceedings an allowance for the taxes paid to the City of Manila under protest, covering a period of time between the dispossession of the owners and the taking of title by the City. *Held:* "As to the question of law involved, we hold that there is no error in court's awarding, as part of the just compensation required by law, the amount of taxes and assessments paid covering the period where the original owner had merely the naked legal title. Where all benefits have been taken away, the corresponding burdens should be

assumed by the state." Affirmed. (In division of five, per Hull, J.; Santos, Butte, Goddard and Diaz. JJ., concurring.)—*Briefed by* CRISOSTOMO F. PARIÑAS.

REIVINDICACION — BURDEN OF PROOF.—*Isabel Artacho de Ocampo vs. Adriano Blanco, Juan Pronda, Tomas Ignacio and Francisco Cabutage, General Registry No. 39834, June 30, 1934.* Plaintiffs in present case are defendants in a cross-complaint filed by Tomas Ignacio. Defendants in cross-complaint hold a Torrens title over the said land by virtue of a decision in case No. 437 wherein Ignacio was one of the oppositors. Ignacio failed to produce satisfactory evidence of his title. *Held:* The cross-complaint cannot prosper. Apart from the fact that Tomas Ignacio was one of the oppositors in said case No. 437 and admitted in the present suit that the land which he now seeks to recover was included in the registration application in said case No. 437 so that the defendants might reasonably plead their Torrens title in bar of the present action we are convinced that the cross-complaint cannot stand because Tomas Ignacio failed to produce satisfactory evidence of his title. As plaintiff the burden rests upon him to prove his title and the judgment in an action of reivindicacion cannot rest upon the alleged weakness of the title of the defendant in possession. (Per Butte, J.; Diaz and Hull, JJ., concurring.)—*Briefed by* CELSO MOLINA.