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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.]

CRIMINAL LAW—WHEN COMPLAINT FOR ABDUCTION SIGNED BY FISCAL PROPER.—*P. P. I vs. Gabriel Pingol, G. R. 40829, July 31, 1934.*—The accused was convicted in the Court of First Instance of Pampanga of the crime of abduction with consent. The error assigned is based on the fact that the complaint on which the accused was tried in the court of first instance was signed by the provincial fiscal. *Held:* Inasmuch as these proceedings originated from the justice of the peace court on a complaint filed by the offended party and that the complaint was introduced in evidence at the trial of the case, there was sufficient compliance with Article 344 of the Revised Penal Code requiring that in the prosecution of the crime of abduction be prosecuted upon complaint filed by the offended party. Affirmed. (In division of three. Hull, J.; Street and Santos, concurring.) *Briefed by* J. S. GONZALES.

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TORTS AND DAMAGES—PRESUMPTION OF NEGLIGENCE ON PUBLIC UTILITY OPERATORS.—*Chua Chiong Pio & Co. vs. Sofronio de Castro, G. R. No. 40840, July 26, 1934.*—In an action by plaintiff to recover a sum of money representing expenses incurred by plaintiff in repairing its car after it had collided with a truck owned by defendant, the trial court absolved the defendant from the complaint stating that the defendant had exercised all the diligence required of a good father of a family to prevent the damage when no such special defense was interposed. *Held:* The defendant being a public utility operator, the presumption of law arises that there was negligence on the part of the master or employer either in the selection of the servant or employee or in the supervision over him after the selection or both. But this presumption may be rebutted. (Yamada vs. Manila Railroad Co., 33 Phil. 8, 7 P. D. 4.) The supervision here includes, in proper cases, the making and promulgation by the employer suitable rules and regulations in the issuance of suitable instructions for the information and guidance of his employees, designed for the protection of persons with whom the employer has relation through his employees. Bahia vs. Litonjua

and Leynes, 30 Phil. 624, 6 P. D. 697.) As the evidence falls short of observing this presumption, and is specially lacking in proof of proper supervision over the chauffeur through whose negligence the accident occurred, the plaintiff has made out his case and has a right to recover damages in the amount alleged in the complaint. Reversed. (In division of three. Malcolm, J.; Villareal and Goddard, JJ., concurring.) (*Briefed by* J. S. GONZALES.

CIVIL LAW.—APPLICATION OF ARTICLE 1473—IN THE INTERPRETATION OF ACT NO. 3344 LAWS IN *PARI MATERIA* SHOULD BE CONSIDERED. —*Demetria W. Viuda de Quintos vs. Jorge Mariano, G. R. No. 36745, July 17, 1934.*—A house built on a piece of land leased by the owner of the house for ten years, together with the leasehold interest, was first sold to the defendant-appellant, and later to the plaintiff-appellee. The sale made to the appellant is evidenced by exhibit "1", and that made to the appellee, by exhibits "A" and "B". Exhibit "1" has not been recorded, while exhibits "A" and "B" have been recorded in accordance with Acts Nos. 2837 and 3344. Now it is clear that the determination of the question who of the two vendees owns the house requires the simple application of Article 1473 of the Civil Code which provides that in case the same thing should have been sold to different vendees, the ownership shall be transferred to the purchaser who may have first taken possession thereof in good faith, should it be personal property, and to the person who first recorded it in the Registry of Deeds, should it be real property. But counsel for appellant contends that the registration of exhibits "A" and "B" was null and void and of no legal effect, because Act No. 3344 authorizes only the registration of rights over land, as distinguished from a house and other improvements thereon belonging to persons other than the owner of the land. Plaintiff was decreed owner of the house. *Held:* The whole argument of counsel for appellant overlooks the fact that the sale of the house involved in this case included the sale of the leasehold interest in the land occupied by the house. The lease, as already stated, was made for a term of ten years. Act No. 3344 speaks of "instruments or deeds establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate." The question therefore arises as to whether the house, together with the leasehold interest, constitute real estate within the meaning of said Act No. 3344. This question should be answered in the affirmative. In interpreting the provisions of Act No. 3344 laws in *pari materia* should be considered, and article 2 of the Mortgage Law regards leases of real property for a period exceeding six years as creating a registrable interest in real property. Judgment affirmed. (In division of three, per Santos, J.; Butte and Diaz, JJ., concurring.) *Briefed by* M. G. SOLIMAN.

CRIMINAL LAW—INFIDELITY IN THE CUSTODY OF PRISONERS—MITIGATING CIRCUMSTANCE.—*P. P. I. vs. Jose Estella, G. R. No. 40852, July 27, 1934.*—It appears from the evidence that about 3:00 o'clock in the morning of September 2, 1932, Fortunato Olimba, a detained prisoner charged with robbery, was delivered into the custody of the defendant, a municipal policeman, to be taken from the municipality of Tuburan, Cebu, to the provincial capital; that at the request of the prisoner the defendant removed the handcuffs, and the prisoner immediately escaped. Immediately after the pris-

oner had escaped the defendant went to the police station and reported to the policeman on duty what had occurred and delivered to him the handcuffs. He was not placed under arrest, but was allowed to pursue the prisoner. A little later defendant gave himself up. *Held:* That defendant is guilty of infidelity in the custody of prisoners through negligence, but that he is entitled to the mitigating circumstance of voluntary surrender. Judgment modified. (In division of three, per Vickers, J.; Street and Diaz, JJ., concurring.) *Briefed by* M. G. SOLIMAN.

FORFEITURE OF BAIL-BONDS—LIABILITY OF BONDSMEN.—*P. P. I. Plaintiff-Appellant, vs. Emilio Marquez, Defendant, Luis Luna et al., Bondsmen-Appellees, G. R. Nos. 39827 & 39828, May 18, 1934.*—These appeals are taken by the Solicitor-General from the order of the Court of First Instance of Sulu, setting aside a judgment of forfeiture of two bail-bonds and the order of their cancellation after the order of execution against bondsmen became final, the appellant, contending that the lower court had no jurisdiction to reconsider or set aside the same, the law on the point being section 76 of Gen. Order No. 58 providing for thirty days from the date of the order of forfeiture of the bond within which to ask for its discharge, citing People v. Calabon, 33 Phil., 945 and People v. Reyes, 48 Phil., 139 to support his contention. Following the decisions in the cases cited, the Supreme Court held that the lower court exceeded its jurisdiction in discharging the sureties from all liability upon a bail-bond which has been declared forfeited more than thirty days before the issuance of the order of discharge; that sec. 76 of Gen. Order No. 58 only authorizes the court to discharge a forfeiture within a period of thirty days from the time of the declaration of such forfeiture. But the court is not deprived of its inherent discretionary powers in regard to the amount of the liability of the sureties to be determined according to the circumstances of a given case. Thus the bondsmen were not discharged from liability nor were they made to answer to the full amount of their bond. Their liability was reduced. (In Division, Per Vickers, J.; Street, Butte, JJ., concurring.) *Briefed by* G. A. A.

ATTORNEY'S FEES — CONSIDERATIONS TO BE TAKEN INTO ACCOUNT WHEN THERE IS NO AGREEMENT.—*Simeon Ramos vs. Luisa Centeno, G. R. No. 41343, July 16, 1934.*—Plaintiff was employed by the defendant to represent her in a civil case in which the question involved was the validity of the will of A. Centeno. The defendant and three other relatives were the oppositors and thru the efforts of the plaintiff the will was invalidated thus making it possible for the oppositors to inherit the whole estate of ₱90,000. The defendant received one fourth of the estate. There was, however no agreement as to the amount of attorneys fees. T. C. found that plaintiff's services in the will case was worth ₱2,400, but awarded him only ₱1,800 for some unknown reason. *Held:* Taking into consideration the amount involved in the will case, and the fact that Simeon Ramos was a prominent and successful attorney with every large practice before he became Director of Lands, the award of ₱1,800 is affirmed inasmuch as the plaintiff did not appeal. (Per Goddard, J.; Imperial and Butte JJ., concurring.) *Briefed by* CELSO MOLINA.

CRIMINAL LAW—SELF-DEFENSE; PRESUMPTION RE FATAL SHOT FROM CIRCUMSTANCES.—*P. P. I., plaintiff and appellee vs. Francisco Bastida, defendant-appellant, G. R. No. 37598, July 14, 1934.*—While defendant and one Casiano Rivera were conversing in front of Pines Star Garage, Bartolome Sabater came along in a runabout. He slowed down his car and insulted the defendant, calling him names. The defendant ran toward the car and Sabater fired at him three times but neither of the shots found its target. Bastida, reaching the car, jumped on the running board and a scuffle between them ensued. In the course of the struggle, two more shots were fired, one of them killing Sabater. The defendant alleged: (1) That the fatal shot was accidentally fired during the struggle for the possession of the revolver, (2) That in killing the deceased, the accused acted in self-defense and is exempt from a criminal liability in accordance with article 11 of the Revised Penal Code. *Held:* From the testimony of the witnesses, it is clear that while there is no positive evidence that the fatal was fired during the scuffle, the defendant admitted that he held the gun after the shot was fired. This admission, considered in connection with the relative position of the defendant and the deceased, the location of the wounds and other circumstances raises the presumption that the fatal shot was fired by the defendant, (Decision of the Supreme Court of Spain in 1887.) The evidence show that the fatal shot was fired after the appellant succeeded in disarming the deceased. Having arrived at the conclusion that the fatal shot was fired after the defendant succeeded in disarming the deceased, it goes with it that the plea of complete self-defense can not be entertained. While the evidence shows that the appellant without provocation on his part was unlawfully attacked; one of the essential elements of self-defense is lacking, namely, reasonable necessity of the means employed to prevent or repel attack. After appellant had succeeded in disarming the deceased, there was no longer any necessity for the killing, especially when consideration is given to the fact that the accused was stronger and bigger than the deceased. The law is that once the danger has passed, there is no necessity for taking the life of the aggressor. Defendant was convicted but judgment was modified. (In Banc, per Abad Santos, J., Malcolm, Hull, Vickers, Butte, and Diaz, concurring.)

The defendant acted in complete self-defense and should be acquitted. (Dissenting opinion per Imperial J., Villareal and Street JJ., concurring.) *Briefed by* FELIPE M. ESCARRILLA.

CIVIL PROCEDURE—ACTIONS WHICH SUBSISTS AFTER DEATH OF PARTY; MANDATORY CHARACTER OF LAW. —*Agapita Pabico contra The Honorable Delfin Jaranilla, Judge of the Court of First Instance of Manila, and Hidalgo, Cuyugan & Co., G. R. No. 42059, July 31, 1934.*—In civil case No. 40283, Hidalgo, Cuyugan, & Co., obtained a judgment against Rufino Pabico for the sum of ₱43,074.00. Pabico appealed to the Supreme Court but pending approval of bill of exceptions he died. On account of his death, his counsel petitioned the court to dismiss the action without prejudice to present claim before the committee on claims against the estate. Lower court denied petition, hence this mandamus proceeding brought by one of the heirs of Pabico to compel judge to dismiss the case without prejudice to present the claim in the form of reclamation before committee. *Held:* The law ap-

plicable in this case is found in sections 119, 686, 699, 700, and 763, Code of Civil Procedure. The last cited section enumerates the actions which subsists after death of a party and prescribes clearly that all others not enumerated are to be abandoned and presented in the form of reclamation before the committee on claims. The action to recover a debt, in the case at bar, is not one of those specified and consequently it did not subsist after the death of Pabico and ought to be presented before the committee. The provisions of sections 119 and 700 Code of Civil Procedure to the effect that pending actions to recover debts after the death of one party should be abandoned, is mandatory in character and does not confer any discretion to the court. The contention that the above cited sections of the Code of Civil Procedure are not applicable because a judgment was already rendered, is untenable. There is an appeal and judgment has not become final and executory. Neither can merger take place; it being possible only when there is a definite and final judgment. Mandamus issued. Judgment reversed. (Second Division of five, per Imperial, J., Malcolm, Villareal, Butte and Goddard, JJ., concurring.) *Briefed by* FELIPE M. ESCARRILLA.

LAND REGISTRATION LAW—LEASE SUBSEQUENT TO MORTGAGE REGISTERABLE; ENGLISH TEXT OF LAND REGISTRATION LAW GOVERNS.—*The Employer's Club, Inc., Recurrente y apelada contra China Banking Corporation, Recurrido y apelante, G. R. No. 40188, July 27, 1934.*—The deceased Go Chioco, mortgaged certain property to respondent bank to secure a debt of ₱250,000. Said mortgage was duly registered in accordance with Mortgage Law. Debtor having failed to pay, respondent instituted foreclosure proceedings. During the pendency of said action, the administrator of the deceased leased the building included in the mortgage to petitioner for a period of three years. Petitioner seek to register the lease but respondent objected and refused to deliver transfer certificate duplicate for annotation. Hence this mandamus proceeding to compel delivery of transfer certificate duplicate in order that the lease contract be annotated and registered. Respondent alleges that said lease cannot be registered as only real rights can be recorded, citing, Manresa's comments on article 1571 of the Civil Code which reads: "The contract of lease of real property gives rise to a *personal right* with the exception that when lease is for more than six years, or rents for three years paid in advance or there is stipulation to record the lease, then in these cases only could the lease be registered." But petitioner's case does not fall under any of these exceptions. *Held:* The appellant bank forgets the fact that the building in question is registered under the Land Registration Law, Act 496, which expressly provides: "All interests in registered land less than a estate in fee simple shall be recorded..." These words include interests arising from a contract of lease, which should be recorded to affect third persons, and not, according to appellant, only real rights. It is true the Spanish translation of "All interests in registered land" is "La inscripción ó registro de todo derecho real," but it was error to rely mainly on the Spanish translation. Act 496, was originally approved in English, and section 15 of the Administrative Code provides that the English text of the law prevail over the Spanish text when said law was promulgated in English. Appellant bank was therefore ordered to deliver the transfer cer-

tificate duplicate to the Register of Deeds to annotate the lease. Affirmed. (In Banc, per Diaz, J., Street, Malcolm, Villareal, Hull, Vickers and Imperial, JJ., concurring.)

Avanceña C. J., dissenting: Even granting that the lease may be registered, it cannot be recorded when it affects the mortgage rights of respondent, previously registered. The registration of the lease will prejudice third persons and will have to be respected by purchaser in case property is sold. These are the legal effects of the registration of the lease. The purpose of the mortgage is to secure the loan with the actual value of the mortgage property. The annotation of the lease will diminish the value of the property in case it is sold, as the purchaser will be bound to respect the recorded lease.

Abad Santos J., dissenting: When the lease of real property does not exceed six years or the rents for three years paid in advance, or there is an express stipulation to record same, the lease is not entitled to be recorded. (Mortgage Law, article 2 (5). Section 52 of Act 496, refers to real rights on the land and not to personal contracts relating to real property, which convey no interests on the land. Under the common law, lease conveys interest in land, while under the civil law it does not: it is a mere personal contract. *Briefed by* FELIPE M. ESCARRILLA.

CRIMINAL LAW—ADULTERY—*P. P. I. vs. Marcelo Bautista and Teopista Dayrit, G. R. No. 40621, July 24, 1934.*—Marcelo Bautista was convicted in the Court of First Instance of the crime of adultery. The information filed by the Provincial Fiscal makes no reference to the fact that the criminal proceedings were instigated by the complaint of the offended party as provided by Article 344 of the Revised Penal Code. However, the records of the case shows that the proceedings in the Justice of the Peace Court were instituted on the complaint of the offended party. The Supreme Court said that in the case of People vs. Arce, G. R. No. 25322, it has ruled that both the trial court and the Supreme Court will take knowledge of the record of the case even if the same is not formally introduced in the evidence.

Another argument of the appellant is virtually to the effect that as he was not seen in the actual commission of sexual intercourse, the crime is not established. *Held:* This is not a true rule of law, as the crime of adultery can rarely be established by direct evidence, but where the circumstancial evidence is of such force as "to lead the guarded discretion of a reasonable and just man to the conclusion that the alleged act has been committed," the verdict of guilty can and should be sustained. (Per Hull, J.; Street and Diaz, JJ., concur.) *Briefed by* LEO. V. MONASTERIAL.

CRIMINAL LAW—ARSON.—*P. P. I. vs. Rafael Cavile, G. R. No. 40576, July 28, 1934.*—Appellant was convicted in the Court of First Instance of the crime of arson. The principal ground of the appeal is that as the crime took place at midnight, the offended party could not recognize the accused as the perpetrator of the crime. As against the argument of counsel for the defense that such identification was impossible, there is the positive declaration of the offended party, who insisted that the accused, personally well known to him, was the guilty party. Even if the night was dark, there was some light, the criminal had a lighted torch, and the offended

party chased the perpetrator from the scene of the crime to the house of the accused. At that time the accused said to the offended party words to the effect that "if you come up, I will kill you. *Held:* The argument of counsel is contrary to ordinary human experience. It is easy to recognize one's intimate neighbors. Argument alone cannot prevail over the direct testimony of record. (Per Hull, J.; Avanceña, Santos, Vicker, and Diaz, JJ., concur.) *Briefed by* LEO. V. MONASTERIAL.

IS THE INSULAR COLLECTOR OF CUSTOMS AUTHORIZED TO ORDER THE FORFEITURE OF A FOREIGN FISHING BOAT ANCHORED IN PHILIPPINE WATERS ON ACCOUNT OF STRESS OF WEATHER?; RIGHT OF ASYLUM.—*Kisajiro Okamoto vs. The Insular Collector of Customs, G. R. No. 39969, July 11, 1934.*—The Hosho Maru, a Japanese fishing boat, anchored a short distance away from Salomangue Island, was seized by order of the Insular Collector of Customs. That official, after administrative proceedings, decreed the forfeiture of the vessel and directed its sale at public auction for the benefit of the government, due to the violation of customs and quarantine laws and regulations. The Captain appealed to the Court of First Instance which reversed the order of forfeiture after finding that the Hosho Maru only took refuge in Philippine waters on account of stress of weather, that said vessel was not engaged in the transportation of merchandise in any Philippine port, and that it has not violated any customs or quarantine law or regulation. *Held:* No statute exists authorizing the Collector of Customs to order the forfeiture of this boat. Both in England and the United States, confiscation of a vessel for violation of a customs law cannot be had administratively but only by court proceedings. Section 1363 of the Administrative Code provides for the forfeiture of vessels engaged in certain specified illegal actions, none of which apply in this case. It therefore must be held that the Collector of Customs was without authority to order the forfeiture of the Hosho Maru.

The right of asylum from stress of weather is a right well recognized by international law and is in accordance with the dictates of Christianity. The only limitation is that the weather must be such as to create an honest belief in the mind of a skillful and firm mariner. (Per Hull, J.; Malcolm, Villa-real, Santos, Imperial, Butte, Goddard, and Diaz, JJ., concur.) *Briefed by* LEO. V. MONASTERIAL.

CRIMINAL PROCEDURE—SECTION 30 CONSTRUED.—*P. P. I. vs. Gavina Clarin, G. R. No. 40716, July 27, 1934.*—Appellant was convicted in Court of First Instance of Bulacan of the offense of oral defamation. At the arraignment the accused asked for a continuance in order to prepare her defense. This was denied by the court and an exception was duly entered. On appeal, defendant assigned this refusal as error. In reversing the judgment appealed from, the Supreme Court, citing the case of P. P. I. vs. Valte, 43 Phil. 917, *Held:* Section 30 of General Orders No. 58 which provides that after his plea, the defendant is entitled, on demand, to at least two days in which to prepare for trial, is mandatory and should be respected by the court. Case remanded to the court of origin for a new trial. (In division of three, per Hull, J.; Street and Santos, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

ATTORNEY'S FEES—LIABILITY OF THE ESTATE—WHERE TO FILE CLAIM.—*In the Matter of the Intestate Estate of Benigna Santos, Deceased; C. C. Viana and Jose Sotelo, Petitioners, vs. Matea Felix de Custodio, Administratrix, G. R. No. 41023, July 31, 1934.*—From an order of the Court of First Instance of Manila granting the petition of attorneys Viana and Sotelo praying that the administratrix be ordered to pay to them the sum of ₱500 as fees for services rendered by them to the estate at the request of the former administrator, Manuel de Santos, during his administration, the administratrix, relying upon the case of Escueta vs. Sy-Juiliong, 5 Phil. 405, appealed. She contended that Santos, having employed the appellees, became individually and personally liable for said fees and that the estate could not be held directly liable for the same. In affirming the order appealed from, the Supreme Court, *Held:* A claim for attorneys fees for services rendered to the estate at the request of the administrator may be presented in the proceeding for the settlement of the estate and not in a separate civil action against the administrator. Such fees constitute a proper charge against the estate. (In division of three, per Butte, J.; Imperial and Goddard, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

SALE OF MINOR'S PROPERTY—EXTENSION OF TIME FOR PAYMENT REQUIRES COURT APPROVAL.—*Felisa Pasiona, as Guardian of the Minors, Socorro and Arsenia Perez; Nieves Pasiona, as Guardian of the Minors, Prediavenda and Juan Perez, et al. vs. Vivencio Obias, G. R. No. 40987, July 19, 1934.*—Plaintiffs, guardians of the Perez and Alvarez minors, sold a parcel of land to the defendant for ₱10,000 on installments. The terms of the sale were approved by the order of the court dated June 25, 1929. On failure of the defendant, at the maturity of the debt, to pay the ₱2,240, balance of the purchase price, plaintiffs commenced this action to recover the same. From a judgment in favor of the plaintiffs, defendant appealed, contending that the plaintiffs on June 24, 1932, agreed to extend the maturity of said debt for three years from said date. Defendant did not, however, show that the alleged oral agreement was submitted to or approved by the court which approved of the sale and to which said guardians are responsible. *Held:* Approval by the court which granted the sale is required to extend the payment of the purchase price. Judgment affirmed. (In division of three, per Butte, J.; Villa-Real and Imperial, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

POWER OF ATTORNEY—WHAT MAY BE INCLUDED IN ACTS OF ADMINISTRATION.—*Ynchausti & Co. vs. Estate of the Deceased Pedro Zabaljauregui and Antonio Zabaljauregui, G. R. No. 40424, July 25, 1934.*—P. Z. executed a power of attorney in which his borther A. Z. was named as the administrator of his lands and cattle ranch. The said power of attorney contained the following: "*También la faculta para contratar y pagar salarios de trabajadores y obreros y practicar todas las demás gestiones de un celoso y entendido administrador.*" Subsequently, A. Z. bought barbed wire from plaintiff company to inclose the cattle ranch of the owner. The only point of controversy concerned the question of who should be responsible for the payment of the merchandise—the estate of the deceased P. Z. or his brother A. Z. *Held:* Article 1713 of the Civil Code reads: "An agency created in general terms includes acts of adminis-

tration only. In order to compromise, alienate, mortgage, or to execute any other act of strict ownership, an express power is required." The power of attorney executed by P. Z. in favor of his brother A. Z. included acts of administration, and these acts of administration in turn, included the purchase of barbed wire to enclose the cattle ranch of the owner. Judgment for plaintiff against the estate of P. Z. (In second division of three, Malcolm, J.; Villa-Real and Imperial, JJ., concurring.) *Briefed by* RODOLFO PALMA.

CRIMINAL LAW — ESTAFA — APPLICABILITY OF THE REVISED PENAL CODE.—*P. P. I. vs. Alejandra Caballero, G. R. No. 40834, July 21, 1934.* —Appeal from decision of C. F. I. finding the defendant guilty of estafa. Jewelry in question was delivered to defendant on Nov. 3, 1931. for sale on commission, the defendant being obligated to pay over the proceeds or to return the jewelry on demand of the owner. Defendant failed to return the jewelry or the value thereof. The only difficulty which the case presented was whether the defendant was punishable under the Penal Code which was in force when the defendant received the jewelry and which would be more favorable to her, or in accordance with the Revised Penal Code. *Held:* The Revised Penal Code should be applied to the present case. Although the jewelry was received by the defendant before the new code became effective, no definite time was agreed upon by the parties as to when the defendant should account for the jewelry, and she did not deny her obligation or refuse to return the jewelry until after the Revised Penal Code had gone into effect. (In first division of three. Vickers, J.; Avanceña and Hull, JJ., concurring.) *Briefed by* RODOLFO PALMA.

THE WORKMEN'S COMPENSATION ACT—WHAT CONSTITUTES SUFFICIENT COMPLIANCE WITH SECTION 24, ACT 3428.—*Canuto Libron vs. Binalbagan Estate, Inc., G. R. No. 41475, July 27, 1934.*—The plaintiff was a fireman on one of the locomotives of the defendant and on Sept. 7, 1931, while employed in his usual occupation, a particle of coal entered his left eye and as a result thereof eventually lost the sight of that eye through no negligence on his part and in spite of the fact that he was treated by the doctor of the defendant. The plaintiff did not learn of the seriousness of the injury until on or about Nov. 2, 1931, when the doctor of the defendant sent him to the provincial hospital. The claim for compensation was presented to the defendant company by the Bureau of Labor on Dec. 31, 1931, within two months after the plaintiff learned that the injury was serious. Defendant argued that the period for bringing the claim as provided in Section 24, Act 3428, had elapsed. *Held:* In this case a seemingly unimportant accident occured which later resulted to be serious as to cause the loss of an eye. It would have been absurd for the plaintiff to have filed a claim for compensation based upon the sole fact that a particle of coal had entered his eye. Such accident ordinarily does not result seriously. The filing by the plaintiff of his claim for compensation within two months after it was evident that he was in imminent danger of losing the sight of the injured eye was a substantial compliance with the provisions of Section 24, Act 3428. (In second division of three. Goddard, J.; Malcolm and Villa-Real, JJ., concurring.) *Briefed by* RODOLFO PALMA.

CIVIL PROCEDURE—WHEN AND IN WHAT FORM MAY A COUNTERCLAIM BE PRESENTED.—*Erlanger & Galinger, Inc. vs. Isaac Gutierrez, G. R. No. 40222, July 28, 1934.*—Plaintiff brought this action in the Court of First Instance of Laguna to recover from the defendant a certain amount which appears at the trial to have been already paid. At the conclusion of the trial the defendant presented orally a counterclaim which the lower court granted dismissing the complaint against the defendant. *Held:* While courts are liberal in permitting amendments to complaint, the same rule does not necessarily follow as to a counterclaim. In the latter case the opportunity to answer and issue having been joined, to present evidence on that issue. As this was not done in this case, the defendant cannot recover anything on the counterclaim. Reversed with respect to counterclaim and affirmed with respect to dismissal of complaint. (In division of three, per Malcolm, J., Butte, Goddard, JJ. concurring.) *Briefed by* G. AL. A.

CRIMINAL PROCEDURE — REASONABLE DOUBT.—*P. P. I. vs. Macario Macua, G. R. No. 40729, July 20, 1934.*—The accused Macario Macua, appellant, was convicted in the lower court with having had illegal possession of dynamite which he alleged to have been part of the same sticks of dynamite for which he was already convicted in the case No. 1599 by the Court of First Instance of Lanao and of which he admitted ownership of the same in the case of People vs. Uncines, G. R. No. 40725, in the same court which disbelieved him and convicted Uncines. However, the answers of Macua to questions put to him by the fiscal indicate that this dynamite was taken at a different date from that for which he was already convicted. *Held:* The present case against Macua is not fully and clearly made out. Although the evidence is not very clear, it is possible that these sticks of dynamite actually formed part of parcels for having possession of which the accused had been convicted. Upon the whole, we concede to the appellant the benefit of reasonable doubt and acquit him of the charge. Reversed. (In division of three, per Street, J., Santos and Hull, JJ., concurring.) *Briefed by* G. AL. A.

ESTAFA — FRAUDULENT INTENT — ISSUING A POST DATED CHECK.—*P. P. I. vs. Pedro Bataclan, G. R. No. 33299, July 27, 1934.*—Bataclan contracted a certain obligation with the China Insurance and Surety Co. for which Castañeda paid to the said company the sum of ₱312.00 as a surety. It appears that Bataclan issued a post dated check for the same amount in favor of Castañeda on the express understanding that if drawer cannot deposit sufficient fund at the bank, that he may pay surety by installment. Check was dishonored and this prosecution followed. Accused presented a receipt for twenty-five pesos (₱25.00) which he paid as per agreed installment. The prosecution maintains that under the Penal Code mere issuance of a post dated check subsequently dishonored constitute estafa. *Held:* The Penal Code in cases of estafa contemplates a fraudulent intent. In the case at bar, there is not sufficient evidence that the accused post dated the check with it. Reversed. (In division of three, per Santos, J., Street, Villa-Real, JJ., concurring.) *Briefed by* G. AL. A.

CIVIL PROCEDURE — DEFAULT — DENIAL TO GRANT INTERLOCUTORY ORDER DECLARING A DEFAULT— WHEN REVIEWABLE. — American *Electric Co., Inc., plaintiff and ap-*

pellant vs. Campos Hermanos, Inc., defendant and appellee, G. R. No. 41021, July 17, 1934.—In an action for debt in the Municipal Court of Manila, judgment was rendered in favor of the plaintiff. Defendant perfected his appeal in the Court of First Instance of Manila. On September 16, 1933, the clerk of the Court of First Instance notified the parties of the receipt and proper docketing of the appeal. On September 29, 1933, defendant filed his formal appearance and on October 6, 1933, his answer. On October 3, 1933, plaintiff petitioned the lower court to declare defendant in default. Petition denied, and court after trial on the merits, rendered judgment in favor of the defendant. Plaintiff-appellant now brings this appeal and assigns as error the denial of plaintiff's petition to declare the defendant in default. He contends that inasmuch as defendant failed to interpose a demurrer or answer within ten days after the receipt of the notice in this present action (citing Rule 9 of the rules of Courts of First Instance in relation to Act No. 3171 amending section 78 of Code of Civil Procedure) the lower court was in duty bound to grant his petition of default. *Held:* The contention is untenable. It is a well settled rule that the granting or denying or setting aside of interlocutory orders declaring a default are matters within the sound discretion of the trial court and its rulings thereon are not reviewable except in clear cases of abuse of discretion (Section 110 C. C. P., Larrobis vs. Wislizenus and Smith, Bell and Co., 42 Phil. 401.) Plaintiff did not contend that there was abuse of discretion in denying his petition for default. Apparently, he denies any discretion at all in the matter. In this we cannot concur. Judgment affirmed. (In division, Per Butte, J.; Imperial, Goddard, JJ., concurring.) *Briefed by* JOSE O. HIZON.

CRIMINAL LAW—HOMICIDE—SELF-DEFENSE—WHEN INCOMPLETE.—*P. P. I. vs. Cesario Burban and Tomas Burban, defendants; Cesario Burban, defendant-appellant, G. R. No. 39803, July 25, 1934.*—Appellant with his brother went to the house of the deceased. He was carrying a cane and a concealed pistol. Upon seeing the deceased, appellant asked him why he had used his (appellant) carabao without his permission. Deceased thought he was insulted, so he attacked appellant with a knife. Appellant hit him with the cane he was carrying and deceased fell down. Deceased stood up and continued his unlawful aggression, whereupon, appellant drew his pistol and fired two shots at the deceased which resulted in his death. The only question to be decided in this appeal is whether, under the facts stated, the means employed by the appellant constitute complete self-defense so as to entitle him to a full exoneration of criminal liability. *Held:* The means employed by appellant fall short of the legal standard. This case should be classified under the category of incomplete self-defense, justifying the imposition of a penalty lower by one degree or two degrees than that provided by law for the crime committed. (Article 69 of the Revised Penal Code) Judgment affirmed with modifications. (In division of five, Per Santos, J.; Hull, Butte, Goddard, Diaz, JJ., concurring.) *Briefed by* JOSE O. HIZON.

ATTEMPTED MURDER—EFFECT OF VOLUNTARY DESISTANCE FROM CONTINUING ACTS OF EXECUTION.—*El Pueblo de las Islas Filipinas vs. Mangking Pambaya, R. G. 41483, July 13, 1934.*—Appeal from a judgment finding defendant guilty of at-

tempted murder. The evidence showed that defendant loaded his rifle, situated himself in the balcony of the barracks occupied by the 90th Constabulary Company at Tamparan, Lanao and looked at the window where Lieutenant Primitivo Castillo was with the intention of shooting the latter as a revenge because shortly before, said lieutenant ordered appellant to stay at attention for failure to salute him. However, on seeing Corporal Luis None approaching, he desisted from his intention and retired with his rifle to the armory of the barracks. In doing so, he was not prompted by any word or action of Corporal None. There was no indication that he insisted in carrying out his purpose. In fact his actions all pointed to the contrary. *Held:* In order for an attempted crime to exist, it is essential that the offender commences the commission of the felony by overt acts, without, however, performing all the acts of execution which should produce the felony, not thru his spontaneous desistance, but thru other causes independent of his will. (Art. 6, Revised Penal Code.) According to Viada, when the acts of execution have been commenced but the offender because of fear or remorse, desists from continuing, there is no attempt, adding that the law inflicts punishment only with regret, preferring to prevent rather than punish crimes. If the author of the attempt, after having commenced the execution of the crime by overt acts, desists by his own free and spontaneous will, he is saved. It is a call to remorse, to the conscience; a grace, a pardon which the law concedes to a voluntary repentance (1 Codigo Penal, Viada 48-49.) Under such circumstances and in the same state of mind, we find the accused when he turned back to the armory of his barracks. Judgment reversed and defendant acquitted. (In division of three, per Diaz, J.; Avanceña, C. J. and Vickers, JJ., concurring.) *Briefed by* A. P. COBACHA.

SALE OF UNDIVIDED CONJUGAL PROPERTY BY WIDOW — DECEASED SPOUSE'S PORTION CONSIDERED HER FUTURE PROPERTY—PURCHASER IN GOOD FAITH OWNER OF FRUITS THEREOF.—*Eufrosino Sapon y otros, demandantes y apelados vs. Arsenio Lindo, demandado y apelante, R. G. No. 40166, July 7, 1934.*—Francisca Maliwanag, mother of plaintiffs, sold to defendant with right of repurchase a parcel of land belonging to her and her deceased husband, vendor promising to ask court to have the whole land adjudicated to her in the liquidation of the conjugal partnership and to issue the title thereto to purchaser. During the proceedings of her husband's intestate, however, Francisca Maliwanag without knowledge of defendant, renounced her rights to the conjugal property in favor of her children. On learning this, defendant brought action for the recovery of one-half the purchase money returning at the same time one-half of the land to the plaintiffs herein who were adjudged owners thereof in intestate proceedings mentioned above. On the other hand, plaintiffs, filed present action for recovery of the fruits from date of purchase to date when land was turned over to them. Lower court rendered judgment in favor of plaintiffs on the ground that defendant knew at time of purchase that one-half of land did not belong to vendor. *Held:* With respect to the widow, the other half may be considered future property which may be a subject-matter of contract under Art. 1271 of the Civil Code, it being perfectly possible for her to acquire the same while it still formed part of the conjugal

property. She could promise to sell it or even sell it as in fact she did. There was nothing improper or illegal in the transaction. Appellant was, therefore, a possessor in good faith. Plaintiffs left him undisturbed in his possession of the land and enjoyment of the fruits thereof since 1926, the date of sale, up to Dec. 6, 1932, when they filed the present action, showing that they were not unaware of the sale made by their mother. This, coupled with the open and peaceful possession by defendant prove further that latter was a possessor in good faith and as such, owner of the fruits claimed by appellees under Art. 451 of the Civil Code. Judgment reversed. (In division of three, per Diaz, J.; Butte and Goddard, JJ., concurring.) *Briefed by* A. P. COBACHA.

SALE ON INSTALLMENT—ACTS WHICH DO NOT CONSTITUTE NOVATION —WHEN ARE SUCH CONTRACTS NOT USURIOUS.—*P. D. Carman Co., Ltd., plaintiff-appellant, vs. Luz Lopez, defendant-appellee, G. R. No. 41218, July 16, 1934.*—Parties to the action entered into a contract whereby plaintiff agreed to sell and defendant to buy a house on installment as follows: ₱682.50 to be paid upon signing the agreement and ₱96.93 monthly thereafter for 120 months, one per cent interest per month being charged on all payments delinquent for more than 30 days. The present action is for recovery of installments in arrears with interest as provided. Defendant interposed following defences: (1) that the contract was novated, she having made payments in different sums and at different times than those specified in the contract which payments had been received by the plaintiff and (2) that the contract was usurious violating Act 2655 as amended. *Held:* There is no merit as to the first defense. As to the second, the transaction is not for a "loan or forbearance of any money, goods or credit." Neither is the contract executed for the purpose of covering up a usurious transaction. Therefore, the Usury Law is not applicable as it is clearly an installment sale. In U. S. vs. Constantino Tan Quingco Cuc, 39 Phil. Rep. 352, we said:" Most of the ordinary contracts when entered into in good faith do not come within the pale of usury. Any person owning property may sell it at such price and at such terms as to time and mode of payment as he may see fit and such a sale, if bona fide, can not be usurious however unconscionable it may be. Lord Mansfield characteristically says: "I lay the foundation of the whole upon a man's going to borrow under the color of buying; there the contract is usurious; but where it is a bona fide sale, it certainly is not." (Floyer vs. Edwards, 1 Comp. 112; 98 Eng. Rep. 993.) The increase of the price of the thing sold on credit over its cash sale price is no interest within the purview of the Usury Law if the sale is made in good faith and not as mere pretext to cover a usurious loan (Manila Trading and Supply Co. vs. Tamaraw Plantation Co., 47 Phil. Rep. 513.) There is nothing to show that the contract in question was not entered in good faith on the part of the plaintiff and defendant. Judgment modified. (In division of three, per Goddard, J.; Imperial and Butte, JJ., concurring.) *Briefed by* A. P. COBACHA.

INSURANCE — FRAUDULENT AND FALSE DECLARATION; EFFECT.—*Ko Bognan, plaintiff-appellee vs. China Insurance & Surety Co., Inc., defendant-appellant, G. R. No. 40697, July 25, 1934.*—The plaintiff insured with the defendant certain movables located in her house. During the

lifetime of the insurance contract, the house was burned and the plaintiff alleging that the movables were also destroyed by fire sues the company for the recovery of the policy. The appellant alleged and proved that when the fire occurred, the movables were then not in the house as declared by the plaintiff, and therefore claims exemption under clause 12 of the contract which reads, in part, as follows: "If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the insured or anyone acting on his behalf to obtain any benefit under this policy * * * all the benefit under this policy shall be forfeited." *Held:* In view of clause 12 of the contract and the decisions of the Supreme Court in Tan It vs. Sun Insurance Co., 51 J. F. 224 and the East Furniture Co. vs. The Globe & Rutgers Insurance Co., 31 Gaz. Of. 3385, the plaintiff-appellee has no right to recover the amount of the policy under a false declaration. (In division of three, per Villa-Real, J.; Malcolm and Imperial, JJ., concurring.) *Briefed by* J. P. S.

CRIMINAL LAW—WHAT EVIDENCE BE CONSIDERED.—*P. P. I. vs. Primo Domingo, G. R. No. 40461, July 20, 1934.*—The accused was convicted in the lower court of the crime of abduction with consent and in this appeal urges upon the Supreme Court that the defendant must be proven guilty by the evidence of the prosecution and that the evidence introduced by the defense does "nothing but to disprove the allegations of the prosecution." *Held:* The evidence of the defense as well as the evidence of the prosecution, if material, can be the basis of the judgment. The accused may rely upon the insufficiency of the evidence of the prosecution but if he does not, what he presents, even if it tends to prove his guilt, may be considered. In fact, in some jurisdictions a false theory or false testimony of the defense is sufficient to sustain a verdict of guilty by the jury. (Per Hull, J.; Street and Abad Santos, JJ., concurring.) *Briefed by* J. P. S.

MUNICIPAL LAW — VAGRANCY — THAT MONEY FOR TRANSACTION IS PAID TO THE PIMP IS NO DEFENSE.—*P. P. I. plaintiff-appellee vs. Esperanza Mendoza y Sapitan, defendant-appellant, G. R. No. 40511, July 27, 1934.*—Defendant was convicted in the Municipal Court of the City of Manila for a violation of section 822 of the Revised Ordinances of the city. Upon appeal to the Court of First Instance, she was again convicted. In this appeal she urges that she is not criminally liable because the money for the transaction was not paid to herself but to her pimp. *Held:* There is ample evidence to the effect that the appellant is a common prostitute and the pretention that she is excused from criminal liability because the money for the transaction was paid to her pimp instead of to herself, deserves no consideration. Affirmed. (In division of three, per Hull, J.; Street and Santos, JJ., concurring.) *Briefed by* CELESTINO C. JUAN.

CRIMINAL LAW — DEFAMATION GENERALLY PROSECUTED UPON COMPLAINT OF OFFENDED PARTY—EXCEPTIONS; EFFECT OF MUNICIPAL RESOLUTIONS; EXCITEMENT AND INTOXICATION AS MITIGATING CIRCUMSTANCES.—*P. P. I. vs. Felimon Carrillo, G. R. No. 40770, July 25, 1934.*—Defendant was convicted of oral defamation in the Court of First Instance of Capiz. The accused, a municipal councilor, on a public occasion and in the presence of a large

number of people, uttered defamatory words against the principal of a village school. Subsequently a number of resolutions deregatory to the offended party was passed by the Municipal council. In this appeal, appellant urges that the prosecution was without merit, (1) because the crime cannot be prosecuted except upon complaint filed by the offended party under Par. 4 of Article 350 of the Revised Code, and (2) because of the resolutions passed by the municipal council. *Held:* In the instant case the defamatory words do not consist of the imputation of any crime which, under Article 344 of the Revised Penal Code can only be prosecuted on a complaint filed by the offended party. Not coming within one of the excepted crimes, the general rule applies, and the first assignment of error is without merit. As to the second assignment of error, the resolutions, however, were passed a long time after his misconduct, which is the basis of the complaint, and long after the offended party has made a report thereof to the Provincial Board. On the other hand, it is obvious that the accused was highly excited, probably drunk, and the language used is partially incoherent. We are therefore inclined to take a more lenient view of the seriousness of his language. Sentence changed to fine of ₱100.00. Modified. (In division of three, as per Hull, J.; Street, Santos, JJ., concurring.) *Briefed by* CELESTINO C. JUAN.

ELECTION PROTEST—MISJOINDER OF PARTIES—EFFECT OF DEMURRER OR MOTION TO DISMISS AS TO JURISDICTION.—*Felix V. Katipunan et al. petitioners vs. Hon. Francisco Zandueta, Judge of the Court of First Instance of Rizal, Julio A. Antiforda et. al. respondents, G. R. No. 42071, July 20, 1934.*—This is a petition for a writ of certiorari. Petitioners instituted a joint election contest proceeding in the Court of First Instance of Rizal, in which the offices of Municipal president, vice-president, and municipal councilors were involved. Respondents filed a motion for dismissal of the protest upon the ground that the court had no jurisdiction to hear and decide an election contest in which all of the above mentioned offices were contested in one protest. The respondent judge ordered the petitioners to amend their protest so as to exclude the office of municipal president from the protest regarding the offices of vice-president and municipal councilors in accordance with Section 479 of the Administrative Code as amended by Act 3834, approved Nov. 5, 1931. In this action of certiorari, petitioners alleged that the respondent judge has exceeded his jurisdiction and abused his judicial discretion in so ruling and prayed that he be ordered to proceed with the hearing of the protest and decide the same upon its merits. Res. prayed that the lower court be declared without jurisdiction to decide the election protest and that the petitioners' motion of protest be dismissed. *Held:* Section 479 of the Adm. C. as amended by Act 3834, permits the filing of a joint election protest by candidates for the offices of vice-president and municipal councilors, and prohibits a candidate for the office of municipal president from joining in such a protest. The reason for the adaption of this amendment is the fact that the new Election Law, provides for an appeal to this court from a decision of the Court of First Instance in an election contest proceeding in which the office of municipal president is involved;

whereas, the decision of the Court of First Instance is final in such a proceeding in which the office of the vice-president and municipal councilors are in question. The object being to avoid bringing to this court the whole record, including all of the evidence, in a case, only part of which is appealable and to prevent unnecessary expenses and probable confusion.

The joint protest of the herein petitioners was filed in good faith. They allege a common ground of action. The same evidence will be relied upon by all of them and under Sec. 114 of the Code of Civil Procedure all persons having an interest in the subject of the action and in obtaining the relief demanded should be joined as plaintiffs. The question is whether the fact of the misjoinder of parties deprive the respondent judge of his jurisdiction to order the petitioners to amend their protest. A demurrer on the ground of a defect or misjoinder of parties does not raise the question of the jurisdiction of the court to try the action. A motion to dismiss on the same ground is in effect a demurrer and does not raise the question of the jurisdiction of the court to proceed with the trial and order the amendment of the pleadings in case there is a defect or misjoinder of parties. Petitioners should be allowed to amend their protest. Certiorari denied without costs. (In division of five, per Goddard, J.; Malcolm, Villa-Real, Imperial, and Butte, JJ., concurring.) *Briefed by* CELESTINO C. JUAN.

CANCELLATION OF A DEED OF SALE—ADMISSIBILITY OF ORAL TESTIMONY AT VARIANCE WITH WRITTEN DOCUMENTS.—*Valentin Domingo, plaintiff and appellee vs. Aniceto Sanchez, defendant and appellant, G. R. No. 40231, July 27, 1934.*—Plaintiff sold to defendant a parcel of land with Torrens title described in Exhibit A for the sum of ₱1000.00, out of which the defendant has paid only ₱500.00 Defendant refused to pay the balance. Plaintiff seeks in this action to rescind the contract of sale, Exhibit A, and to have forfeited in his favor the amount already paid by the defendant. Trial court rendered judgment to the effect that defendant will be the absolute owner of the land sold upon defendant's paying to plaintiff the balance of ₱500, and further held that whatever is stated in Exhibits B, C, and 6 relating to two parcels of land without Torrens title and belonging to the plaintiff is null and void having been inserted therein fraudulently and without consideration. Defendant appealed and raised the question whether oral testimony at variance with written documents are admissible as evidence. *Held:* In cases of fraud oral testimony may be introduced to show the true meaning of parties relative to a written document. Defendant to pay plaintiff the balance of ₱500.00 with interest thereon at 6% from February 8, 1923, until final payment. Judgment modified. (In division of three, per Hull, J.; Street and Santos, JJ., concurring.) *Briefed by* CRISOSTOMO F. PARIÑAS.