

PHILIPPINE LAW JOURNAL

Published monthly, July to March inclusive, during the academic year, by the
College of Law, University of the Philippines.

Subscription ₱8.00 per year

Single number 60 centavos

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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—ESTAFA—WHEN ALLEGATION IS INSUFFICIENT—P. I. vs. Sy Gesiong, G. R. No. 38618, September 15, 1934.—For having concealed or otherwise disposed of certain personal property for the purpose of defrauding his creditors, appellant was convicted of the crime of estafa in the lower court. Appellant assigned as error the insufficiency of the facts alleged in the information to sustain his conviction. The information only alleges that the defendant fraudulently concealed and absconded with his property with intent to defraud his creditors. The question is: Is the allegation in the information sufficient to warrant the conviction of the defendant: *Held*: Such allegation is insufficient. No allegation that the absconding of the property by the defendant resulted in the prejudice of his creditors. This is one of the essential requisites of the crime penalized by Art. 314 of the Revised Penal Code. A person may fraudulently dispose of some of his property, and yet he may have some other property with which to satisfy his obligation. It is too well settled that to warrant conviction, every element of the crime must be

alleged and proved. Reversed. (In division of five. Per Santos, J.; Street, Malcolm, Vickers, Butte, JJ., concurring.) *Briefed by* JOSE G. BAUTISTA.

CRIMINAL LAW—RAPE—P. I. vs. Andres Santos, G. R. No. 40905, August 30, 1934.—Appellant was charged in the J. P. Court with the crime of simple rape. The complaint was subscribed and sworn to by the mother of the offended girl, a minor. Finding probable cause, the Justice of the Peace forwarded the case to the Court of First Instance, where the provincial fiscal filed an information charging appellant with forcible abduction with rape, instead of simple rape as originally charged by the mother of the offended girl. Trial court took cognizance of the case and sentenced appellant for the crime of abduction with consent. The sentence is contended as error. *Held*: Trial court erred. The filing of the complaint for simple rape in the J. P. court did not confer jurisdiction upon the court of first instance to try and sentence accused for the crime of abduction. Par 3 of Art. 344, Revised Penal Code, which re-

cites that the crimes of seduction, abduction, rape or acts of lasciviousness cannot be prosecuted except upon a complaint filed by the offended party or her parents was violated by the provincial fiscal when he filed the information of forcible abduction with rape, instead of simple rape as originally subscribed and sworn to. Judgment reversed. (In division of five Per Vickers, J.; Street, Santos, Hull, Diaz, JJ., concurring.) *Briefed by* JOSE G. BAUTISTA.

PUBLIC SERVICE COMMISSION—PUBLIC CONVENIENCE—INVESTMENTS IN PUBLIC UTILITIES—TWO PRINCIPLES COMPARED — *Pangasinan Transportation Co. vs. Manila Railroad Co.*, G. R. No. 41471, September 15, 1934.—From an order of the Public Service Commission authorizing respondent to extend its autoline into the territory maintained and operated by petitioner, petitioner appellant appeals and complains against said order of the commission. The ground of opposition centers in the fact that such an extension would result in ruinous competition for the reason that appellant is already losing along that line even without any competition. The commission granted the order on the strength of a petition of a hundred residents and a municipal resolution. The only basic inquiry involved is whether or not the order of the commission is reasonably supported by the evidence. *Held*: Two basic principles meet in collision in this case. One is the principle that in all public service cases, the convenience of the public must be taken into account and is a prime consideration. The other principle is that the investments made by public service operators must be protected rather than destroyed. In the instant case where it is shown that the convenience of a few pas-

sengers only will be served by authorizing the extension of the line of the respondent, and that to allow the respondent to invade the territory served by the petitioner will cause financial losses to the latter, it cannot be said that public necessity is more compelling than what amounts to ruinous competition. Order set aside. (In Banc, Per Malcolm, J.; Street, Villa-real, Hull, Vickers, Butte, Goddard, Diaz, JJ., concurring.)

Imperial, J. with whom concur Avanceña, C. J. and Santos, J. dissenting: The majority opinion abandons a uniform and well established doctrine in the jurisdiction that public convenience is the first and primordial consideration in determining whether a service should be granted or not. The majority opinion strips the Public Service Commission of the exercise of its sound discretion as recognized by law. In effect, the majority opinion substituted its own judgment to that of the commission. *Briefed by* JOSE O. HIZON.

TAXATION—SECTION 17 OF ACT 2833 CONSTRUED.—*P. P. I. vs. Uy Tengpio*, G. R. No. 40513, August 25, 1934.—The defendant, upon failure, on demand, to pay his income tax amounting to ₱5,155.13, was prosecuted under the first sentence of Section 17 of Act 2833. The Court of First Instance gave judgment against him for the tax claimed and assessed a fine of ₱40.00, with subsidiary imprisonment in case of insolvency either as to the fine or the tax, with costs. The defendant, on appeal, contended that the first part of Section 17 of Act 2833 does not contemplate a criminal proceeding and that the court is not authorized to attach the penalty of subsidiary imprisonment to the judgment against the

appellant for the tax due and the fine imposed. In reversing the decision of the lower court, the Supreme Court, *held*: The first part of Section 17 contemplates a civil or administrative proceeding, while the second part imports a criminal prosecution. Therefore, the conviction of the appellant cannot stand. The act denounced in the first part is a mere neglect to make a return or pay the tax; while the act contemplated in the second part of the same section is the making of a false or fraudulent return, with intent to evade assessment. The latter is a graver delinquency than the first and is, in fact, declared to be a misdemeanor. (In division of six, per Street, J.; Avanceña, C. J., Santos, Hull, Vickers and Diaz, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

LAND REGISTRATION—APPLICABILITY OF SECTION 113 OF ACT 190—REQUISITES—PATROCINIO FLORES, APPLICANT AND APPELLEE, *vs.* LUCIA FLORES, OPPOSITOR AND APPELLANT. *G. R. No. 40660, September 24, 1934.*—No opposition having been filed, the Court of First Instance of Pangasinan granted the application for the registration of five parcels in favor of the applicant, Patrocinio Flores, who proved ownership over the same by virtue of a donation from her mother, which donation, though of a later date than that of the petitioner, was registered earlier. On December 29, 1932, before the issuance of the decree of registration, Lucia Flores filed a petition under the provisions of Section 113, C.C.P., praying the Court of First Instance to set aside its decision and reopen the case for the admission of the opposition of the petitioner and that, in default of the remedy sought under Section 113, the decision be set aside on the ground of fraud. The lower court denied the petition. *Held*: To en-

title a party the relief under Section 113, he must show that he has a just and valid defense. (*Mapua vs. Mendoza*, 45 Phil 424). And that, though a party has a right to ask that the judgment be set aside on the ground of fraud without waiting for the issuance of the decree, he must show that the applicant for registration acted in bad faith, and furthermore, that the petitioner has a better right to the property. (*Escudero and Marasigan v. Esguerra*, 48 Phil. 514). Judgment affirmed. (In division of three, per Vickers, J.; Hull and Diaz, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

ATTACHMENT—PRIORITY OF RIGHT—MANUEL URQUICO, PLAINTIFF AND APPELLANT, *vs.* MANILA RICE MILL CORPORATION, DEFENDANT AND APPELLEE—*G. R. No. 40985, September 24, 1934.*—This is an action to declare the plaintiff the owner of certain parcels described in the complaint and to obtain an order requiring the defendant to surrender the possession of said properties, and to pay damages. The defendant answered with a general denial, special defenses and cross-complaint in which he sought in turn for a declaration of ownership of the five parcels described in plaintiff's complaint. It appeared that these two parties were competing creditors of a common debtor. Each of these creditors brought an action against the debtor, and each apparently obtained an attachment which was levied upon the property in question. The defendant had an earlier attachment, but the creditor under whom the plaintiff claims, obtained the earlier judgment. When the defendant corporation obtained its judgment, it proceeded to sell the property attached. Which of the parties has the priority right over the properties in question? Our

Supreme Court, citing the case of *Chua Pua Hermanos vs. Register of Deeds of Batangas* 50 Phil. 670, *held*: The earlier attachment, when followed by a judgment in due course, is entitled to priority over the later attachment, although the judgment of the other creditor was of prior date. Judgment affirmed. (In division of three, per Street, J.; Vickers, and Diaz, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

TRIAL PRACTICE—PERFECTION OF DEFENDANT'S APPEAL IN A CRIMINAL CASE DOES NOT DEPRIVE COURT OF JURISDICTION TO ENTERTAIN MOTION FOR RECONSIDERATION BY THE COMPLAINANT TO DETERMINE DEFENDANT'S CIVIL LIABILITY—*P. P. I. vs. Benedicto Urana, G. R. No. 40198, August 1, 1934.*—The defendant was convicted by the trial court of homicide thru reckless negligence. He filed his notice of intention to appeal five days after the promulgation of the decision. The complaining witness, nine days after such promulgation, presented a motion for reconsideration so that the civil liability of the defendant be determined. The trial court denied this motion on the ground that it had lost jurisdiction over the case by the perfection of the appeal of the accused. *Held*: The offended party in any criminal case has the right to intervene in the prosecution of the offense and to recover damages for the injury sustained by reason of the same (Sec. 107, Gen. Orders No. 58). This right is as much protected as the right of the defendant to his defense. If the accused has a right, within 15 days, to appeal from the judgment which convicts him, the offended party should have within the same period, a right to appeal from the decision which prejudices him, without his appeal being de-

pendent upon the appeal of the defendant. Therefore, if the court, independently of the appeal of the accused, has jurisdiction within 15 days to admit the appeal of the offended party, it also has jurisdiction to consider and resolve the petition for reconsideration presented by the prosecution that the civil liability of the defendant may be properly determined. Besides, it is error for the trial court not to make a finding as to the civil responsibility of the defendant. (In Division of five, per Avanceña, C. J., Street, Abad Santos, Vickers and Diaz, JJ., concurring.) *Briefed by* J. P. S.

CRIMINAL LAW—ARTICLE 125, REVISED PENAL CODE AS AMENDED, APPLIED—*P. P. I. vs. Alberto Acasio, et al., R. G. No. 40472, August 4, 1934.*—Appellant, a municipal chief of police, arrested Espiridion Villones and Rufina Olarte, whom he caught committing illicit sexual intercourse at about 8:00 p. m. on Nov. 4, 1932, and kept them overnight in the municipal jail but set them free at six o'clock the next morning. It was claimed against the appellant that Rufina Olarte was illegally detained contrary to the provisions of Art. 125 of the Revised Penal Code, as amended. Said article penalizes any public officer or employee who shall detain any person on some legal ground and shall fail to deliver such person to the proper judicial authorities "within the period of six hours" from the time of arrest. *Held*: The detention was in fact for a longer period than six hours and, if the article referred to should be literally applied, the appellant was undoubtedly rightly convicted. But it must be noted that the arrest was effected about eight o'clock at night and the individuals arrested were released at about six the next morning. During this interval no judi-

cial office was accessible to whom the arrested persons could be delivered, and it was not incumbent on the appellant to disturb any person for the purpose of making delivery. Judgment reversed, defendant acquitted. (In Division of three, per Street, J., Santos, Hull, JJ., concurring.) *Briefed by J. P. S.*

LAND REGISTRATION—EFFECT OF CADASTRAL PROCEEDING ON TORRENS CERTIFICATE OF TITLE—*A. A. Addison vs. The Payatas Estate Improvement Co., et al., G. R. No. 39695, September 27, 1934.*—Defendants were the owners of a parcel of land described in the original Certificate of Title No. 333 of the Office of the Register of Deeds of the Province of Rizal, issued on Jan. 31, 1905, pursuant to land registration proceedings. Subsequently, in cadastral proceedings, plaintiff claimed to be the owner of a large tract of land, part of which was claimed to have been included in the Certificate of Title No. 333, above mentioned. Parties agreed that the strip of land in dispute was included within the original Certificate of Title of defendants. The issue was: "Can land which has been duly registered and for which Torrens Certificate of Title has been issued be given to another in a cadastral proceeding?" *Held:* This question has been repeatedly answered by the Supreme Court in the negative. The two cases of Legarda and Prieto vs. Saleeby (31 Phil. 590) and Reyes et al vs. Borbon (50 Phil. 791) are sufficient to show that the original owner cannot be divested of title by subsequent cadastral proceedings. Judgment affirmed. (In division of five. Hull, J.; Avanceña, Santos, Vickers, Diaz, JJ., concurring.) *Briefed by RODOLFO PALMA.*

CORPORATION LAW—RIGHT OF ONE CORPORATION TO ASSUME THE NAME OF ANOTHER AS A TRADE NAME.—

Red Line Transportation Co., petitioner-appellant, vs. Rural Transit Co., Ltd., respondent-appellee, G. R. No. 41370, September 6, 1934.—

This is a petition for review of an order of the Public Service Commission entered December, 1932, granting to the Rural Transit Company, Ltd., a certificate of public convenience to operate a transportation service between Ilagan, Isabela and Tuguegarao, Cagayan, and additional trips in its existing express service between Manila and Tuguegarao. The petitioner-oppositor filed a motion for reconsideration and called the attention of the Commission to the decree of the Court of First Instance of Manila ordering the dissolution of the respondent-applicant. The Commission, however, proceeded on the application as filed and the decision of December 21st was rendered in favor of the Rural Transit Co., Ltd., and the certificate issued in its name, in the face of the evidence that said corporation was not the real party in interest, but the Bachrach Motor Company. The Commission justified its action by citing its resolution of November, 1932, granting the Bachrach Motor Company the power to use the name "Rural Transit Co., Ltd.," as its trade name in all its applications and motions. *Held:* There is no law that empowers the Commission to authorize one corporation to assume the name of another corporation as a trade name. Both the Rural Transit Company, Ltd., and the Bachrach Motor Co., Inc., are Philippine corporations and the very law of their creation and continued existence requires each to adopt and certify a distinctive name. The incorporators "constitute a body politic and corporate under the

name stated in the certificate." Section 11, Act 1459 as amended. A corporation has the power "of succession by its corporate name." Section 13, *ibid.* The name of a corporation is therefore essential to its existence. It cannot change its name except in the manner provided by the statute. By that name alone is it authorized to transact business. The law gives a corporation no express or implied authority to assume another name that is unappropriated; still less that of another corporation, which is set apart for it and protected by law. If any corporation could assume at pleasure, as an unregistered trade name, the name of another corporation, this practice would result in confusion and open the door to frauds and evasions and difficulties of administration and supervision. (In second division of five, per Butte, J., Malcolm, Villa-Real and Imperial JJ., concurring.) *Briefed by FELIPE M. ESCARRILLA.*

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AUCTION SALE OF LAND TAKEN IN LIEU OF TAXES; ADEQUACY OF PRICE.
—The Government of the Philippine Islands vs. Vicente Cementerio et al., G. R. No. 40760, September 6, 1934.—The Collector of Internal Revenue directed the Provincial Treasurer of Iloilo to sell lot No. 1368 of the Cadaster of Oton taken in lieu of taxes, at public auction. The lot was sold to defendant Cementerio, the highest bidder and upon payment of the amount of the bid, transfer certificate was duly issued by the Register of Deeds. Two subsequent transfers were made but the Collector of Internal Revenue on the advice of his representative disapproved of the sale and brought action to cancel the same, on the ground that the purchase price is inadequate. *Held:* The Collector of Internal Revenue directed that the land be sold at

public auction, and neither he nor the Provincial Treasurer put the condition or limitation on the sale that an upset price be fixed or that the sale was subject to the approval or confirmation of any other government official. There is no allegation in the complaint or in the proof of fraud. There is no claim that the Municipal Treasurer did not give at least twenty days' notice of the sale. The rule is general that in the absence of any statutory provision or limitation in the terms of the sale, the fall of the hammer at a public auction makes the contract. The mere fact that the land was sold at a public auction for less than it might bring at a private sale, does not render the auction sale illegal. (In division of three, per Hull, J., Diaz and Street JJ., concurring.) *Briefed by FELIPE M. ESCARRILLA.*

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CIVIL LAW—OBLIGATIONS—Luzon Surety Co., Inc., vs. Manuel A. Guieb and F. E. Ledda, G. R. No. 41105, Sept. 19, 1934.—This is an appeal from a judgment of the Court of First Instance of Manila in an action for the sum of P4,653.76 which the plaintiff was compelled to pay to Erlanger & Galinger Inc. and to the Philippine National Bank upon obligation due them by the Filipino Gun Store Inc. The Luzon Surety Co. became surety on said obligations of the Filipino Gun Store, Inc. upon the promise of the defendants Manuel A. Guieb and F. E. Ledda to indemnify the surety company for any amounts it might be required to pay as surety of the Filipino Gun Store, Inc. on said obligations.

The Filipino Gun Store, Inc. intervened in this suit and states in its petition that on April 30, 1931, it executed and delivered a note for P3,617.01 in favor of Erlanger & Galinger, Inc. upon which the Lu-

zon Surety Company was surety and on May 15, 1931, a note for ₱1,500 to the Philippine National Bank upon which the Luzon Surety was surety, these being the same obligations referred to in the plaintiff's petition. The intervener further alleges that on May 16, 1931, it executed a chattel mortgage in favor of the Luzon Surety Company as security to hold the said surety harmless from any expense, loss or damage for having signed the said promissory notes as surety; that the said surety company foreclosed the said chattel mortgage and realized from the proceeds of the sale the sum of ₱3,065. It is alleged that the intervener required the Luzon Surety Company to apply said proceeds on the note which is payable to Erlanger & Galinger and the intervener prays that the surety company be required to apply said sum of ₱3,065 on the said note.

There is no merit in the first assignment of error that the indemnity agreements have been cancelled by mutual agreement of the parties, or in the second assignment of error that said indemnity agreements were modified or extinguished by the execution of the chattel mortgage which was given as an additional security to the surety. Nor was the defendant Ledda, as indemnitor of the surety company,

was in any wise prejudiced when the surety company obtained for itself the additional security of the chattel mortgage. The principal obligations to Erlanger & Galinger, Inc. and the Philippine National Bank for which the surety company was surety and which it was obliged to pay were not in any wise altered by the terms of the mortgage so as to release the indemnitors under their agreement.

The argument that the ₱3,065 should be applied to the debt of ₱5,017.01 of the Filipino Gun Store, Inc. to the Luzon Surety Company as guaranteed by appellants Ledda and Guieb ignores the provisions of the indemnity agreements whereby the indemnitors, including Guieb and Ledda, "jointly and severally agreed to indemnify the company and save it harmless from all loss and damage on account of having become surety on said notes." It is true the word "guarantor" is typewritten in parenthesis opposite the typewritten name of Manuel A. Guieb and likewise opposite the typewritten name of F. E. Ledda, but this in itself is not sufficient to alter the plain terms of the agreement. At most these words are *descriptio personae*. (In division of three. Butte, J., Malcolm & Goddard, JJ., concurring.) *Briefed by RAFAEL CAÑIZA.*