

PHILIPPINE LAW JOURNAL

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

Subscription P8.00 per year

Single number 60 centav o

VICENTE G. SINCO, *Managing Editor*

Student Editorial Board

Celestino C. Juan
Jose O. Hison
Melton G. Soliman
Felipe M. Escarrilla
Felix O. Alfelor

Leovigildo V. Monasterial
Jose G. Bautista
Rafael Cañiza
Agapito P. Cobacha
Crisostomo Pariñas

Jose S. Gonzales
Jose F. Santillan
Rodolfo Palma
Galo Acuña
Celso Molina

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—GRAVE PHYSICAL INJURIES; APPLICATION OF ARTICLE 263, SUBSECTION 3 OF THE REVISED PENAL CODE.—*P. P. I. v. Alipio Balubar, G. R. No. 40940, Oct. 9, 1934.*

—It appears that the defendant-appellant struck one Isidro Pizarro in the mouth with an iron instrument used for cranking the engine of a motor truck, thereby breaking four of the offended party's front teeth and inflicting on his upper lip a wound which required medical treatment for six days. The trial judge found that the offended party had a very noticeable disfigurement in the mouth at the time of the trial.

The principal question involved in this case is whether the physical injuries inflicted by the defendant constitute grave physical injuries punishable under subsection 3 of Art. 263 of the Revised Penal Code, which reads as follows:

“The penalty of prison correccional in its minimum periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed (*disfigured*) or shall have lost any other part (*member*) of his body, or the use thereof, or shall have been ill or in-

capacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days.”

Held: The Supreme Court of Spain in several decisions, among them that of May 5, 1884, Oct. 29, 1886, Oct. 31, 1900, Jan. 12, 1903, held that the loss of 2 or 3 front teeth is a disfigurement, and therefore applied No. 3 of Art. 431 of the Spanish Penal Code which is identical with Art. 263 of our Revised Penal Code. But in *P. P. I. v. Rodas, G. R. No. 31807*, where two of the offended party's lower incisors were knocked out, a division of four of our Supreme Court refused to follow the decisions of the Spanish Supreme Court on the ground that they were obsolete because of the progress in dental science, and held that such a case need not be taken as a permanent physical abnormality; again, in *P. P. I. v. Medina, G. R. No. 32113*, the same division of the Court held that the loss of four teeth did not constitute a disfigurement within the meaning of the law, because it was not permanent as the natural teeth had been substituted by artificial ones.

However, the majority of the Court think that this is not a correct interpretation of the law. The injury contemplated by the Code is an injury that cannot be repaired by the action of nature, and if the loss of the teeth is visible and impairs the offended party, it constitutes a disfigurement. The fact that he may, if he has the necessary means and so desires, have artificial teeth substituted for the natural teeth he has lost does not repair the injury, altho it may lessen the disfigurement. The case of a child or an old person is an exception to the rule. (In this case the offended party is 25 years old).

One who unlawfully wounds another is responsible for the consequences of his act. If as a result thereof, the offended party is impaired in his appearance in such a way that the disfigurement cannot be removed by nature, the person causing the injuries is responsible for the disfigurement, and he is not relieved of that responsibility because the offended party, might, if he had the means, lessen the disfigurement by some artificial contrivance.

A further reason for considering the offense committed by appellant as *lesiones graves* is that a front tooth is a member of the body, other than a principal member, within the meaning of the words, "or shall have lost any other member", as used in subsection 3 of Art. 263. (*Keith v. Stee.*, 232 S. W. 321). (In banc, per Vickers, J.; *Avanceña, C. J., Street, Villa-Real, Imperial, Butte, Goddard, Diaz, J.J., concurring*; *Hull, J., concurs in the result*. *Malcolm, J., with whom concurs* *Abad Santos, J., dissents on substantially the same reasons as given in the Rodas and Medina cases cited above.*) *Briefed by J. P. S.*

RIGHTS AND LIABILITIES OF A FORECLOSURE PURCHASER. — *Phil. American Drug Co. vs. Mariano Cu Unjieng and Rafael Fernandez, G. R. No. 41211, July 25, 1934.*— Defendants are owners of a parcel of land mortgaged in favor of El Hogar Filipino. One of the conditions of the mortgage was that should the mortgagors fail to pay the land taxes of the properties mortgaged, the mortgagee could pay them and the amount so paid should be added to the principal debt to be reimbursed by the mortgagors. At the foreclosure of the mortgage, the plaintiff became the highest bidder. Thereafter the city treasurer exacted from the plaintiff the land taxes corresponding to the properties mortgaged, which plaintiff paid under protest and instituted this action for reimbursement. *Held*: Since the plaintiff did not take advantage of the condition of the mortgage that the mortgagee could pay such taxes and the amount so paid should be added to the principal debt to be reimbursed by the mortgagors, a separate action cannot prosper to place this burden on the former mortgagors. The mortgage was foreclosed and no deficiency judgment was instituted thereon. Furthermore, section 2497 of the Administrative Code provides that taxes and penalties assessed against realty shall constitute a lien thereon. The true rule is that the rights and liabilities of a foreclosure purchaser are the rights and liabilities that attach to the ownership of land, and he becomes owner of the land subject to all encumbrances to which it is subject when the sale is made. The amount paid for taxes together with the amount due on the mortgage constitute but a single and indivisible demand existing only by virtue of the mortgage and being collateral and subordinate thereto. *Re-*

versed. (In division of three, per Malcolm, J.; Villa-Real, Imperial, J. J. concurring.) *Briefed by* JOSÉ G. BAUTISTA.

PACTO DE RETRO SALE—VENDEE'S DEFENSE THAT IT IS A CONTRACT OF LOAN.—*Mariano Villanueva and Marta Magalalug vs. Evarista Sinapilo and Mariano Ona, G. R. No. 41408, July 26, 1934.*—Defendant Evarista Sinapilo executed a public document Ex A in which she sold to the plaintiff a parcel of land with right to repurchase within five years. As the plaintiffs were not able to pay, they made a promissory note in favor of defendant to the effect that the amount shall be paid to Mariano Ona, son of Evarista Sinapil. The plaintiffs claim that the document Ex A was not a sale *con pacto de retro* but a loan. *Held:* This case is unique. Its uniqueness consists in the fact that it is the first case that has come to the attention of this court wherein the buyers under a *pacto de retro* sale contend that the document of sale with right to repurchase was made to cover up a loan transaction. Moreover, the promissory note and the payments made in conformity therewith establish the fact that Exhibit A was a genuine sale with right of repurchase. This is not the first time that a buyer of a parcel of land has later found it convenient to sell at a lower price than he paid for it. It often happens that land depreciates in value from one year to another on account of the fact that the market price of its products has decreased. Reversed. (In division of three, per Goddard, J., Malcolm, Villa-Real, J. J. concurring.) *Briefed by* JOSÉ G. BAUTISTA.

CRIMINAL LAW—HABITUAL DELINQUENCY — WHAT CONSTITUTES SUFFICIENT ALLEGATIONS—P. P. I.

vs. Rufino Tome, G. R. No. 42423, Nov. 14, 1934.—Appellant was convicted of theft on his plea of guilty, and as an habitual delinquent. The only question in this appeal was the sufficiency of the charge of habitual delinquency, which reads as follows in the complaint: "That said accused has already been convicted three times of the crime of theft and is an habitual delinquent, his last release thereof being on August 14, 1934." Appellant relied upon the case of *People vs. Nayco*, 43 Phil. 167, in which the court held that in order to invoke the penalty for habitual delinquency, it would be sufficient to further allege "that the defendant is an habitual delinquent under the terms and provisions of Act 3062." *Held:* The case of *People vs. Sobrevilla*, 53 Phil. 226, explained the *Nayco* case in the following language: "The court said that it would have been sufficient to allege that the defendant is an habitual delinquent under the terms of Act 3062, but it does not mean that such allegation was necessary—only that it would have sufficed, in the absence of another or others specifically mentioning the circumstances required by said act for its application." Tested by the case of *Sobrevilla*, the complaint must be held good. (In division of three. Hull, J.; Diaz and Street., JJ., concurring.) *Briefed by* RODOLFO PALMA.

CRIMINAL LAW — WHEN MAY COURTS TAKE JUDICIAL NOTICE OF ROBBERY.—P. P. I. vs. Crescenciano Roque, G. R. No. 42365, November 12, 1934.—FACTS: The defendant in this case was convicted of robbery in that "he did wilfully, unlawfully and feloniously break open the trunk of one Filemon Kuison, which was then located at his residence * * * and took, stole and

carried away therefrom with intent to gain and without the consent of the owner thereof the following personal property * * *” The defense pointed out that the offense was not committed with force or violence, and upon this fact it was claimed that the appellant should have been sentenced for simple theft and not robbery. *Held*: Courts can take judicial notice of the fact that the felonious breaking open of a trunk involves the use of force and violence to the extent necessary to convict the offender of the crime of robbery. Judgment affirmed. (In first division of three. Street, J.; Hull and Diaz, JJ., concurring.) *Briefed by* RODOLFO PALMA.

INSOLVENCY—SECTION 70 OF THE INSOLVENCY LAW DOES NOT IMPART VALIDITY TO FRAUDULENT CONVEYANCES OF LONGER STANDING.—*Arthur Landahl, Assignee in Insolvency of Dy Yam, vs. Chua Cue.*—G. R. No. 41097, Sept. 4, 1934.—Arthur Landahl, assignee in insolvency of Dy Yam, commenced this action to recover a parcel of land situated in Manila, from Chua Cue, on the ground that it belongs to the insolvent Dy Yam and had been conveyed fraudulently to the defendant for the purpose of defrauding the insolvent's creditors. It was shown that on May 3, 1929, the insolvent, for a purported consideration of ₱5,000, transferred the property in question to Dy Liang who, in turn, conveyed the same to Lu Pi. Later, Lu Pi sold it to the insolvent's sons who, on Aug. 31, 1932 finally transferred the property in litigation to the defendant for the alleged sum of ₱6,000. This last conveyance was made twenty days before Dy Yam was declared insolvent by the Court of First Instance of Manila. From a judgment in favor of the plaintiff,

defendant appealed contending that section 70 of the Insolvency Law cannot be applied to this transaction for the reason that Dy Yam had conveyed the property to his original vendee years before the last conveyance. *Held*: Although the Insolvency Act declares *prima facie* fraudulent documents of sale made within a given time before declaration of insolvency, it was not intended by that Law to impart validity to fraudulent conveyances of longer standing. Especially where it appears, as in this case, that the successive purchasers were not persons who could reasonably be supposed to have money to make so considerable a purchase and that, notwithstanding the successive transfers, the property remained in the possession of the insolvent. The court has ample authority to subject to legal process property carried by an insolvent in the name of another, for however long a period the transaction may have been made. Judgment affirmed. (In division of three, per Street, J., Hull and Diaz, JJ., concurring.) *Briefed by* FELIX O. ALFELOR.

INSOLVENCY LAW—SCOPE OF SECTION 32 OF THE LAW.—In the *Matter of the Estate of Guillermo Lopez & Company and the surviving partner Jose Jordana, Insolvent debtors*, G. R. No. 41149, October 2, 1934.—The Manila Wine Merchants Ltd., obtained a judgment against Jose Jordana and Guillermo Lopez & Co., in the Court of First Instance of Manila and caused a writ of execution to be issued dated August 15, 1933, directed to the sheriff of Camarines Sur. He received this on August 21, 1933, and between that date and August 28, 1933, he levied on goods of the judgment debtors which he sold be-

tween September 2 and 9, realizing therefrom the sum of P506.90. On the latter date the judgment debtor filed a petition for voluntary insolvency in the Court of First Instance of Camarines Sur. On September 11, 1933 the said sheriff in said insolvency proceedings filed a motion for instructions as to what disposition he should make of the funds and the court directed him to hold the said money subject to the orders of the court in insolvency proceedings. From this order the Manila Wine Merchant Ltd., appealed. *Held*: The sheriff must deliver the proceeds of said execution sale to the judgment creditor. Under the provisions of section 32, of the Insolvency Law, the title of the assignee is determined as of the date of the commencement of the proceedings in insolvency. The assignment also dissolves any attachment levied within one month next proceeding the commencement of insolvency proceedings. The lower court erred in holding that this language covers an execution sale held under and by virtue of a judgment obtained more than thirty days before the commencement of the insolvency proceedings. An execution sale may be set aside if the judgment was entered "within thirty days" prior to the commencement of the insolvency proceedings. In the present case the judgment under which the execution was issued was obtained more than two months before the insolvency proceedings. (In the second division of three, per Butte, J., Imperial and Villarreal, JJ., concurring.) *Briefed by FELIPE M. ESCARILLA.*

CRIMINAL LAW—ADULTERY—EFFECT OF PARDON—IMPLICATION OF PARDON FROM CIRCUMSTANCES.—*P. I. vs. Francisco Cornejo and Esmeralda de Guzman, G. R. No.*

40393, October 25, 1934.—In January, 1931, the wife Favor presented a complaint against her husband Cornejo and his mistress Guzman charging them of adultery. Said complaint was dissolved for non-appearance of the wife at the time set for trial. On March 8, 1933, another complaint was filed against the same parties. The main defense was an implied pardon from the wife. The lower court convicted the defendants. *Held*: From the evidence it was shown that the offended party returned to her husband with her sons and lived in the conjugal home. This was equivalent to a pardon by the wife, taking into consideration that she did not enter her appearance at the time of the trial in the previous case and also that there was evidence that she pardoned her husband as against her explanation for her failure to appear. Though in accordance with the old law the pardon of the offended party did not extinguish the penal action, the Revised Penal Code now in force provides otherwise and the latter being favorable to the accused, it must be applied even to acts which were committed prior to the time it was in force. Defendants acquitted. (First division of five, per Avanceña, C. J., Santos, Hull, Vickers and Diaz JJ., concurring.) *Briefed by FELIPE ESCARILLA.*

ADMISSION OF CHINESE MINOR CHILDREN — PREREQUISITES — *Teng Ching, in his own behalf and in behalf of his sons Teng Can, Teng Lam, Teng Tong vs. The Insular Collector of Customs.*—*G. R. No. 42103, October 29, 1934.*—The said three children claimed the right to enter and reside in the Islands as the minor children of petitioner Teng Ching. A board of special inquiry denied them the right to land

and reside in the Islands, which judgment was confirmed by the respondent Collector of Customs. The lower court disregarded the said order of the Collector. *Held*: As a condition precedent to the admission of his minor children the law requires a Chinese father to establish his exempt status not only by his own testimony but by the testimony of two or more credible witnesses other than Chinese. It is true that Teng Ching filed an application to the Insular Collector for indorsement as a resident merchant but such application was denied. Furthermore, the evidence he presented before the board of special inquiry was not supported by the testimony of two or more credible witnesses other than Chinese as required by law. (Per Santos, J., Street, Hull, Vickers, and Diaz concurring, JJ.) *Briefed by CELSO MOLINA.*

TAXATION—SPECIAL ASSESSMENT—SECTION 349 AND 355 ADMINISTRATIVE CODE CONSTRUED.—*R. R. Landon vs. Alfredo Jacinto, Provincial Treasurer and ex-officio Provincial Assessor of Cebu.*—In 1930, in accordance with the provisions of section 361 of the Administrative Code, the Municipal Council of Cebu made and adopted, and the Provincial Board of the Province of Cebu duly approved, a general schedule of values of real property within the municipality of Cebu, in force during all the time up to the present action. At the time of the adoption of the said schedule of values the plaintiff was the owner of three parcels of land in said municipality of Cebu. Said parcels of land were unimproved and have no taxable or income producing improvements on them. In 1930 the defendant, as Provincial Assessor, on his own initiative made what he called a spe-

cial assessment of plaintiff's land increasing the assessment from ₱.80 per square meter to ₱5.00 per square meter. The plaintiff actually paid to the defendant under protest as taxes for the years 1930, 1931, & 1932 a total of ₱4,808.16. The plaintiff brings this action to recover said amount paid under protest and contends that defendant had no legal right to make the "special assessment" or to assess the plaintiff's land at a rate different from that already fixed in accordance with the schedule of values approved according to law. The defendant, however, claims authority under section 349 and 355 of the Administrative Code. Lower Court held that defendant was authorized to make the special assessment but hold that the rate was excessive. Lower Court reduced assessment from ₱5.00 to ₱3.00 per square meter. *Held*: Under section 349 Administrative Code, there are three things which the assessor, in proper cases may lawfully do in respect to assessments to already made, i. e., he may eliminate property from the list of taxable property, he may lower the assessment of property, or he may increase the assessment. But the cases in which he may lawfully do these things are specifically stated and prescribed. Thus his authority to increase assessment already properly made is limited definitely to stated cases where taxable improvements have been made on land subject to the last previous assessment. No taxable improvements have been made on the plaintiff's land subsequent to the previous assessment. Neither can the defendant rely on section 355 Administrative Code because that section authorizes him to proceed independently of the schedule of values only in those cases where the property to be assessed is of a kind not classified or of a kind for which a value is not therein fixed. It is probably true

that the condition of plaintiff's property has undergone changes which have increased its value by reason of the opening of streets and the making of adjacent public and private improvements. Even so, the defendant has no authority under the law to increase the assessment upon said land unless taxable improvements have been made thereon. This duty corresponds to the provincial board and the municipal council, either by a general revision of the schedule of values or by an amendment of the existing schedule. The special assessment is therefore null and void ab initio. (In division of five, per Goddard J., Malcolm, Villa-Real Imperial, Butte, JJ., concurring.) *Briefed by* JOSÉ G. BAUTISTA.

CRIMINAL LAW—CONSPIRACY—EFFECT OF ACQUITTAL OF A DEFENDANT, THE ESTABLISHMENT OF WHOSE GUILT IS ESSENTIAL TO THE CONVICTION OF THE OTHER.—*P. P. I. vs. Ong Chiat Lay, G. R. No. 39086, October 26, 1934.*—Appellant and two others were jointly charged of the crime of arson. After trial while the two defendants were acquitted, the present appellant was found guilty. It is not claimed that appellant has taken a direct part in the burning of the building. Appellant was prosecuted on the theory that he induced his said codefendants to set fire to the building. Lower Court convicted defendant-appellant. *Issue:* Is the conviction proper in spite of the acquittal of the other two defendants. *Held:* In a case of conspiracy where one of the persons, the establishment of whose guilt is essential to the conviction of the other, has been legally acquitted, the other became discharged. It cannot be that a man can be held guilty to any purpose who has, in due course of law, been found not guilty. There can be no aid given

to a deed when the deed itself was never perpetrated. For A could not conspire with B if the latter did not conspire at all. In all the cases, therefore, a verdict affirming the guilt of fewer persons than could commit the crime, and affirming the innocence of all others charged, has been held to be an acquittal of all. Reversed. (In division of five, Abad Santos, Jr., Avanceña, Street, Vickers, Butte, JJ., concurring.) *Briefed by* JOSÉ G. BAUTISTA.

CRIMINAL LAW—WHEN TREACHERY EXISTS—WHEN TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF PASSION AND OBFUSCATION AND THE AGGRAVATING CIRCUMSTANCE OF NOCTURNITY.—*People of the Philippine Islands vs. Vicente Matbagon, G. R. No. 42165, November 12, 1934.*—The defendant and the deceased engaged in a fight between eleven and twelve o'clock at night. They were separated after they had bitten each other. About half an hour later, while the deceased was on his way home, the defendant with a knife in hand approached the deceased and stabbed him in the breast. A struggle ensued resulting in the death of the deceased. The trial judge found the defendant guilty of murder because the crime was committed with treachery; that the aggravating circumstance of nocturnity was offset by the mitigating circumstance of passion and obfuscation, since the defendant committed the crime because he had been bitten a few minutes before by the deceased. *Held:* Under the circumstances of this case, there could not be both treachery and the aggravating circumstance of nocturnity because the nocturnity would be included in the treachery as an inseparable incident, and should not be considered separately (U. S. vs. Salgado, 11 Phil. 56, 59). The mitigating circumstance of passion

and obfuscation was improperly appreciated. Half an hour intervened between the fight at the cockpit and the stabbing. The accused waited for the deceased and in attacking him with a knife was actuated by a desire for revenge because of the injury he received in the fight with the deceased. The attack was not the result of a sudden impulse of natural and uncontrollable fury. (*People vs. Hernandez*, 43 Phil. 104, 111). There is no treachery on the part of the accused because he did not commit the crime in such a manner as to insure its execution without risk to himself from the defense which the deceased might have made. The aggravating circumstance of nocturnity could not be taken into account since the time for the commission of the crime was not deliberately chosen by the accused; nor did the accused take advantage of the darkness for the more successful consummation of his plans, to prevent his being recognized, and that the crime might be perpetrated unmolested (*U. S. vs. Billedo*, 32 Phil. 574, 579). (Per *Vickers, J.*; *Avanceña Street, Santos, Imperial and Diaz, JJ.*, concur.) *Briefed by LEOVIGILDO V. MONASTERIAL.*

HABEAS CORPUS—APPEAL IN HABEAS CORPUS PROCEEDING, WHEN PERFECTED.—*Soo Hong Chung vs. Insular Collector of Customs, G. R. No. 42461, November 26, 1934.*—A decision of the Board of Special Inquiry denying *Soo Hong Chung* entrance into the Philippines was confirmed by the Collector of Customs. Claiming that the action of the immigration authorities was arbitrary, capricious and illegal, he instituted habeas corpus proceedings in the Court of First Instance. After hearing, the Court of First Instance denied the application for habeas corpus. His motion for reconsideration

filed two days later being denied, he noted his appeal, paid the docketing fee of the Supreme Court, and filed his brief. In sustaining the motion made by the Acting Solicitor General to dismiss the appeal on the ground that appellant did not act within the time provided in section 4 of Act No. 654, which act authorizes appeals in habeas corpus proceedings, the Supreme Court *Held*: Act No. 654 which authorizes appeals in habeas corpus proceedings provides in its section 4 that such appeal shall be perfected "by filing... within twenty-four hours after the order has been made... refusing the discharge of the prisoner, a statement that the person so appealing is dissatisfied with the action of the court... in respect to the order so made and appeals therefrom to the Supreme Court". This language is clear and needs little interpretation. The statute contemplates that the period of time therein prescribed runs from date of the notice of the entry of the order. The statute in question does not necessarily contemplate a motion for reconsideration before the right of appeal accrues. However, should a motion for reconsideration be filed within the statutory period, it is assumed that the trial court or judge would have the right to consider such motion and that petitioner would have his right to appeal after denial of said motion, provided he made the proper representation within twenty-four after receipt of notice of the denial of the motion. In this case, the decision of the Court of First Instance had become final before petitioner filed his motion for reconsideration. His right to appeal in this Court from that decision had already been extinguished by the lapse of time. It could not be revived by a belated motion for reconsideration. (Per *Hull, J.*; *Avance-*

ña, Street, Malcolm, Villa-Real, Santos, Vickers, Imperial, Butte, Goddard and Diaz, JJ., concur.) *Briefed by* LEOVIGILDO V. MONASTERIAL.

CRIMINAL LAW—PERJURY—*P. P. I. v. Antonio Nosce, G. R. No. 42009, Oct. 26, 1934.*—Defendant was convicted of the crime of perjury under Art. 183, R. C. P. based on his verification of a petition for habeas corpus. The complaint of perjury alleges that the defendant falsely subscribed to a petition for habeas corpus "that Atty. Godofredo Reyes, the alleged aggrieved party in Crim. Case No. 6567 * * * was one of the sponsors of Deputy

Provincial Fiscal Engracio Fabre in his marriage, and due to this relationship he, the accused Antonio Nosce, was falsely charged by said Deputy Fiscal with the crime of frustrated murder committed against * * * Godofredo Reyes * * *." *Held:* To constitute perjury under Art. 183, the false statement must be relative to a material matter. It is absolutely immaterial whether the Fiscal had the relationship to the offended party alleged in this complaint and a conviction based thereon cannot be sustained. (In division of three, per Hull, J.; Street, Diaz JJ., concurring.) *Briefed by* J. P. S.

