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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.]

**CHATTEL MORTGAGE—MORTGAGOR'S INTEREST IN A MORTGAGED CHATTEL SUBJECT TO EXECUTION—***Levy Hermanos, Inc. vs. Idelfonso Ramirez and Jose Casimiro, G. R. No. 41284, Nov. 28, 1934.*—Plaintiff-appellant sold a Packard automobile to Gregorio Olegario on the installment plan. The unpaid balance was secured by a chattel mortgage on the automobile. Thereafter the defendant secured a judgment against Gregorio Olegario in Civil Case No. 23198 and obtained a writ of execution. The plaintiff filed a third party claim for at that time Gregorio Olegario still owed him around P1,000. The defendant filed a bond and the automobile was sold at public auction to a third party and the proceeds of the sale were turned over to the defendant; whereupon plaintiff brought this suit. The plaintiff alleged that the equity of the mortgagor in a mortgaged chattel is not subject to execution and that the mortgagor has no attachable interest therein. Defendant demurred on the ground that the complaint does not state facts sufficient to constitute a cause of

action. Demurrer was sustained. *Held:* This Court has held that since a chattel mortgage is a conditional sale (Section 3, Act 1508) and that the ownership of the chattels mortgaged passes to the mortgagee (*Meyers vs. Thein, 15 Phil. 305*) the only thing that can be attached under an execution against the mortgagor is his right to redeem the mortgaged chattels. (*Manila Mercantile Co. vs. Flores, 39 Phil. 799*). Under this doctrine and the provisions of section 461 of the Code of Civil Procedure the purchaser at public auction of the Packard automobile in question acquired no more than Gregorio Olegario's right of redemption, provided for in section 13 of Act No. 1508. Furthermore section 451 of the Code of Civil Procedure expressly authorizes the sale upon execution of "any interest \* \* \* of the judgment debtor." This section has been construed by this court as follows: "This statute authorizes the sale under execution of every kind of property, and every interest in property which is, or may be, the

subject of private ownership and transfer. It deals with equitable rights and interests as it deals with legal, without anywhere expressly recognizing or making any distinction between them." (Reyes vs. Gray, 21 Phil. 73.) Affirmed. (Second division of five, per Goddard, J., Malcolm, Villa-Real, Imperial, and Butte, JJ., concurring.) *Briefed by* JOSE C. BAUTISTA.

CRIMINAL LAW—ADDITIONAL PENALTY OF DEPORTATION IN CASES OF RECIDIVISM IN THE VIOLATION OF THE OPIUM LAW NOW ELIMINATED.—*Teo Tung—alias Teo Tunga vs. Perry Nachlan, Acting Collector of Customs, and Jose Magno, Chief of the Secret Service of Customs of the Port of Jolo, G. R. No. 41740, November 16, 1934.*—Having more than once violated the opium law, appellant was tried, convicted, and sentenced to be deported. The sentence was carried out, but within one year following his deportation appellant returned to the Philippines and continued living with his family ever since. That was twenty years ago. In 1933 he was discovered, and the Court of First Instance of Sulu, on the strength of the sentence of deportation of 1914, forthwith ordered the deportation of the appellant. Appellant petitioned for a writ of habeas corpus, which petition the lower court denied. Appellant contends that as the present Revised Penal Code does not contain the penalty of deportation upon a recidivist for a violation of the opium law, therefore, the former sentence of deportation has been wiped out by article 22 of the Revised Penal Code. Solicitor General concurs with appellant's contention. *Held:* Both appellant and Solicitor General are correct, especially in this particular case where

the original sentence of deportation has long been executed. That original sentence having once been executed is of no more force than a portion of the same sentence requiring confinement which confinement has likewise been executed. Reversed. (In division of five, per Hull, J., Street, Vickers, Santos, Diaz, JJ., concurring.) *Briefed by* JOSE O. HIZON.

ESTAFA—CONVERSION OF MERCHANDISE DELIVERED FOR SALE UPON COMMISSION.—*The People of the Philippine Islands, plaintiff-appellee vs. Pua Lay, defendant-appellant, G. R. No. 42124, January 24, 1935.*—This is an appeal from a sentence convicting the defendant of the crime of estafa. The accused is alleged to have converted certain merchandise delivered to him for sale upon commission. The fact that the obligation has not been paid is undeniable. As a defense the appellant alleges that the contract under which he is held did not truly represent the facts, and that, on the contrary, the merchandise acknowledged by him was received upon an anterior contract. The accused, therefore, claims that his failure to meet this obligation did not constitute estafa. *Held:* The contract upon which the goods were received is presented in evidence and is proved by the testimony of a subscribing witness, Go Sion. Both the injured party and Go Sion have testified that the goods were received by the accused at the time said contract was signed by him. There is no credible proof which justifies a contrary conclusion. Affirmed. (In first division of three, per Street, J., Avanceña and Santos, JJ., concurring.) *Briefed by* CRISOSTOMO F. PARIÑAS.

LAND REGISTRATION—WHO IS DEEMED NOT AN INNOCENT PURCHASER.—*Government of the Philippine Islands vs. E. Abaile et al., Claimants; J. Tupas, petitioners-appellees; M. E. Grey, oppositor-appellant.*—G. R. No. 37900, Dec. 15, 1934.—This is an appeal from an order of the Court of First Instance of Occidental Negros, granting the petition of the appellees for revision of the decree of registration of three lots. It appeared that in the order for the issuance of the decree of registration in favor of Juana Barbosa and the appellees, it was erroneously stated that each and every one of the lots was subject to a *pacto de retro* sale in favor of Epifanio Tupas with right of repurchase until Nov. 15, 1933. Tupas was not slow in taking advantage of this error. And for the purpose of defeating the rights of the appellees by making it appear that the land had passed into the hands of an innocent purchaser, he conveyed or was made to convey his interest in the *pacto de retro* sale to J. Bacolod, one of the witnesses in the execution of the deed transferring J. Barbosa's one-half interest in said parcels to Tupas. Then followed a series of transfers which could not have had any other conceivable purpose that to cover a fraudulent design. The appellant M. Grey, one and a half months before the decree of registration, acquired these parcels by purchase thru his agent E. Lopez, who took an important part in the design to defraud the appellees. It is pretended that the transfer certificates of title from J. Bacolod to E. Lopez were issued by virtue of the deed of sale which the former executed in favor of the latter on April 6, 1930, and that the transfer certificates of title made to Grey, the last purchaser, were issued pursuant to the

deed of sale executed by Lopez on April 9, 1930. It is by virtue of this transfer that Grey claims himself to be an innocent purchaser and, therefore, deserves protection. The Supreme Court, citing *Rivera vs. Moran*, 48 Phil. 836, *Held*: A person who acquires his interest in the land after the registration of the same, but before the entry of final decree, is not an innocent purchaser for value within the meaning of Section 38 of the Land Registration Act. Furthermore, the deeds of transfer relied upon by the appellant to support his title were executed simply to cover prior transactions, and fundamentally they were nothing but a fiction of the deeds covering the same transactions which preceded them, inasmuch as the acquisition of the rights and interests over said properties had taken place prior to and not on the date of the instruments referred to. Grey is not, therefore, an innocent purchaser. Order affirmed. (In division of five, per Abad Santos, J., Malcolm, Villa-Real, Butte, and Diaz, JJ.; Concurring). *Briefed by FELIX O. ALFELOR.*

HABEAS CORPUS — IMMIGRATION CASES—DECISIONS OF BOARD OF SPECIAL INQUIRY.—*Chiu Ken (petitioner) vs. Insular Collector of Customs (respondent)*, G. R. No. 42627, January 21, 1935.—After investigation by a board of special inquiry, appellant's petition for admission into this country as a minor son of a Filipino citizen was denied. A rehearing granted him later resulted in the same refusal after which appellant appealed to the Insular Collector of Customs, who confirmed the decision of the board. Whereupon, a petition for a writ of *habeas corpus* was filed in the court

of first instance of Manila, and after due hearing, the court denied the petition. Hence this appeal on the ground that the evidence presented by appellant before the board of special inquiry was sufficient to admit him into the Philippines. *Held*: The Supreme Court has always held that the decision of a board of special inquiry in immigration cases must be sustained unless it is shown to be arbitrary. In the present case, the records showed that the appellant was given a fair hearing and, therefore, it could not be said that the board abused its power and discretion in refusing him admission into this country. Order affirmed. (In first division of five. Santos, J.; Avanceña, Street, Hull, Vickers, J.J., concurring.) *Briefed by* RODOLFO PALMA.

**CIVIL LAW—LIABILITY OF THE HUSBAND FOR TRANSACTIONS OF THE WIFE—***Manuel Tan Cungco vs. Maria Ayson et al. G. R. No. 41163, January 29, 1935.*—The evidence shows that commercial transactions had existed between the plaintiff Tan Cungco and the defendants Olalla and Maria Ayson, husband and wife. Eventually the wife signed a document which reads as follows:

“Es cierto que yo pedi por prestado setecientos pesos (P700.00) del Sr. Tan Cungco, mi promesa de pagarla sera en el mes de agosto de 1929. En testimonio de lo cual, firmo abajo hoy a 10 de Mayo 1929 en Angeles.

(Fdo.) Maria Ayson.”

The question is whether or not the husband can also be made liable for the obligation thus incurred by the wife. *Held*: The marital consent of the husband for acts done by the wife may be express or written, or, again, may be tacit. In

this instance, tacit consent of the husband has been shown. The negation of the husband is not worthy of credit; and all things considered, it would be remarkable for a husband to be entirely unaware of the transactions carried on by the wife, for the evidence showed that the husband had permitted the wife to administer the conjugal partnership. (In division of three. Per Malcolm, J.; Butte and Goddard, concurring.) *Briefed by* JOSE S. GONZALES.

**CRIMINAL LAW—IS THE STATEMENT OF A WITNESS IN THE COURSE OF A JUDICIAL PROCEEDING PRIVILEGED?—WHEN THE SAME CONSTITUTES ORAL DEFAMATION.—***P. P. I. vs. Antonio Nosce, G. R. No. 42010, November 5, 1934.*—The defendant was convicted in the trial court of grave oral defamation. The occurrence took place during the trial of a criminal case in which the defendant-appellant was asked a question. He voluntarily answered that he had been convicted by the machinations of Señor Godofredo Reyes, the attorney who was then conducting the cross examination. The imputation was not true and an impertinent answer to the question asked. Appellant claims that the matter is privileged in view of the fact that it was given by a witness in the course of a judicial proceeding. *Held*: Statements of a witness in the course of a judicial proceeding are not privileged. (*People v. Trinidad*, 53 Phil. 671; *People v. Tumayag*, G. R. 38104, Aug. 10, 1933). The reputation and honor of a practising attorney are among his most cherished possessions, and an act wrongfully bringing his character into question deserves punishment. The offended party is a lawyer of standing and is well known

in the community as a man of high ability. The offense comes within the second section of Art. 338 of the Revised Penal Code and the penalty is fixed at P100 with subsidiary imprisonment. (In division of three, Per Hull, J.; Street and Diaz, JJ., concurring.) *Briefed by* JOSE S. GONZALES.

**FUNDS IN CUSTODIA LEGIS—ARE THEY LIABLE TO EXECUTION.**—*Benito Manejero vs. Mariano Lampa, Judge of C. F. I. of Iloilo, Estrella Zamora, her husband Ricardo Luna and the Provincial Sheriff of Iloilo, G. R. No. 24750, December 17, 1934.*—This is a writ of certiorari against Judge Lampano to nullify the order made by the latter directing the clerk of court to issue a new writ of execution against the sum of P610 deposited by the petitioner in connection with case No. 9628 instituted by the latter against Luna de Manahan and the present defendants to annul a certain deed of sale. This case was later withdrawn by the plaintiff himself but reinstated subsequently. Meanwhile the re-

spondents brought an action for unlawful detainer against the present petitioner. Inasmuch as present petitioner failed to comply with section 88 of the Code of Civil Procedure an execution of the judgment of the J. P. court was issued against the sum of P610. Upon motion said order of execution was vacated but was later reissued. The question is whether the said sum of P610 is liable to execution. *Held:* The argument of the respondents that the amount was attached when the first case was already dismissed is untenable. From the moment the deposit was made by the petitioner the money remained under the control of the court, and the petitioner cannot recover it except under express order of restitution. The money therefore was in *custodia legis* when the sheriff attached it. It is a doctrine well known that money deposited with the clerk of court cannot be attached nor be subject to execution (*Springer vs. Odlin* 35 Phil. 553). Writ granted. Per Imperial, J.; Malcolm, Villareal, Butte, Goddard, JJ., concurring. *Briefed by* CELSO MOLINA.

