RECENT DECISIONS

Digest of Current Cases

ATTORNEY'S FEES.—*Alejandro de Guzman, Petitioner vs. Visayan Rapid Transit Co., Negros Transportation Co., Inc., and Nicolas Concepcion, Respondents, G. R. No. 46396, Sept. 30, 1939.* Respondents engaged the professional services of the petitioner for the purpose of obtaining the suppression, reduction and refund of certain toll rates on various bridges along the line operated by the respondents' transportation companies. Petitioner accordingly took steps to obtain the suppression and later the reduction of toll rates on said bridges and also the refund of ₱50,000 of toll charges already collected by the province of Occidental Negros. As a result of the reduction of the rates, the respondents were benefited with an economy of ₱78,448.00 and the refund to the said corporations of the amount of ₱50,000 was a great relief and enhancement of their business. Petitioner claimed in the lower court the sum of ₱20,000. The trial court awarded him ₱10,000. On appeal the Court of Appeals reduced this amount to ₱3,500. Hence this petition for certiorari. *Held:* In determining the compensation of an attorney, the following are the circumstances to be considered—the amount and character of the services rendered; the labor, time, and trouble involved; the nature and importance of the litigation or business in which the services were rendered; the responsibility imposed; the amount of money or the value of the property affected by the controversy, or involved in the employment; the skill and experience called for in the performance of the services; the professional character and social standing of the attorney; the results secured; and whether or not the fee is absolute or contingent, it being a recognized rule that an attorney may properly charge a much larger fee when it is to be contingent than when it is not. The services of the petitioner in the instant case were not limited to the preparation and filing with the authorities concerned of the petitions and other papers submitted in evidence, for he appears to have had various conferences with the Secretary of Public Works and Communications, the Secretary of Interior, the Secretary of Labor, and the Insular Auditor, and had taken steps to secure the objectives of his clients. It is clear that for these services the petitioner is entitled to a compensation of ₱7,000. Judgment modified without pronouncement regarding costs. (Per Laurel, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Concepcion, JJ., concurring. Moran, J., did not take part.)—*Briefed by* AMORSOLO V. MENDOZA.

CRIMINAL LAW.—*The People of the Philippines, Plaintiff-Appellant vs. Aniceto Marquez, Defendant-Appellee, G. R. No. 46578, September 22, 1939.* The defendant was charged with the crime of slander by deed in a complaint subscribed to by a certain chief of police. The defense demurred to the complaint on the ground that the Court had no jurisdiction over the subject matter of the action because the complaint was not filed by the offended party in ac-

cordance with Article 360, paragraph 4 of the Revised Penal Code. *Held:* Article 360, paragraph 4 of the Revised Penal Code which provides that "no criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* shall be brought except at the instance of and upon a complaint expressly filed by the offended party" refers to defamation which consists of the imputation of such crimes as adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness. Hence, the crime of slander by deed can be prosecuted *de oficio*. Demurrer overruled. (Per Laurel, J.; six Justices concurring.)—*Briefed by* LUIS J. GONZAGA.

CRIMINAL LAW.—*The People of the Philippines, Plaintiff-Appellee vs. Fernando C. Quebral, Defendant-Appellant, G. R. No. 46094, Sept. 27, 1939.* The defendant was charged with illegal practice of medicine in violation of section 770 of the Administrative Code in that he did not previously obtain the proper certificate of registration from the Board of Medical Examiners. When he diagnosed, treated and prescribed for certain patients, from whom he received money as compensation, the defense contended that the prosecution had not adduced evidence to the effect that the defendant had not obtained the proper certificate of registration. *Held:* The rule is that if the subject of the negative averment, like for instance the act of voting *without the qualifications provided by law*, inheres in the offense as an essential ingredient thereof, the prosecution has the burden of proving the same. In view, however, of the difficult office of proving a negative allegation, the prosecution under such circumstance, need do no more than make a prima facie case from the best evidence obtainable. But if the negative averment is merely a matter of defense, then the burden of proof is upon the defendant. Under our law the want of a certificate of registration is an essential element of the offense charged. The prosecution must, therefore, prove that negative fact. In the present case the prosecution had sufficiently proven its negative averment by means of the letter of José Ma. Delgado, chairman of the Board of Medical Examiners to the effect that "there is nothing in the records of this Board to show that Mr. Fernando C. Quebral is a registered physician." Judgment affirmed. (Per Moran, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concurring.)—*Briefed by* VICENTE ABAD SANTOS.

CRIMINAL PROCEDURE.—*The People of the Philippines, Plaintiff-Appellee vs. Jesus Acha y Rivera, Defendant-Appellant, G. R. No. 46714, October 2, 1939.* Upon an information charging the defendant of having stolen the sum of 92 centavos and of being a habitual delinquent, he was tried, convicted, and sentenced by the Municipal Court of the City of Manila to the principal penalty of one month and one day of *arresto mayor* and to six years and one day of *prision mayor* for habitual delinquency. Appealing to the Court of First Instance, the defendant was again convicted and sentenced to imprisonment. Appellant contended that the Municipal Court had no jurisdiction to impose on him, for habitual delinquency, the additional penalty of six years and one day of *prision mayor* because under Section 2468 of the Revised Administrative Code, as amended by Commonwealth Act No. 361, the original criminal jurisdiction of the Municipal Court is limited to cases in which the maximum penalty imposable is imprisonment for not more than six months or a fine of not more than two hun-

dred pesos, or both. *Held:* Appellant's contention is without merit. The Municipal Court has concurrent jurisdiction with the Court of First Instance over all cases of theft where the amount involved is not more than two hundred pesos. In such cases, the amount and not the penalty is the controlling factor in determining whether said Court has jurisdiction or not. (Per Laurel, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring.) —*Briefed by* GELASIO M. IBARRA.

DISBARMENT.—*Pedro de Guzman, Complainant vs. Attorney Tomas B. Tadeo, Respondent, Adm. Case No. 879, September 27, 1939.* The Solicitor-General filed a complaint against the respondent charging him of malpractice—that of representing conflicting interests in a civil case and that of undue delay in prosecuting a land registration case. The respondent was recommended for exoneration from the charges by the judge of the Court of First Instance of Pangasinan who was appointed by the Supreme Court as commissioner to investigate, report and recommend. The Solicitor-General contended that the commissioner committed an error. *Held:* The power to suspend or disbar ought to be exercised with great caution and only for the most weighty reasons. The two charges preferred against the respondent were not supported by convincing evidence, and it is a rule that disciplinary action against a member of the bar must be predicated upon proof of guilt that satisfies the court with reasonable certainty. The serious consequences of disbarment and suspension should follow only when there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court, in accordance with his oath. Complaint dismissed. (Per Laurel, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* VICENTE Q. QUINTILLAN.

EVIDENCE.—*The People of the Philippines, Plaintiff-Appellee vs. Manoji (Moro), Defendant-Appellant, G. R. No. 46412, September 18, 1939.* Defendant was convicted by the trial court of the crime of robbery with homicide. The conviction was grounded on corroborative circumstantial evidence, one of which was the fact that the appellant was pale, nervous, and trembling when he was investigated by the constabulary authorities. The court below considered this circumstance as indicative of the culpability of the appellant. *Held:* That this fact by itself does not necessarily show the appellant's guilt. While lessons in human psychology teach us that a guilty conscience will exhibit an excited behavior, nevertheless this is not true in all cases. All living things, in their spontaneous activities, respond readily to the influences of their surroundings. In the same manner as the microscopic amoeba feels the external variations in heat, and a plant responds to light and moisture, so is a man's life, in the language of Herbert Spencer, "a continuous adjustment of internal relations to external relations," a never-surceasing subserviency to the influences of environment, heredity, and education. Under-development and under-employment of the human faculties result in the repression of true feelings and emotions, and may give occasion for the manifestation of fear and nervousness, and the restraint of vigorous self-expression. But whatever may be the proper guide in experimental psychology in doubtful matters of this kind, in this case it would be unjust to attach importance to an expression

of fear or emotion to the extent of virtually permitting the disregard of the presumption of innocence in favor of the accused. Defendant acquitted. (Per Laurel, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Concepcion, JJ., concurring; Moran, J., not taking part.)—*Briefed by* GUILLERMO P. VILLASOR.

ELECTIONS.—*Antonio B. Sanagustin, Petitioner vs. Hon. Conrado Barrios, Judge of the Court of First Instance of Iloilo, et al. (the protestees), Respondents, G. R. No. 46497, Sept. 18, 1939.* Petitioner, one of the candidates for councilor of the City of Iloilo, contested the proclaimed election of respondents, other than the respondent Judge, as councilors of said city. Respondent Judge confirmed the disputed election. Thereafter, in an original action instituted by petitioner, the Supreme Court revoked the decision of respondent Judge, and ordered him to reopen the election proceedings, consider the 38 ballots found in the red box of Precinct No. 32, separate the excess ballots from those rejected as marked, and determine whether the rejection of the latter was proper or not. Pursuant to that order respondent Judge reopened the proceedings, and subsequently reiterated his first decision. Petitioner brought this present petition for certiorari to have this last decision revoked. He contended that respondent Judge had failed to comply with the order of the Supreme Court. *Held*: When the respondent Judge, after considering the 38 ballots aforesaid, determined that the excess ballots numbered 9 and that the remaining 29 were marked ballots, and when he particularized the inscriptions and marks found on the latter, there was sufficient compliance on his part. In the reopening of the case, he acted in accordance with the request of petitioner as to the manner of segregating the excess ballots from those rejected as marked. Petitioner, therefore, cannot now say that the respondent Judge improperly segregated the excess ballots, for he is not permitted to shift from one theory at the trial to a different theory in the appellate court. Even sustaining his contention that respondent Judge erred in holding the 9 ballots as excess, still his case would not prosper for he was voted for in only two of them and even with those two additional votes he still loses the election. Petition dismissed. (Per Laurel, J.; Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring. Avanceña, C.J., did not take part.)—*Briefed by* CICERON SEVERINO.

PLEADING.—*Esteban Liwanag and Jose Tinsay, Plaintiff-Appellants vs. Hon. Mariano Nable, Judge of the Municipal Court of Manila, and Manila Motor Co., Inc., Defendant-Appellants, G. R. No. 56154, Sept. 25, 1939.* Plaintiff-appellants filed a complaint against defendant-appellees for the recovery of a certain sum of money. Defendant-appellees demurred on the ground that the complaint was ambiguous, unintelligible and uncertain and that it did not state facts sufficient to constitute a cause of action. The demurrer was sustained, and as the plaintiffs failed to amend the complaint, the case was dismissed. Plaintiff-appellants assailed the order of dismissal contending that the demurrer was erroneously sustained and that they should have been allowed the opportunity to amend the complaint after the denial of the motion for reconsideration. *Held:* Appellants cannot determine the precise nature of the remedy they are seeking, although reliance is placed upon article 148 of Act No. 190. Nevertheless, there is no allegation in the complaint of any circumstance constituting fraud,

accident or excusable negligence which form the basis for the relief provided therein. The contention that no opportunity was given the appellants to amend is untenable, for it appears from the records that the appellants were given ten days within which to amend the complaint, and instead of amending the same within the period designated in the order, or to give notice that they elected not to do so, they filed a motion for reconsideration. This motion is nowhere authorized by law, and, if ignored, cannot be a ground for complaint. Judgment affirmed. (Per Moran, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* YUSUP R. ABUBAKAR.

PURCHASE AND SALE.—*International Harvester Company of the Philippines, Plaintiff-Appellee vs. Delfin Mahinay, Defendant-Appellant, G. R. No. 46168, September 29, 1939.* In 1932, defendant bought agricultural implements from the plaintiff on installment, making some initial payments and executing a chattel mortgage thereon. Defendant defaulted, and hence the mortgage was foreclosed. After applying the proceeds of the sale to the amount due, a considerable sum still remained outstanding. This action was instituted for its recovery. The question resolves itself into whether Act 4122, which took effect on December 9, 1933, could be given retroactive effect so as to govern the transactions herein involved. Act 4122 is now Article 1454-A of the Civil Code, the second paragraph of which provides: "However, if the vendor has chosen to foreclose the mortgage, he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void." Defendant contended that Act 4122, is procedural in nature and therefore applies to all proceedings brought after the enactment of said law irrespective of whether the sale was executed before or after its taking effect. *Held:* That the contention of the defendant is untenable. The transactions in question occurred before Act 4122 took effect. Said Act being substantive in nature, it could not be given retroactive effect. Judgment affirmed. (Per Laurel, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concurring.) —*Briefed by* ALEJANDRO D. YANGO.

REGISTRATION OF LAND.—*Cresencio Reynes et al., Plaintiff-Appellees vs. Rosalina Barrera et al., Defendant-Appellants, G. R. No. 46724, September 30, 1939.* The spouses, Vidal Reynes and Lucia R. de Reynes, were owners of lot No. 471. Lucia died leaving the plaintiff-appellees herein, as her heirs. After her death, Vidal contracted a debt. In an action subsequently brought by the creditor against Vidal, a condemnatory judgment was rendered, and in virtue thereof, execution was levied on lot No. 471, which was later sold at public auction. Vidal conveyed his right of redemption to his brother, Manuel Reynes who thereafter redeemed the property. The lot was subdivided into lots Nos. 471-a and 471-b. The second lot was registered in the name of Manuel Reynes. Lot No. 471-a was sold to Sanchez and is not involved here. Manuel Reynes conveyed his lot under *pacto de retro,* to the defendant-appellant herein Rosalina Barrera, who thereafter, acquired full ownership thereof and since then had been in continuous possession of the property until the commencement of the present action. Plaintiff-appellees now seek to declare null and void the sale at public auction of one-half of the property in question, which appertained

to them by heirship, as well as all subsequent transfers thereof. *Held:* The defendant-appellant acquired the property in good faith and for a valuable consideration, with nothing in the certificate of title of Manuel Reynes to indicate any cloud or vice in his ownership of the property or any encumbrance thereon. Where the subject of a judicial sale is a registered property, the purchaser thereof is not required to explore farther than what the Torrens title, upon its face, indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure, would entirely be futile and nugatory. Judgment reversed. (Per Moran, J.; Avanceña, C.J., Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* ERNESTO P. VALENCIA.

SUCCESSION.—*Testate Estate of Petrona Francisco, Deceased, Casimiro Tiangco and Maria Tiangco, Fiduciaries and Appellants vs. Proceso Francisco, Petitioner and Appellee, G. R. No. 46390, September 30, 1939.* Upon probate of Petrona Francisco's will which created a trust for religious purposes, the Court of First Instance appointed Casimiro Tiangco as trustee. Shortly thereafter, Maria Tiangco was also appointed a co-trustee. As the submission of the annual reports to the court was irregular, Proceso Francisco filed an opposition to the 1935 and 1936 statements of accounts, presenting at the same time a petition for temporary substitution of trustees. The clerk of court was designated as commissioner to make a detailed examination of the accounts already submitted. In consonance with the report of the clerk of court, the court issued an order requiring the resignation of the trustees within ten days, and thereby appointing Father L. R. Arcaira as temporary trustee. The trustees appealed questioning the power of the court to require the resignation of the trustees and the legal sufficiency of the order for this purpose. *Held:* The appellants were commissioned as trustees not because of any beneficial interest which they possess in the estate but because their selection was approved by the lower court in the belief that they would faithfully perform their obligations. The power to appoint a trustee is discretionary with the court before whom application is made, and the appellate court will decline to interfere except in cases of clear abuse. Under section 587 of the Code of Civil Procedure upon proper showing that interests of justice would be adequately served with the removal of the incumbent trustee, it is likewise within the discretion of the original court to do so, and the Supreme Court will refuse to interfere in the absence of showing grave abuse or whimsical and capricious exercise of discretion. The order, read in conjunction with the report of the clerk of court as commissioner, shows a finding of facts, and is sufficient compliance with the requirements of the law. Judgment affirmed. (Per Laurel, J.; Avanceña, C.J.; Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* BIENVENIDO C. AMBIÓN.

TAXATION.—*Yap Tak Wing & Co., Inc., et als., Petitioner-Appellants vs. The Municipal Board, Hon. Juan Posadas Jr., as Mayor of the City of Manila, and Victor Alfonso, as City Treasurer, Respondent-Appellees, G. R. No. 46602, Sept. 22, 1939.* On or about Jan. 13, 1936, the City of Manila enacted and approved an ordinance providing for a re-classification of panciterias, restaurants,

cafés, carenderias and other public eating places within the city and imposing increased rates of license fees or taxes. The petitioners refused to pay the license fees under the new law and instead filed a petition to have the ordinance nullified on the ground that the city has no power to enact an ordinance imposing a tax for revenue purposes, when such ordinance is enacted under its police power inasmuch as the power to regulate does not include the power to impose revenue taxes. *Held:* The ordinance is valid. It is a revenue measure enacted in pursuance to Sec. 2444 of the Administrative Code as amended which gave the Municipal Board the legislative power to tax, fix the license fees, and regulate business of hotels, restaurants, refreshment places, lodging houses and boarding houses. Nor is the ordinance unreasonable, arbitrary, oppressive and discriminatory for it merely re-classified panciterias according to the volume of business and the number of persons that can be accommodated in the establishment, and required one group to pay a rate of tax different from that of another group. It is clear therefore that the ordinance is not aimed against any particular group but applies as well to all persons or group of persons included in one group irrespective of nationailty of such persons or group of persons. (Per Laurel, J.; Avanceña, Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* HERMINIA YATCO.

HOW TO READ

"READ not to contradict and confute, not to believe and take for granted, not to find talk and discourse, but to weigh and consider."—BACON.