# RECENT DECISIONS

## Digest of Current Cases

ADOPTION—*In re Adoption of Emiliano Guzman. Petronilo Ramirez and Anacleta Camandre, Petitioners and Appellants. G. R. No. 47790, June 30, 1941*—On May 20, 1940, spouses Petronilo Ramirez and Anacleta Camandre filed in the Court of First Instance of Pangasinan a petion for the adoption of Emiliano Guzman, of age and natural son of said Petronilo Ramirez with one Cristina Guzman. The petition alleges that the petitioners are childless; that the person to be adopted has been brought up and reared by them until he finished his course as forest ranger; and that he, together with his natural mother, consents to the adoption. The lower court, declaring that a person of age cannot be legally adopted under the provisions of the Code of Civil Procedure, denied the petition. Held: The law applicable is the old Code of Civil Procedure, the petition having been brought before the new Rules of Court took effect. Sections 765 to 769 of the Code of Civil Procedure speak of "minor" as the subject of the adoption proceeding provided therein; and, as correctly ruled by the trial court, the use of the term "minor" precludes, in the absence of specific provisions to the contrary, the adoption of adults. *Inclusio unius est exclusio alterius.* Appellants argue that the provisions of Art. 178, Civil Code, which impliedly sanctions the adoption of adults, cannot be deemed impliedly repealed by the Code of Civil Procedure. It will be noted that Chapter XLI of the Code of Civil Procedure appears to be a complete enactment on the subject of adoption, and may thus be regarded as the expression of the whole law thereon. So viewed, that chapter must be deemed to have repealed the provisions of the Civil Code on the matter. While, as a general rule, implied repeal of a former statute by a later one is not favored, yet, "if the later act covers the whole subject of the earlier one and is clearly intended as a substitute it will operate similarly as a repeal of the earlier act." (Posadas v. National City Bank of New York, 296 U. S. 497; 80 L. ed. 351). (Per Moran, J.; Avanceña, C. J., Laurel, Horrilleno, J.J., concurring. Diaz, J., dissenting.) —*Briefed by* MAGDALENA S. LAPUS.

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CHATTEL MORTGAGE — *Pedro de Jesus, Representing the Mercantile Bank of China, Plaintiff-Appellee vs. Guan Bee Co., Inc., Defendant-Apellant. Ty Hoan Chay, Third-Party Claimant. G. R. No. 47226, June 27, 1941.*—Pedro de Jesus, representing the Mercantile Bank of China, which by order of the court is in a state of liquidation, filed an action against Guan Bee Co., Inc. for unpaid rents of the property leased by it from the plaintiff. It appears that Ty Hoam Chay executed a chattel mortgage of its properties situated in Samar in favor of the Mercantile Bank of China to guaranty the payment of the credit account extended to Ty Camco Sobrino, a duly registered commercial part-

nership. Upon the failure of the principal debtor to meet its obligation, the plaintiff proceeded to foreclose the chattel mortgage referred to. On December 15, 1932, over the objection of the mortgagor, the property in question was sold at public auction to the plaintiff. Guan Bee, the herein defendant, leased the property from the plaintiff, paying ₱180 as advance on the rents. Thereafter the defendant refused to pay the balance on the ground that Ty Hoam Chay was the owner of the property, hence this action was brought. Ty Hoam Chay filed a third-party claim, alleging that the mortgage executed by it in favor of the Bank was null and void because buildings cannot be the subject of chattel mortgage citing Leung Yee vs. F. L. Strong Machinery Co. (37 Phil. 644); and besides, the foreclosure sale was void on the ground that the price at which the property was sold was grossly inadequate. *Held*: The defendant Guan Bee Co. cannot lawfully refuse to pay rents to the plaintiff when it recognized the plaintiff's right to it by virtue of the telegram and rents paid and the document of sale executed by the sheriff in favor of the plaintiff. The third-party claimant cannot impugn the mortgage executed by him, even granting that the mortgage was void, because a person cannot put up as a defense his own wrongful acts. The doctrine of the Leung Yee case is not applicable because only third parties can impugn the validity of a mortgage. In the instant case, the appellants are not third parties. Moreover, the properties in question having been built in a land belonging to another and that said mortgage contract was foreclosed after the rental contract on the land had expired, the buildings could very well be treated as a movable. The fact that the mortgaged properties were sold for ₱130 at the public auction, which is very much below the assessed value of ₱76,126, cannot be considered because the appellants in this case have admitted the validity of the public auction sale in their stipulation of facts. Besides, the validity of the sale held on December 15, 1932 was not contested until September 30, 1933 when the third party claim was filed. (Per Horrilleno, J.; Avanceña, C.J., Diaz, Laurel, Moran, JJ., concurring). *Briefed by* GILDA LIM.

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CONSTITUTIONAL LAW (Meaning of "double compensation")—*Zacarias de Sadueste, Plaintiff-Appellant, vs. The Municipality of Surigao, Defendant-Appellee. G. R. No. 47380, June 27, 1941.*—Plaintiff, as district engineer for the Province of Surigao, was designated by the Director of Public Works as sanitary and waterworks engineer for the same province with an additional compensation of not more than ₱60 a month payable from the income of the waterworks systems under his supervision. The designation, duly approved by the provincial board of Surigao, was made pursuant to the last paragraph of section 1916 of the Administrative Code, as amended, which provides: "Upon designation by the Director of Public Works, a district engineer may be allowed additional compensation with the approval of the provincial board not to exceed sixty pesos per month to be paid from the income of the waterworks systems supervised by him for services rendered in his capacity as sanitary and waterworks engineer." He rendered services to the defendant municipality and upon failure of the later to provide the necessary appropriation for his services, he instituted this action for its recovery. *Held:* Under Art. XI, section 3, of the Philippine Constitution, "no officer or employee of the government shall receive additional or double compensation unless *specifically* authorized by law." There

being no law by which the plaintiff is specifically authorized to receive additional compensation for his services, his claim must fail. The authority granted in the last paragraph of section 1916 of the Administrative Code is a general authority given to all district engineers. The authority required by the Constitution is a specific authority given to a particular employee or officer of the Government because of peculiar or exceptional reasons warranting the payment of extra or additional compensation. (Per Moran, J.; Avanceña, C.J., Diaz, Laurel, Horrilleno, J.J., concur.). *Briefed by* FERMIN R. MESINA.

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CORPORATION LAW (Meaning of "transacting business")—*Mentholatum Co., Inc., et al., Petitioners vs. Anacleto Mangaliman, et al., Respondents. G. R. No. 47701, June 27, 1941.*—The Mentholatum Co., Inc., a foreign corporation, manufacturers of a medicament named "Mentholatum", together with the Philippine-American Drug Co., Inc., as its exclusive agent for the product in the Philippines instituted this action against the defendants for infringement of trade mark and unfair competition. It is admitted that the Mentholatum Co., Inc., has no license to transact business in the Philippines. The judgment of the trial court in favor of the petitioners was reversed by the Court of Appeals on the ground that the transactions of the corporation in the Philippines constitute "transacting business" in this country as this term is used in Sec. 69 of the Corporation Law, and, therefore, having no license to do business in the Philippines, said corporation cannot maintain the present suit in accordance with Sec. 68 of the said law. Hence this petition for a writ of certiorari. *Held:* No general rule or governing principle can be laid down as to what constitute "doing" or "engaging in" or "transacting business". Indeed each case must be judged in the light of each peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it to another. (Traction Cos. vs. Collector of Internal Revenue [C.C.A. Ohio] 223 F. 984, 987). The term implies a continuity of commercial dealings and arrangements and contemplates to that extent the performance of acts or works or the exercise of some functions of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization. Viewed from this, the transactions of the Mentholatum Co., Inc., in the Philippines constitute transaction of business, as the term is used in Sec. 69 of the Corporation Law. As said Corporation is without the license required by Sec. 68 of said law, it may not prosecute this action. Neither may the Philippine-American Drug Co., Inc., maintain the action here for the reason that the distinguishing features of the agent being his representative character and derivative authority, it cannot now to the advantage of the principal claim an independent standing in court. The instant case is different from the case of Western Equipment and Supply Co. vs. Reyes (51 Phil. 115) because the decision in that case expressly says that the Western Equipment and Supply Co. was not engaged in business in the Philippines. The recognition of the legal status of a foreign corporation being a matter affecting the policy of the forum, the general statement of the Reyes case should not be construed as a derogation of the policy-determining authority of the state. Writ denied. (Per Laurel, J.; Avanceña, C.J., Diaz,

Horrilleno, J.J., concurring. Moran, J., dissenting.)—*Briefed by* EMILIO CENTENA.

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MORTGAGE—*Paula Mercado, Petitioner-Appellant vs. Chung Liu & Company, Oppositor-Appellee. G. R. No. 46966, June 24, 1941.*—Paula Mercado appeals from the decision of the Court of First Instance of Manila dismissing her petition to cancel the Certificate of Title No. 44406 on the land here in question and to have another issued in her name. The land was originally owned by Fernando Go Chioco. On January 22, 1932, he executed a mortgage on the said property in favor of Ching Yng Si in consideration of a loan of ₱5,500, which mortgage was duly registered in the Registry of Property of Manila. During the existence of the mortgage, Paula Mercado filed a suit against Go Chioco for the payment of a certain sum of money and caused a preliminary attachment on the property in question, which attachment was duly registered on April 12, 1932. Paula Mercado, having obtained a judgment in her favor, asked for the execution of the same. But the order of execution was returned uncomplied by the sheriff for lack of property of Go Chioco other than the land in question. Later, the mortgage in favor of Ching was foreclosed and the land sold at public auction on November 13, 1933. The court on December 9, 1933, approved the sale of the property to Ching and issued to him transfer certificate of title No. 44405. Ching sold the land to the appellee, Chiung Liu & Co., February 13, 1934 to whom was issued transfer certificate of title No. 44406. On May 25, 1936, the appellee filed a petition for the cancellation of the attachment noted on the back of his transfer certificate of title, which was granted over the plaintiff's objection. The plaintiff appealed and, pending appeal, she obtained another execution (alias execution) whereby the property in question was sold to her at a public auction sale. Question: Which is superior, the attachment or the mortgage? What is the effect of the foreclosure of the mortgage to the preliminary attachment which was annotated much later? *Held*: It is a reiterated doctrine in this jurisdiction that when there exists mortgages or encumbrances over the same immovable, the second is subordinated to the first, and when, as in this case, the person whose favor the second encumbrance was annoted has not been made part of the proceedings of the first execution, the only right left to him is the repurchase of the property sold at public auction within the time required by law because "his rights are strictly subordinated to the superior encumbrance of the first creditor-mortgagee and the second creditor-mortgagee has no indispensable part in the foreclosure proceedings of first mortgage." (Sun Life Assurance Co. of Canada vs. Gonzalez Diez, 42 Phil. 281). (Per Horrilleno, J.; Avanceña, C.J., Laurel, Moran, Diaz, JJ., concurring.)—*Briefed by* VESTA G. BORBON.

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MINING LAW — *Paula Ringor, Plaintiff-Appellant vs. Baguio Mining Co. and Others, Defendants-Appellees. CA-G.R. No. 4386, 40 Official Gazette 2301.*—On September 19, 1916, Wm. H. Powell presented before the register of mines of Benguet a petition for the registration of a mineral claim called "Joco Fraction," which he alleged to have discovered and located. Until 1924, Powell continued to report annually the performance of annual labor on the claim, but since 1925, no report has been made. Powell died in 1927, and the Solicitor-General, as administrator, liquidated and partitioned Powell's properties between his mother and his widow, without including said mining claim. Powell's

widow brought this action, asking for the recognition of her preferential right to the claim; and praying that that the defendants be made to surrender possession of the same to her and account for the mineral products they have obtained from the claim, plus other damages. Plaintiff claims that defendant John Hoover, having knowledge of Powell's right over the claim, presented on February 13, 1930, thru an agent, Joseph Neesun, a petition for the registration of the said claim under the name of "Juanita", and subsequently transferred the same to his co-defendant, Baguio Mining Co.; and that, moreover, the registration of the location by Hoover is void on the ground that the declaration was not accompanied by competent proof of citizenship. *Held:* Art. 36 of Act of Congress of July 1, 1902, as amended, provides that until issuance of patent or title of ownership of a mining claim, the locator must perform annual labor thereon amounting to no less than ₱200, otherwise the claim is subject to relocation by another. Inasmuch as Powell and his heirs failed to comply with this obligation, they have lost their right to the mineral claim in question, in which in 1930 was open to location by another, as if it had never been discovered or located. (Upton vs. Santa Rita Mining Co., 89 Pac. 275, 284; 40 C.J. 826-27). Although Art. 21 of Act of Congress of July 1, 1902 provides that the right to minerals in public lands is reserved exclusively to American and Filipino Citizens, and Art. 35 of the same law provides for the form of proving the citizenship of the locator, yet such form is not mandatory, but merely directory. Besides, the declaration of location of a mining claim in favor of a foreigner is not void *ab initio*, but merely voidable, and only the Government has the right to question the right of a person over a mining claim on the ground that such person is not a citizen of the Philippines or the United States. (Per Imperial (M), J.; Paras, Pres., Hontiveros, Albert, J.J., concurring.) —*Briefed by* PEDRO L. YAP.

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PLEADINGS AND PRACTICE (Attachment) — *Francisco Emigdio, Plaintiff-Appellee vs. Leon Regalado and others, Defendants, Philippine Guaranty Co., Surety and Appellant. G. R. No. 47338, June 27, 1941.*—This is an action for the recovery of damages sustained by the plaintiff as a result of the sinking of a vessel due to the negligence of the defendants. A preliminary writ of attachment was issued and levied upon the sum of ₱5,085.92 in the custody of the Provincial Sheriff of Iloilo, which amount was the proceeds of a writ of execution issued by the Court of First Instance of Iloilo in favor of the defendants in a case where defendants were plaintiffs and the Visayan Shipping Co., defendant, under the provisions of Act 3428. To set aside said attachment, defendants filed a bond of ₱5,200 in which the Philippine Guaranty Co. was the surety. On March 19, 1936 judgment was rendered against defendant Leon Regalado for the sum of ₱7,221 plus interests and costs. During all this time the sum of ₱5,085.92 adjudicated in his favor by the Court of First Instance of Iloilo under Act 3428 was in the possession of the Provincial Sheriff of Iloilo. A writ of execution was duly issued but was returned and unsatisfied. Plaintiff then petitioned the Court to issue a writ of execution against the bond which was granted by the Court. On March 8, 1938 defendant Leon Regalado filed a motion in the Court of First Instance of Manila to set aside the order of execution issued by the Court against the sum adjudicated in his favor under Act 3482 on the ground that under the provisions of said Act the same is exempt from the claim of creditors.

The Court issued an order declaring void and without effect the attachment and the bond. Upon a motion for reconsideration filed by the plaintiff-appellee the Court, in spite of its prior order, issued an order of execution against the Philippine Guaranty Co. for the amount of the bond. Hence, this appeal. *Held*: The proceeds of a writ of execution in the hands of a sheriff is "in custodia legis" and cannot be the object of an attachment. Compensation granted under Act 3428 cannot be attached by judgment creditors because Art. 35 of the Act provides that compensation granted under the provisions of said Act is exempt from the claims of creditors. A bond filed without an object is ineffective and cannot be the basis of a cause of action because under the law it does not exist nor has it ever existed. (Per Horrilleno, J.; Avanceña, C.J.; Diaz, Laurel, Moran, J.J.; concurring)—*Briefed by* ABELARDO S. FERNANDEZ.

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PLEADINGS AND PRACTICE (Jurisdiction)—*Idonah Slade Perkins, Petitioner, vs. Mamerto Roxas, et. al. Respondent. G. R. No. 47517, June 27, 1941.*—On July 5, 1938 the respondent herein, Eugene Arthur Perkins, filed a complaint in the Court of First Instance of Manila against the Benguet Consolidated Mining Company for the recovery of the sum of ₱71,379.90 consisting of dividends declared and made payable on 52,874 shares of stock registered in his name. The company in its answer alleged that the withholding of the plaintiff's right to the disposal and control of the shares in question was due to the demands of Idonah S. Perkins and one George Engelhard. Having been admitted as party defendant, Idonah S. Perkins set up in her answer and cross-complaint a judgment obtained by her against Eugene Arthur Perkins in the Supreme Court of the State of New York, declaring her the sole legal owner of said shares of stock, together with the cash dividends attaching thereto. To the answer and cross-complaint, respondent Perkins filed a reply and an answer in which he sets up several defenses to the enforcement in this jurisdiction of the judgment of the New York Supreme Court. Petitioner then filed a demurrer thereto on the ground that "the court had no jurisdiction on the subject of the action" because the alleged judgment of the New York Supreme Court is *res judicata*. Her demurrer having been overruled, Idonah S. Perkins then filed this petition for certiorari, prohibition, and mandamus alleging that the respondent judge is about to enter judgment in disregard of her constitutional rights, thereby annulling the final judgment of the Supreme Court of the State of New York, whose decision is *res judicata* on all the questions constituting the subject-matter of civil case No. 53317; she also prays that the respondent judge be permanently prohibited from taking any action on the case. *Held:* Petition denied. Whether or not the respondent judge will give validity and efficacy to the New York judgment is a question that goes to the merits of the controversy, relating to the rights of the parties, and not to the jurisdiction of the court. The rest of jurisdiction is whether or not the tribunal has power to enter upon the inquiry, not whether its conclusion is right or wrong. If the decision is erroneous, the judgment can be reversed on appeal. Having jurisdiction over the case, the respondent judge cannot be compelled to decide the validity of the New York judgment, since the petitioner can appeal from an erroneous judgment. Hence the action sought for is premature and without merit. (Per Laurel, J.; Avanceña, C.J., Diaz, Moran, and Horrilleno, J.J., concurring).—*Briefed by* ADRIANO R. GARCIA.