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INFORMATION FOR PROSPECTIVE LAW STUDENTS[1]

By H. E. STONE

Dean of Men, West Virginia University.

1. In the profession of law there are many kinds of work calling for many types of mind.

2. The lawyer who pleads cases in court must be able to express his thoughts clearly and forcefully.

3. Among the subjects that are of special value to the prospective law student are: English, Public Speaking, Economics, Latin, Civics, United States History, and English History. "Experience seems to have shown that mathematics and formal logic have a distinct value by way of general preliminary training," comments Dean Pound.

4. Office lawyers draw up wills, contracts and other legal papers. They are consulted also in the settling of estates, in real estate transactions, and in transactions involving corporate reorganizations and corporate mortgages.

5. Attorneys specialize in commercial law, patent law, real estate law, corporation law, banking law, the bond business, etc.

6. The successful lawyer must be a deep student as well as a practical man.

7. A three year course in a law school preceded by a college course is the usual preparation required for success in law.

8. Many former lawyers are engaged in the insurance or real estate business. Some are employed in banks and bond houses. Dean Pound adds: "Many great industrial corporations have at

1 This article commented upon and, later, published in the *American Bar Association Journal* aroused considerable interest in the United States. It was prepared by Dean Stone of West Virginia University, and revised by Dean Roscoe Pound of Harvard and Dean John A. Wigmore of Northwestern University.

the head of them men who started in the legal profession, and from being legal advisers to such enterprises became presidents thereof. It is also noteworthy that a great many lawyers become in time presidents of banks and trust companies."

9. The training of the lawyer tends to fit him for political life and for politics. "The presidents of the United States have, with few exceptions, been either lawyers or soldiers or both," adds Dean Pound.

10. The lawyer spends part of his time in reading statutes, decisions, and reports of law cases. He also spends much time in consultation with clients, in writing pleadings and briefs and in arguments to judge and jury. "Nowadays he spends a great part of his time in advising as to the conduct of business and industrial enterprises, and in planning organizations and reorganizations," adds Dean Pound.

11. Legal training is of value in all forms of business activities.

12. Very few now read law in the office of a practicing lawyer. Attendance of a good law school is recommended.

13. The principal degree given by American law schools is that of Bachelor of Laws (LL.B.). An additional year is required at the best law schools for the degree of Master of Laws (LL.M.), and a second additional year in residence for the degree of Doctor of Juridical Science (S.J.D.).

14. Among the universities at which there are first class law schools are the following: Harvard University, Northwestern University, University of Pennsylvania, Columbia University, Yale University, Western Reserve University, University of Michigan, University of Chicago, University of Pittsburg, Cornell University, Syracuse University, West Virginia University, University of Virginia.

15. Harvard, Columbia, Pittsburgh, Northwestern and Western Reserve University admit to their law schools only those who have graduated from a four years' college course. "Northwestern requires four years of law study from those who have been only three years at college," adds Dean Wigmore.

16. Few fortunes are made in the practice of the law. Dean Wigmore suggests that this statement be changed to read: "Few fortunes are made by lawyers; none in the regular practice of the law."

17. Two years of college work are required for entrance to the College of Law of West Virginia University. This is the

requirement of the American Bar Association to satisfy its Class A standard. Students are urged to complete at least three years of work in the College of Arts and Sciences before entering the College of Law, thus placing themselves in a position to take advantage of the combined sx year course which leads to both arts and law degrees.

18. Students who do not offer two years of Latin for entrance to the freshman class of the College of Arts and Sciences of West Virginia University must satisfy this requirement during the period of pre-legal study.

19. The following should be of special interest to all who desire to practice law in West Virginia.

All persons seeking admission to the West Virginia Bar, except those who hold the degree of Bachelor of Laws from West Virginia University, are required to take and pass the State bar examination.

The bar examinations are held in Charleston, commencing on the second Wednesday of March and of September.

An order made and entered by the Supreme Court of Appeals on September 16, 1924, contains the following provision:

"Until otherwise provided it is ordered, under Chapter 119, Section 1 of the Code, as follows:

"1. Persons applying, on and after July 1, 1928, for license to practice law in this state under the provisions of Section 1, of Chapter 119 of the Code, must satisfy the following requirements as to period of study and degree of preparation.

"(1) A preliminary academic education equivalent to at least two years of study in a college.

"(2) Three years of diligent law study as a resident student in a law school certified by the Association of American Law Schools as complying with the following standards:

"(*a*) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

"(*b*) It shall provide an adequate library, available for the use of the students.

"(*c*) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

"Graduation from such a school shall be evidenced by a certificate to the State Board of Law Examiners by the head of the school at which such study was pursued, showing in detail all the work done."

20. An examination of some of the leading legal periodicals will be helpful to any young man who is interested in gaining an idea of the profession of law. Among the legal journals read by progressive lawyers are: The American Bar Association Journal, Chicago; Harvard Law Review, Cambridge, Mass.; Yale Law Journal, New Haven, Conn.; Columbia Law Review, New York; Illinois Law Review, Chicago; Wisconsin Law Review, Madison, Wis.; Boston University Law Review, Boston, Mass.; Michigan Law Review, Ann Arbor, Mich.; Virginia Law Quarterly, Charlottesville; West Virginia Law Quarterly, Morgantown; Journal of American Institute of Criminal Law, Chicago, Ill.

21. Concerning the law Sir William Blackstone said: "It employs in its theory the noblest faculties of the soul and exerts in its practice the cardinal virtues of the heart."

22. Edmund Burke referred to law as "a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together."

23. "No man can ever be a truly great lawyer who is not in every sense an honest man," said George Sharswood. "A lawyer without the most sterling integrity may shine for a while with meteoric splendor, but, depend on it, his brief career will go out in darkness."

24. Abraham Lincoln said: "Resolve to be honest at all events. If in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do, in advance, consent to be a knave." (Added to leaflet by Dean Wigmore.)

25. "Many a practicing lawyer in the prime of life will master in a few weeks the principles and details of a complex subject in science or art, in transportation or manufacturing, with an accuracy and comprehensiveness which enables him to deal successfully with the subject in competitive argument," says the late Charles W. Eliot in "Education and Efficiency."

26. The young man who contemplates taking up the study of law will profit by reading some good book prepared especially for the help of young men seeking occupational and educational information and guidance as to this important profession. A good book of this type is "The Young Man and the Law," by

the late Simeon E. Baldwin, formerly President of the American Bar Association and for many years a professor in the Law School of Yale University. Dean Roscoe Pound adds: "I would suggest that the student who desires to read with a view to determining whether he is interested in the profession of law could do no better than read Lord Campbell's Lives of the Chancellors, and Lord Campbell's Lives of the Chief Justices. These books are as entertaining as novels and will give the reader an excellent notion of the hardships involved in attaining high rank in the legal profession, and at the same time, if he has a taste for law, cannot but interest him powerfully. They are a part of the general culture of any lawyer."

27. Among the great names in Law with which the prospective law student may well familiarize himself are: Grotius, Coke, Littleton, Blackstone, Lord Mansfield, Marshall, Kent, Cooley, Storey, Sharswood, Thayer, Minor, Washburn, Wigmore, Pound, Taft and Root. Dean Pound's comment on this paragraph is given herewith in full: "Of English judges I should pick out Lord Coke and Lord Mansfield as preeminently those of whom one might well know something before entering upon the study of law. The college student could find good biographies of these men in Lord Campbell's Lives of the Chief Jusitces. Of American judges the men who stand out are Kent, Marshall, Storey, Shaw, Gibson, and Ruffin—all of them before the Civil War. I suppose these are the classical names in American judicature. Perhaps the names that stand out most since the Civil War are those of Cooley and Chief Justice Doe of New Hampshire. Biographies of these men can be found in the Green Bag which doubtless your students would find in the law school library. Of continental jurists you name only Grotius. I should be inclined to say Grotius, Pothier and Savigny. You also have a list of law teachers beginning with Blackstone, for Blackstone's greatness is in his lectures at Oxford (printed as his Commentaries) rather than in anything that he did upon the bench. I should be inclined to leave out Sharswood who is an interesting character, but not great as a judge or as a writer. Perhaps your list might include Langdell, the greatest of us all. I suppose you put in Chief Justice Taft and Mr. Root as examples of the best upon the bench and at the bar today. I do not know that one could have any quarrel with that suggestion."

RECENT DECISIONS OF THE SUPREME COURT REVIEWED

LIBEL — PRIVILEGED COMMUNICATION — JURISDICTION.— *P. P. I. vs. Carl W. Wantz, G. R. 28934; October 26, 1928.—Facts:* This appeal has been brought to reverse a judgment of the Court of First Instance of the province of Cebu finding appellant Carl W. Wantz guilty of the two offenses of libel and of insulting the Public Service Commissioner in the discharge of his official duties. It appears that appellant was concerned with two cases before the Public Service Commissioner. Although the rulings and orders made in these matters by the commissioner were not to the appellant's liking, he did not appeal to the Supreme Court. Instead, he entered upon a campaign of personal vilification and abuse against the Commissioner, first, and then communicated with the Governor-General denouncing the Commissioner for alleged incompetence and insinuating corruption. Of the six communications addressed to the Governor-General, the last three were made the basis of prosecution in this case against appellant for libel. Appellant contends that only the Court of First Instance of Manila, where the letters were opened and read, could have jurisdiction over the prosecution. *Held:* Prosecution can be maintained either in the place where the libelous matter is written or in the jurisdiction to which the libelous communication is sent and where it is given publicity.

Libel: Privileged character—Appellant insisted that he had a legitimate interest in the subject-matter of the letters for the reason that they were written with a view to the protection of his rights as a litigant before the Public Service Commissioner and that inasmuch as the letters in question were directed to the Chief Executive of the Islands, the subject-matter of the letters must be considered of a privileged nature. *Held:* Contention not well founded. Communications of this nature are only conditionally privileged, that is privileged if made in good faith upon an adequate basis of fact. In the present case malice of appellant is apparent from the statements themselves in connection with the demonstrated baselessness of the charges. Besides, as defendant well knew, the place for redress against the decisions of the Commissioner was in this court upon appeal, the Governor-General having no power to review or correct the decisions by which the appellant pretended to conceive himself against.

Double offense of libel and insult—Was it proper for trial court to convict the accused of the double offense of libel and of insulting the commissioner in the discharge of his official duties? *Held:* In this connection we note the fact that the penalty for libel in this case was imposed under section 2 of Act 277 and the penalty for the insult to the Commissioner was imposed under section of Act 3316. Now, while these offenses are entirely distinct, it is nevertheless obvious that upon the facts stated in the information in this case and established by the evidence, a conviction could have been separately had for either of the two offenses mentioned. But it must also be noted that every element involved in the offense of insult to the Commissioner is a proper component of the offense of libel. It results that the offense of insult to the Commissioner must be considered absorbed in

the offense of libel. The cases in which this court has approved or imposed cumulative penalties for multiple crimes are cases wherein the different offenses are naturally separable or where multiple offenses not constituting a complex crime are committed at or about the same time. If more than one offense results from one single act, or if one offense is necessary to the commission of another, the two offenses cannot be considered separable. In the case before us we think the offense of insult to the Commissioner was, as suggested above, a legitimate component of the offense of libel and therefore absorbed in it. The judgment of the trial court must therefore be modified by eliminating the conviction for the offense of insult. Per Street J., Ostrand, Malcolm, Villa-Real JJ concurring (Second Division). (*Briefed by Pedro Camus*).

CRIMINAL LAW AND PROCEDURE—ROBBERY WITH HOMICIDE NOT PROVEN.—*People of the Philippine Islands vs. Moros Andail, Baybayan, Maharani, Igasan, Nawali, Salihan, Andawi, Hamsali No. 1, Hamsali No. 2, and Amidil. R. G. No. 28630. October 20, 1928. Facts:* Ten moros were prosecuted for robbery with double homicide and all, except two, were sentenced to death, while the other two were sentenced to life imprisonment, a sentence subsequently suspended, (as to said two) by the court, in consideration of the fact that they had testified for the prosecution at the trial. *Held, per Curiam:* "Two homicides were committed, and in connection with each should be estimated the generic aggravating circumstances of nocturnity, dwelling, and that advantage was taken of superior strength. *Alevosia* cannot be estimated because the persons slain were aroused upon the approach of their aggressors and made armed resistence against the assault. Furthermore, such features of the assault as savor of *alevosia* are, in our opinion, absorbed in the generic aggravating circumstance, already mentioned, that advantage was taken of superior strength... Nor do we think it proper to find present the qualifying circumstance of *ensañamiento* (usually mistranslated in English by the word "cruelty"). Numerous wounds, it is true, were inflicted upon the deceased, but these were inflicted with a view, no doubt, to the effectual destruction of life by the several assailants, and it cannot be safely said that they proceeded from mere ferocity... That there was a common intention upon the part of all the assailants to commit robbery admits of no question. That was the mission upon which they were undoubtedly bent, but it appears that after the killing of Tamali and Jamlani the gang left the house without searching for valuables or carrying away anything of value except two lances, worth a few pesos. It has been suggested that the two weapons thus appropriated may have been seized as trophies or otherwise carried away *sine animo lucrandi.* This view commends itself to the Chief Justice and Justices Romualdez and Villa-Real. The other members of the court, acquiescing in the absolute veto power possessed by any member of this body with respect to the imposition of the death penalty (Act 3104), are constrained to accept this conclusion, with the consequence that robbery cannot be stated as one of the features of this crime. The result is that the commission of the complex crime of robbery with homicide is not established; and it becomes necessary to treat the crime merely in the light of a double homicide, and to sentence each of the appellants accordingly.

The following rulings were laid down: *Criminal Law; sentence for double homicide where complex ofense of robbery with homicide not proved*

In a case where eight male-factors had been sentenced to death for the complex offense of robbery with double homicide, the Supreme Court found that the robbery had not been established by proof satisfactory to all the members of the court, and it was declared by the Court that robbery could not be stated as one of the features of the crime. The Court accordingly sentenced each of the accused to undergo two periods of imprisonment of twenty years (forty years in all) for two separate offenses of homicide, each of which was characterized by three generic circumstances.

Aggravating circumstances; advantage taken of superior strength. It was here held proper to appreciate the aggravating circumstance that advantage was taken of superior strength in each of the two homicides, it appearing that four assailants contemporaneously attacked each of the two victims from different directions who were first fatally stricken from behind.—*Briefed by Pedro M. Syquia.*

MANDAMUS UNDER 499 C. C. P.; LACHES IS CAUSE FOR DENIAL.—*Anacleta Cortez Vda. de Castro vs. The Court of First Instance of Capiz, and Ledesma Hermanos and Pedro de la Viña, R. G. No. 30270, October 19, 1928. Facts:* Decision in Civil Case No. 1875 was rendered on November 22, 1926. Bill of exceptions was disapproved on September 29, 1927. Motion for reconsideration addressed to this order was denied on January 21, 1928. Attorney for petitioner claims to have been notified of this last order on March 2, 1927 (1928) and immediately to have excepted thereto. His petition for mandamus was dated July 16, 1928, but was received for filing in this court on September 3, 1928. *Held*: "Without deciding what would constitute an application within a reasonable time after the refusal of a trial judge to sign the bill of exceptions, it is apparent that the delay in ordinary cases should not be more than the longest period allowed in the lower court for the party to take action which is thirty days. It is well settled that laches in making an application for the writ of mandamus affords sufficient cause for its denial. Also it should not be forgotten that during the pendency of the proceedings execution has been issued and the property of the petitioner has been sold at public auction." Writ denied. (In banc, by Malcolm, J.) *Briefed by P. M. Syquia.*

MORTGAGES; FORECLOSURE OF SECOND MORTGAGE BY FIRST MORTGAGEE.—*Sun Life Assurance Company of Canada vs. Florencio Gonzalez Diez, R. G. No. 29027, October 25, 1928. Facts*: Joaquin Serna mortgaged the property, subject of this action, to the Shanghai Life Ins. Co., Ltd., to secure a promissory note in the amount of ₱20,000. On the same day Serna executed a second mortgage on the same property in favor of the herein defendant, Gonzalez Diez, to secure a debt in the amount of ₱6,000. Serna after mortgaging the property transferred the mortgaged property for a valuable consideration to Paulino Francsico. The promissory note and the rights of the original first mortgagee were transferred to the Sun Life Assurance Co. of Canada, plaintiff in this case. On non-payment of the note, The Sun Life Ass. Co., of Canada foreclosed the first mortgage. In this proceeding only Serna and Francisco were named as defendants, no account being taken of Gonzalez Diez, the holder of the second mortgage. The property was ultimately sold in the regular course and bought in by the plaintiff, mortgage creditor. The present proceeding is to foreclose the mortgage as against Gonzalez Diez in his character as second mortgagee.

The question at issue is as to the right of the first mortgage creditor to maintain the present action. *Held*: *Mortgages; foreclosure; parties to foreclosure of first mortgagee.*—While a second mortgagee is a proper and in a sense even a necessary party to a proceeding, he is not an indispensable party, because a valid decree may be made, as between the mortgagor and the first mortgagee, without regard to the second mortgage; but the consequence of a failure to make the second mortgagee a party to such proceeding is that the lien of the second mortgagee on the equity of redemption is not affected by the decree of foreclosure. *Foreclosure of second mortgage where second mortgagee not made party to first proceeding.*—Where the second mortgagee is not made a party to a proceeding to foreclose the first mortgage, an independent foreclosure proceeding may be maintained against him by the creditor in the first mortgage, in which proceeding the court should require the second mortgagee to redeem from the first mortgagee within three months, under penalty of being debarred from the exercise of his right to redeem. (In banc by Street, J.) *Briefed by P. M. Syquia.*

SHIPPING—COLLISIONS IN BAY TRAFFIC.—*Agusto Lopez vs. Juan Duruelo et al., Albino Jison, R. G. No. 29166, October 22, 1928. Facts:* Plaintiff, to embark upon the interisland steamer "San Jacinto" which was half-a mile distant from the port, embarked at the landing in the motor boat "Jison," which was engaged in conveying passengers and luggage from the landing to boats at anchor and which was owned and operated by the defendant Albino Jison with Juan Duruelo as patron. The engineer was Rodolin Duruelo, a boy sixteen years of age, alleged to have been in the third day of his apprenticeship in that capacity. It is also alleged that the motor-boat was grossly overloaded, having aboard 14 passengers while its capacity was only for 8 or 9. The motorboat came to near the propeller of the ship in a perfectly quiet sea and the still-revolving propeller struck and sank the motorboat at once. The accident is alleged to have been due to the fault, negligence, and lack of skill of the patron of the motorboat. The plaintiff was struck by the propeller and received various physical injuries. The damages claimed amount to ₱120,000. The demurrer is based on article 855 of the Code of Commerce requiring that a protest be made within 24 hours after the occurrence. The trial court sustained the demurrer. Held:

Shipping; Collision; Protest.—The protest required by article 835 of the Code of Commerce in case of collision between vessels is not necessary to preserve the rights of a person aboard a motorboat engaged in conveying passengers between ship and shore who is injured in a collision between the motor boat and the larger boat.

Case at Bar.—A person desirous of embarking on a ship which was some distance away from the shore in a Philippine port took passage upon a small motor-boat, which was used in conveying passengers and luggage, to and fro, between the shore and the shipside. Owing to the negligence of the patron or incompetence of the person in charge—so the complaint averred—the boat approached too near to the atern of the ship, with the result that the propeller of the ship which was still turning, struck the motor boat and sank it, injuring the plaintiff. *Held*, upon demurrer, that the failure of the complaint to allege that the plaintiff had made protest

according to article 835 of the Code of Commerce was no impediment to the maintenance of a civil action, under articles 1902 and 1903 of the Civil Code to recover damages for the tort.

Meaning of Word "Vessel." The word "vessel" (Spanish, "*buque*," "*nave*") used in the Third Section of Title IV, Book Third of the Code of Commerce, dealing with collisions, does not include all ships, craft, or floating structures of any kind without limitation. The provisions of said section do not apply to minor craft engaged in river and bay traffic. (Estasen, Der. Mer., Vol. IV. p. 195; Blanco, Der. Mer., Vol. II., p. 22; cited. Yu Con vs. Ipil, 41 Phil. 770, distinguished. "The Mamie" 5 Fed. 813 and Dufour, 1 Droit Mer. 121, also cited.)

Pleading and practice; demurrer; interpretation of pleading demurred to.—A case should not be dismissed on demurrer when, under any reasonable interpretation of the complaint, a cause of action can be made out; and the fact that a complaint is unartificially drawn or in a certain degree lacking in precision constitutes no sufficient reason for dismissing it on demurrer. In passing upon a demurrer, every reasonable intendment is to be taken in favor of the pleading against which the demurrer is directed. (In banck by Street, J.) *Briefed by P. M. Syquia.*

CONTRACTS—RESCISSION FOR DECEIT—RATIFICATION.—*Tan Ah Chan and his wife Kwong Kam Koon vs. Eduardo B. Gonzalez, Helen Dahlke and her husband A. H. Dahlke,* R. G. No. 28595, October 11, 1928. *Facts:* Action for recission of a contract on ground of deceit. Gonzalez alleged ratification as a special defense. On July 28, 1924, Gonzalez as a result of negotiations conducted by the broker, Mrs. Dahlke, conveyed to plaintiffs three parcels of land for ₱106,000.00. To secure the payment of the balance of ₱100,000.00, plaintiffs mortgaged to Gonzalez, land thus conveyed and another property located on Calle Echague. Property sold by Gonzalez to Tang Ah Chan forms extreme southern point of the tongue of land extending south of Fort San Antonio Abad, located at the mouth of the Estero San Antonio Abad in the district of Malate, City of Manila. Said tract is registered under the Torrens System. The land is partly covered with vegetation, the rest being sandy soil, which at high tide is under water. Before any permanent construction could be made on the property, a retaining wall would have to be erected. Just north of the property here described and between it and the old Fort San Antonio Abad is the tract of land which Tang Ah Chan claims was that which has pointed out to him by the broker, Mrs. Dahlke, and which he thought he was buying. It was shown at the trial that plaintiff applied for a building permit on September 16, 1924, that he had land surveyed in October 1924, that some time before plaintiff entered into negotiations with Atlantic Gulf and Pacific Co., for the construction of a retaining wall; and that he continued to pay interest until December, 1924. The present action was brought on Dec. 19, 1924. *Held:*

Contracts; rescission for deceit; waiver and ratification; articles 1265, 1269, and 1270 of the Civil Code concerning consent given by reason of deceit. Contrasted with articles 1309, 1311, 1313 *of the Civil Code concerning ratification of contracts.*—The record is examined to discover if the trial court erred in making its findings, and it is found that there are present in the case a number of well authenticated facts and circumstances

which singly and together demonstrate beyond cavil negligence on the part of the vendee, a waiver of rights, and ratification of the sale. Conceding without deciding that the broker falsely pointed out the land to be sold to the purchaser, there is no ground for reacission of the contract in view of these facts and circumstances.

The case at bar is distinguished from Gomez Mariano vs. Linton, (1924) 45 Phil. 652. The case at bar is more closely a kin in principle to Tacalinar vs. Corro, (1616) 34 Phil. 898, and Ruhl vs. Mott, (1898) 120 Cal. 668.

The case does not call for the application of the articles of the Civil Code concerning consent given by reason of deceit. (Articles 1265, 1269, 1270.) On the contrary, the case comes squarely within the purview of the provisions of the Civil Code under the subject of Nullity of Contracts which pertain to ratification. (Articles 1309, 1311, 1313).

After a contract is validly ratified, no action to annul the same can be maintained based upon defects relating to its original validity.

Any acts evincive of an intent to abide by the contract are evidence of the affirmance of the contract where, with the knowledge of the true nature of the transaction before him or wth means available to obtain that knowledge the party alleged to be defrauded performs his part of the contract. (In banc by Malcolm, J.) *Briefed by P. M. Syquia.*

RIGHT OF RETENTION FOR USEFUL AND NECESSARY EXPENDITURES.—*Maria Mendoza and Natalio Enriquez vs. Manuel de Guzman. Max. B. Solis, intervenor, R. G. 28721, October 5, 1928. Facts:* In a previous action for the recovery of land brought by Leandra and Bernardo Solis, Martin Mendoza was put in possession of the property by the court. Subsequently in cadastral proceedings this lot was adjudicated to Martin Mendoza and Natalio Enriquez in equal parts pro indiviso subject to the right of retention on the part of Manuel de Guzman until he was indemnified for the improvements existing on the land. De Guzman obtained a writ of possession, by virtue of this judgment. From the time Leandra and Bernardo Solis, as well as Manuel de Guzman who was working on the land were ejected therefrom, Martin Mendoza possessed it, until De Guzman obtained the writ of possession above mentioned. Since them De Guzman has had dominion over the land. The present action is to fix the value of necessary and useful improvements incurred by Manuel de Guzman in introducing the improvements, to require an accounting, and to recover possession of the land. Bernardo Solis intervenes on the ground that De Guzman has transfered all his rights to him. *Held:*

Property; Improvements; Articles 361, 453, 454 *of the Civil Code construed.*—The findings of fact and law of the trial judge in the lower court are made the findings of fact and law in the appellate court. Accordingly, the rulings of the lower court (1) that in accordance with the provisions of articles 453 and 454 in relation with article 361 of the Civil Code, the value of the "indemnización" to be paid to the defendant should be fixed according to the necessary and useful expenses incurred by him in introducing *"las plantaciones en cuestion"*; (2) that the plaintiffs as the owners of the property have the right to make their own *"las plantaciones hechas por el demandado"* upon payment in the form indicated in No. 1, the defendant having the right to retain the land until the expenditures have been refunded; (3) that the defendant is obliged to render a detailed and

just account of the fruits and other profits received by him from the property for their due application; and (4) that the value of the fruits received by the defendant should first be applied to the payment of the "indemnizacion," and in case that it exceeds the value of the "indemnización," the excess shall be returned to the plaintiffs—are confirmed.

Article 361 of the Civil Code in the original Spanish text uses the word "indemnización." However one may speculate as to the true meaning of the term "indemnización" whether correctly translated as "compensation" or "indemnity," the amount of the "indemnización" is the amount of the expenditures mentioned in articles 453 and 454 of the Civil Code.

Necessary expenses are those made for the preservation of the thing; those without which the thing would deteriorate or be lost; those that augment the income of the things upon which they are expended. Among the necessary expenditures are those incurred for cultivation, production, and upkeep. (In banc by Street. J.) *Briefed by P. M. Syquia.*

PLEADING AND PRACTICE—ASSIGNMENTS PENDENTE LITE. —*Oria Hermanos y Cia., en liquidación vs. Gutierrez Hermanos, R. G. No. 28613, October 5, 1928. Facts*: After litigation had been begun in the year 1909 by Gutierrez Hnos. to recover the balance due them in current account from Oria Hnos. & Co., in order to retire said assets from the active capital of the firm, the following entry was made in the journal of Gutierrez Hermanos.

"December 29, 1911...
"Sundries to Sundries...

> "For the following accounts which are separated from our assets either because of the doubtful collection of some of them in their entirety, or because of the slow payment of the others, which accounts become the private property of our partners Messrs. Miguel and Placido Gutierrez, Mr. Daniel Perez and Mr. Leopoldo Criado and Mrs. Ramona Gutierrez de Celis in the proportionate amount that pertains to each of them, upon the condition that the firm shall take charge of the collection of said debts and turn over to each of them such part thereof as may be collected, and to that end said accounts are carried to a book which shall be entitled 'Accounts Receivable in Liquidation' as follows:"... (Entries follow giving the exact portions of each partner.)

The lower court annulled the judgments complained of on the grounds that this entry constituted an assignment which deprived the firm Gutierrez Hnos. of the right to prosecute the action, and that the concealments of this assignment and the continued prosecution of the claim was a fraud on Oria Hermanos which authorized it to annul the final judgment affirmed by the Supreme Court on January 4, 1919. *Held*:

Pleading and practice; assignment of subject of action; continued prosecution of action in name of original plaintiff; validity of judgment:—The fact that a credit which is the subject of an action is assigned pendente lite to a third person, of which fact the debtor party remains ignorant, and the further fact that the prosecution of the action is continued without substitution of the assignee, do not constitute a fraud on the debtor, and a judgment obtained against him in the name of the original plaintiff cannot be successfully attacked by him on these grounds.

Case at Bar.—While an action was in course of prosecution at the instance of a general partnership upon a credit which was considered of slow or doubtful collection, the manager of the firm, in order to segregate the claim from its active capital, caused the item to be carried to a special account in its books entitled "Account Receivable in Liquidation," setting it down as belonging to the several members of the firm in the proportion of their respective shares in the firm, it being stated at the same time in the entry that the firm would take charge of the collection of the debt and pay the proceeds, as and when recovered, to the several members of the firm in their proper proportion. Held: that the making of such entry in the books of the company did not constitute a technical assignment of the credit in a sense that would have required a substitution of the assignees as parties plaintiff. (In banc by Street, J.) *Briefed by P. M. Syquia.*

MORTGAGE OF THIRD PERSON'S PROPERTY—EFFECT OF DEFAULT IN PAYING MORTGAGE DEBT.—*Miguel Perez v. Juan Barcia G. R. No. 29120, Oct. 11, 1928. Facts:* Juan Barcia borrowed ₱20,000, for two years from Jose Ledesma at 12% annual interest, payable annually. As security for the loan, Barcia mortgaged to Ledesma the *hacienda* Cambaros belonging to Perez who consented to the mortgage. It is stipulated in the mortgage that in case of failure on the part of the debtor to comply with any of the obligations of the mortgage, all the terms then pending should be considered as lapsed. The first year ended but Barcia failed to pay the interest then due, amounting to ₱2,400. For his own protection, the owner, Perez, was compelled to pay the said interest to avoid a sacrifice of his estate. Thereafter, Perez brought this action against Barcia asking that the defendant be declared to have lost the right to the period for payment allowed in the mortgage, to pay the plaintiff Perez the ₱20,000 with interest, in order that he may free his property from the mortgage. Lower court gave judgment for plaintiff allowing the recovery of ₱20,000, the capital loan with interest, and of the ₱2,400, the interest paid by Perez to Ledesma. Defendant appealed. Affirmed as to ₱2,400 and reversed as to the 20,000. *Held:* Tho not literally such, the plaintiff was substantially in the position of a surety for the defendant, by reason of the mortgage upon the hacienda; and a debtor is bound to indemnify his surety for any outlay that the latter makes in satisfying the obligation of the debtor (Art. 1838, C. C.) As regards the capital loan of ₱20,000, the action rests on Art. 1843, C. C. which recognizes the—right of the surety in case of the insolvency of the debtor, to proceed against the principal debtor even before the surety has paid off the debt. But the relief to which a surety is entitled under said article is to obtain his release from the contract of suretyship or to obtain any security to protect himself against any proceedings on the part of the creditor and against danger of insolvency of the debtor. The giving of a money judgment in favor of a surety for the amount of the debt is not among the remedies enumerated. Furthermore, plaintiff has expressly agreed that he would not require any security or bond from Barcia for mortgaging his property to Ledesma. Plaintiff, therefore, expressly renounced all security in his favor for the payment of the debt. He disabled himself from obtaining the precise remedy which the law would have given him under the last paragraph of Art. 1843, C. C . Hence no remedy can be given him under this article. (In Banc) (Per Street, J.; Johnson, Malcolm, Ostrand, Romualdez, Villareal, J. J. concur.) *Briefed by D. J. Puyat.*

WILLS—HOLOGRAPHIC WILLS EXECUTED BY FOREIGNERS. —*In re Will of Babcock, Beatrice Babcock Templeton, petitioner vs. Wm. Rider Babcock, opponent—appt.* G. R. No. 28328, Oct. 2, 1928. *Facts:* Appeal from an order of the C. F. I. Manila admitting to probate the holographic will of Jennie Rider Babcock. The will was found among the effects of the deceased shortly after her death and written wholly in her handwriting and bears her proper signature. It was contained in an envelope indorsed with the name of her daughter, Mrs. G. D. Templeton, and son, Mr. W. R. Babcock. The beneficiaries under the will are her three grandchildren, the children of her daughter, Mrs. G. D. Templeton, who for her part, was to receive all interests and dividends in the money and stocks. The instrument is of a testamentary character, but it is not executed as a will under the provisions of Philippine Laws. It is not therefore offered for probate under Sec. 618 and related provisions of Code of Civil Procedure, but under sec. 636 which authorizes the probate by our courts of a will made within P. I. by a citizen of another state or country, when such will is executed in accordance with the law of the state or country of which the testator is a citizen or subject and which might be proved under the law of such state or country. It is proven that she is an American citizen, that at the time of her death, she was a resident and domiciled in California which she declared to be her state, altho she had made sojourns in New York City and had stayed in Manila. As between these states, New York and California, the latter was surely the state of her legal domicile, acquired by choice and by residing therein. The lower court did not err in considering the testatrix a citizen of the state of California. Affirmed. *Held*: A holographic will, executed within the P. I., not in accordance with our laws governing the execution of wills, by a citizen of another state or country, may be admitted to probate in our courts, when it is executed in accordance with the laws of the testator's state or country and which might be proved under the laws of his state or country. (In Banc) (Per Street, J.; Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Villareal, J. J. concur.) *Briefed by D. J. Puyat.*

OFFICERS—AGE LIMIT—DUTY TO HOLD OVER—PROPER ACTION FOR TESTING TITLE.—*Felipe Tayko et. al v. Nicolas Capistrano* et. al R. G. No. 30188, Oct. 2, 1928. *Facts*: Petition for a writ of prohibition enjoining the respondent Judge Capistrano from taking cognizance of certain civil and criminal election cases in which the petitioners are parties. Petitioners allege: (1) That there was an understanding between the Auxiliary Judge de la Costa and respondent Judge Capistrano that the former would hear and take cognizance of election protests and election criminal cases; and the latter, of ordinary cases; (2) That the respondent Judge is already over 65 years of age and therefore automatically disqualified according to sec. 148, Ad. Code; and (3) that the respondent took great interest and active part in the filing of the criminal charges against petitioners to the unjustifiable extent of appointing a deputy fiscal who filed the informations when the regular provincial fiscal refused to do so for lack of evidence. Respondents demurred; demurer sustained and proceedings dismissed. *Held*: (1) A writ of prohibition to a judge of an inferior court will only lie in cases where he acts without or in excess of jurisdiction (Sec. 226, C. C. P.) A mere "understanding" as to the distribution of cases for trial did not deprive the respondent Judge of jurisdiction conferred upon him by law (2) The title to the office of a

Judge whether *de jure* or *de facto*, can only be determined in a proceeding in the nature of *quo warranto* and cannot be tested by prohibition. Assuring that the respondent judge is already over 65 years of age and therefore automatically disqualified per sec. 148, Ad. Code, he is still a *de facto* tho not *a de jure* Judge. "Apart from any constitutional or statutory regulation on the subject there seems to be a general rule of law that an incumbent of an office will *hold over* after the conclusion of his term until the election and qualification of a successor." (22 R. C. L. pp. 554-5). When a Judge in good faith remains in office after his title has ended he is a *de facto* officer (3) The fact that the respondent Judge took great interest and an active part in the filing of the criminal charges to the extent of appointing a deputy fiscal when the regular fiscal refused to file the information, did not disqualify him from trying the cases in question. Under sec. 1679, Ad. Code, a Judge of First Instance shall appoint an acting provincial fiscal when the regular fiscal "for *any reason*..... *shall fail to* discharge any of *the duties* of his position." Under that section the question as to whether the fiscal has failed to discharge his duty in the prosecution of a crime must necessarily, to a large extent, lie within the sound discretion of the presiding Judge. (In Banc) (Per Ostrand, J.; Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, Villareal, J. J. concur.) *Briefed by D. J. Puyat.*

ESTAFA—PARTY INJURED NEED NOT BE OWNER OF PROPERTY.—*P.P.I. vs. Yu Chai Ho*, R. G. No. 29278, Oct. 3, 1928. *Facts*: Estafa under par. 5 of Art. 535, Penal Code. Defendant Yu Chai Ho, as managing partner of Gui Sing & Co., ordered merchandise from Wm. H. Anderson & Co. in N. Y. to be shipped to Cebu. Goods arrived in Cebu consigned to Gui Sing & Co. The bill of lading and invoices were forwarded to Cebu branch of Int. Banking Corp., subject to delivery on payment of the purchase price, $259.50. They were accompanied by a draft on Gui Sing & Co. who accepted, but was unable to pay. Therefore, the International Banking Corporation, retained the bill of lading and invoices without which, the goods could not be cleared thru the custom house. Thru the intervention of Mr. Morrison, Manager of Cebu Branch of Wm. H. Anderson & Co., the Int. Banking Corp. agreed to deliver the bill of lading and invoices to Gui Sing & Co. upon their giving a trust receipt. Gui Sing & Co. duly executed the trust receipt and delivered it to the Banking Corp. The bill of lading and invoices were surrendered and upon presentation to the customs authorities, the merchandise was obtained. The defendant thereupon sold the merchandise, but, in violation of the terms of the trust receipt, failed to make payment to the Int. Banking Corp., and Wm. H. Anderson & Co. as guarantors, were compelled to pay the amount of the draft for the purchase price of the goods to the Int. Banking Corp. The Lower Court convicted defendant. Affirmed: *Contentions of the defendant;* that inasmuch as the price of the goods had been paid to the Int. Banking Corp. by Wm. H. Anderson & Co. the Bank had suffered no loss, and that, therefore, an essential element of the crime of estafa was lacking; that the only party prejudiced by the actions of the defendant was Anderson & Co. and that as to the latter, the defendant had incurred a civil obligation. *Held*: "We cannot accept this theory. Under Art. 535, par. 5 of the Penal Code, the person whose interests are prejudiced thru the conversion or misappropriation of money, goods, or other personal property need not necessarily be the *owner* thereof; if such had been the intention of the authors of the Code, the

phrase "to the prejudice of another" would have read "to the prejudice of the owner." In the crime of estafa, the damage resulting therefrom need not necessarily occur simultaneously with the acts constituting the other essential elements of the crime. (In Banc) (Per Ostrand, J.; Avanceña, C. J., Johnson, Malcolm, Villamor, Romualdez, Villareal, J. J. concur; Street, J. dissented in a separate opinion. *Briefed by D. J. Puyat.*

ILLEGAL DETENTION—ESSENTIAL ELEMENTS.—*P. I. vs. Jose de la Cruz y del Rosario*, No. 29381, Nov. 12, 1928. *Facts*: Jose de la Cruz y del Rosario was an acquaintance and possibly more, of Fausta Lopez y de Leon. Certainly De la Cruz was enamored of Miss Lopez and was greatly desirous of marrying her. As the story runs, De la Cruz presented himself at the house of Miss Lopez on the morning of November 2, 1927. The young lady was intending that morning to visit her father in the Philippine General Hospital, so De la Cruz offered to accompany her and her aunt to the hospital. After purchasing fruits in the Divisoria Market, they all proceeded in a calesa towards the General Hospital. On the way, they stopped at the Acquarium. Finally arriving in front of the General Hospital, after the aunt alighted, the driver speeded up his horse with De la Cruz and Miss Lopez still occupying the calesa, leaving the aunt frantically gesticulating near the hospital. In the calesa the two young people proceeded to the Municipality of Salinas, Cavite. They sought out the parish priest of Tanza, Cavite, Father Marcos Punzal, who however told them that it would be impossible to marry them out of his jurisdiction. Thereupon the couple proceeded to Tanza, arriving at the convent there about the middle of the day. But the young lady on being asked by the priest if she desired to marry De la Cruz answered that she did not. Being unable to get Miss Lopez to agree to the marriage, De la Cruz returned to Manila. Miss Lopez remained in the convent until the next day when she also returned to Manila in the company of her aunt who had gone to Tanza to get her. The foregoing facts gave rise to a criminal prosecution in the Court of First Instance of Manila of Jose de la Cruz of del Rosario for the crime of illegal detention.

Issue: Does the evidence of record justify conviction?

Held: It does not. To find the accused guilty it would be necessary to reach the conclusion that Fausta Lopez was deprived of her liberty. Yet she went from Manila to Salinas, Cavite, and from Salinas, Cavite to Tanza, Cavite, without protest. Not even when she first met the parish priest did she offer objection. The only difficulty was encountered when it came time to say yes or no in the marriage ceremony. The young man in the case should not be sent to prison simply because as seems likely the young lady in the case saw fit to change her mind. Judgment reversed, defendant acquitted. (In division, Per Malcolm, J.) *Briefed by P. Camus.*

OPIUM LAW—INSUFFICIENT EVIDENCE.—*P. I. vs. Tio Oh et al.* R. G. 29335, Nov. 12, 1928. The only evidence against the two Chinese accused, charged with the crime of illegal possession of opium consists (1) of their being found sitting near a third Chinaman, Tio Oh, who was smoking opium, (2) of stains on the fingers and (3) of the smell of their breath. *Held*:. Applying doctrines announced in previous decisions these facts and circumstances are hardly sufficient to justify conviction. Moreover, in this instance, the two Chinamen have been shown to be in good

health and thus not opium addicts and never previously to have been charged with an infringement of the Opium Law. Judgment reversed, defendants appellants acquitted. (In division Per Malcolm, J.) *Briefed by P. Camus.*

LICENCES—DISTINCTIONS—MUNICIPAL COUNCIL'S DISCRETION.—*The Company "Bighani", Eugenio Tansioco, Eriberto Estrella, Juan F. Bartolome, Nicanor Ramirez, Ciriaco de Jesus, Inocencio Esperitu, and Juan Gomez, Fabian Alonalon, Gabriel Badaguas, Blas Fajardo, Juan Esquerra, Fabien Cruz, Pablo Pablo, Blas Bernardino, The Municipal Council of Caloocan, and The Municipality of Caloocan, Defendants and appellees. R. G. No. 28455, Oct. 15, 1928. Facts:* This is in effect a petition for a writ of mandamus to compel the defendants to issue a permit or license for the operation of a cockpit constructed by the plaintiffs in the *sitio* of Galas, Municipality of Caloocan. It appears that Tansioco the president of the plaintiff company, made a formal application for a building permit for the construction of a cockpit of strong materials which was granted. But the plaintiffs failed to comply with the provisions of articles 51 and 52 of the "Reglamento de Galleras" of 1906. The Supreme Court in affirming the decision of the lower court for the defendants held:

1. The permit to erect the cockpit is not a license or permit to conduct cock-fights. Under the view most favorable to the plaintiffs, the defendants cannot be compelled by mandamus to issue the desired license unless it is shown that they are guilty of gross abuse of discretion.

2. It is true that the language of the ordinance is somewhat obscure, but ambiguities are not uncommon in Municipal Ordinances and it is often necessary to construe them in accordance with their evident intent without regard to lack of nicety of expression and punctuations. (In Banc—per Ostrand, concurred by Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villareal, J. J.) *Briefed by D. J. Puyat.*

PARTNERSHIP—LIABILITY OF MEMBERS.—*Leoncia Vda. de Chan Diaco, alias Lao Licng Naw, vs. Jose S. Y. Peng*, R. G. No. 29182, Oct. 21, 1928. *Facts:* This is an appeal from a decision of the Court of the First Instance of Manila dismissing an insolvency proceeding. It appears from the record that on June 13, 1925, the San Miguel Brewery, Porta Pueo & Co., and Ruiz & Rementeria S. en C. instituted insolvency proceedings against Leoncia Vda. de Chan Diaco alias Lao Liong Naw, alleged to be the owner of a grocery store on Calle Nueva, Binondo, known as the store of "La Vda. de G. G. Chan Diaco.", alleging among other things, that Leoncia was indebted to them in the sum of ₱26,234.47, which debt was incurred within thirty days prior to the filing of said petition. It further appears that other creditors have filed claims against the estate to the amount of ₱50,000.00. Plaintiff appellee alleges as defense that the proceedings against her should have been brought against the partnership "Lao Liong Naw & Co." of which she was only a member. Lower Court for plaintiff. The Supreme Court in reversing the decision of the lower court held, "Conceding for the sake of argument that the debts in question were incurred by the alleged partnership, it clearly appears from the record that said partnership has no visible assets and that, therefore, the partners individually must, jointly and severally, respond for its debts. (Code of Commerce, Art. 127.) As the appellee is one of the partners and admits

that she is insolvent, we can see no reason for the dismissal of the proceedings against her. It is further to be noted that both the partnership and the separate partners thereof may be joined in the same action, though the private property of the latter cannot be taken in payment of the partnership debts until the common property of the concern is exhausted (La Compañia Maritima vs. Muñoz et. al. 9 Phil., 362) and, under this rule, it seems clear that the alleged partnership here in question may, if necessary, be included in the case by amendments to the insolvency petition. A partnership may be adjudged bankrupt in the name of an ostensible partner, when such name is the name under which the partnership did business. (In Banc) (Per Ostrand J., concurred by Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez and Villareal, J. J.) *Briefed by D. J. Puyat.*