DIGEST OF DECISIONS OF THE COURT OF APPEALS

ESTOPPEL; ESTOPPEL "IN PAIS"; RULE. — While it is true that, because of equitable estoppel, "a party can not, in the course of a litigation, be permitted to repudiate his representations, or occupy inconsistent positions" (Magdalena Estate vs. Myrick, 71 Phil., 344: 3 Moran, Rules of Court (Perm. Ed.), p. 496), it is fundamental in the law of estoppel *in pais* that the representations held to conclude a party should be of *material facts;* that the representation be made with full knowledge of the truth; and that party invoking the estoppel should have been misled to his prejudice (3 Moran, Op. Cit. 494; 21 C.J., s. 227, pp. 1223-1225.) *Testate Estate of the Late Dorotea Apostol. Benedicta Obispo, et al., petitioners and appellees, vs. Remedios Obispo, opposito r and appellant, C.A. No.* 8454-*R, October* 1, 1953, *Reyes, J. B. L., J.*

ID.; CONCLUSIONS OF LAW IN PLEADING CAN NOT GIVE RISE ESTOPPEL. — When it appears from the plain terms of a pleading that there is no allegation of fact therein, but only conclusions of law, such conclusions can not give rise to estoppel (31 C. J., 1225). *Ibid, Ibid.*

EVIDENCE; WITNESSES; TESTIMONY; PARTY MAY CALL OPPONENT AS HIS OWN WITNESS. — There is no provision of law or of the Rules of Court that would prevent a party to a litigation from calling any of the opposing parties to be his witness, so long as the one called is not disqualified under section 25 or section 26 of Rule 123. On the contrary, section 83 of said rule expressly authorizes the calling of any adverse party as such witness, even if leading questions have to be employed to overcome his natural hostility. If the previous acts or former statements of the witness contradict his present testimony, they may be shown to impeach his credibility under sections 91 and 92 of Rule 123, but they would not be grounds to bar him from testifying.

WILL; PROBATE; ESTOPPEL, WHEN NOT APPLICABLE IN PROCEEDINGS. — Probate proceedings involve public interest, and the application therein of the rule of estoppel, when it will block the ascertainment of the truth as to the circumstances surrounding the execution of a testament, would seem inimical to public policy. Over and above the interest of private parties is that of the state to see that testamentary dispositions be carried out of it, and only if, executed conformably to law. (In Re Canfield's Will, 300 NYS 502). *Ibid, Ibid.*

EVIDENCE; RECEPTION OF EVIDENCE OF DOUBTFUL ADMISSIBILITY, LESS HARMFUL. — Reception of evidence of doubtful admissibility is in the long run the less harmful course, since all material necessary for final adjudication would come before the appellate tribunals. (Prats & Co., vs. Phoenix Insurance Co., 52 Phil., 816.) *Ibid, Ibid.*

PROPERTY; STOLEN MOVABLES; OWNER'S RIGHT TO RECOVER. — That plaintiffs, as owners, are absolutely entitled to recover the stolen trucks, or any parts thereof, results from the application of article 464 of the old Civil Code. *Ethel Case, et al., plaintiffs and appellants, vs. Felipe F. Cruz, defendant and appellee, C.A. No.* 9779-*R, October* 1, 1953, *Reyes, J. B. L., J.*

MOTOR VEHICLE; OWNERSHIP; CERTIFICATE OF REGISTRATION, NOT CONCLUSIVE EVIDENCE OF OWNERSHIP.— It is a matter of law and general knowledge that certificates of registration are not conclusive on the ownership of the vehicle, and they are only issued for wholly assembled motor vehicles, not for component parts thereof. *Ibid, Ibid.*

PROPERTY; POSSESSION IN GOOD FAITH. — The good faith of a possessor consists in the absence of knowledge of a defect that invalidates his title (Art. 433, Civil Code of 1889) or, as stated in article 1950 of the same Code, "a belief that the person from whom he received the thing was the owner thereof and could transmit title thereto", which belief must be *well-founded* or reasonable (Santiago vs. Cruz, 19 Phil., 148; Leung Yee vs. Strong, ante; Emas vs. Zuzuarregui, *jam cit.*). *Ibid, Ibid.*

ID.; ID.; ID.; POSSESSION IN BAD FAITH; REIMBURSEMENT OR REMOVAL OF IMPROVEMENTS. — The spirit of articles 453 and 454 of the Spanish Civil Code of 1889 (in force in 1944 to 1946, when this case instituted) is to deny a possessor in bad faith any right to be reimbursed for or to remove the improvements (expensas utiles) made by him, even if he could remove them without injury to the principal thing (3 Sanchez Roman, Estudios de Derechos Civil, 449; 4 Manresa, Commentaries, 6th Ed., p. 318). *Ibid, Ibid.*

ID.; ID.; ID.; ID.; REPAIRS; TERM "NECESSARY EXPENDITURES", CONSTRUED. — By "necessary expenditures" have been always understood those incurred for the *preservation* of the thing, in order to prevent its becoming useless; or those without which the thing would deteriorate or be lost (Alburo vs. Villanueva, 7 Phil., 277; 4 Manresa, 6th Edition, p. 318; 8 Scaevola, Codigo Civil, p. 408); "inversiones hechas para que la cosa no perezca o desmerezca" (3 Puig Peña, Derecho Civil, Vol. 3, Part I, p. 46). *Ibid, Ibid.*

OWNERSHIP; CHATTEL MORTGAGE; MORTGAGOR, NOT DIVERTED OF ALL OWNERSHIP. — It is now recognized that a chattel mortgage is merely a real right of security (Bachrach vs. Summers, 42 Phil., 3) and does not completely divest the mortgagor of ownership. *Ibid, Ibid.*

WILLS; TESTATOR'S SIGNATURE; LOCATION IMMATERIAL. — Section 618 of Act 190 (unlike article 805 of the new Civil Code) did not require that the testator should "subscribe at the end" of the will. All it required was that the will — "be written in the language or dialect known by the testator and *signed* by him, or by the testator's name *written* by some other person in his presence and by his express direction x x x." The law did not expressly stipulate any particular place for the testator's signature; and there is respectable authority that under similar statutes, the location of the signature has been held immaterial, (Alexander, Treatise on Wills, Vol. I, pp. 558-559, 564, 565; Gardner on Wills, p. 185; Woener on Wills, Vol. I, pp. 89-90). *Testate Estate of Roman Castillo, deceased. Jose C. Platon, petitioner and appellant, vs. Antonio Castillo et al., counter-petitioner and oppositors-appellee, C. A. No.* 1042-*R October* 12, 1953, *Reyes, J. B. L., J.*

ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE OF THE LAW SUFFICIENT. — The authenticity of the preceding pages of a will not being in any way endangered by the absence of the testator's signature at the foot of the fourth page, because all pages carried the marginal signature of the testator and the three witnesses, *Held:* that the law was substantially complied with. *Ibid, Ibid.*

ID.; FAILURE TO PAGE FIRST SHEET, NOT SUFFICIENT GROUND TO REFUSE PROBATE. — The failure to page the first sheet of a will composed of several sheets is not a sufficient ground to refuse its probate, where other circumstances supply identification, as already decided by the Supreme Court of the Islands in Lopez vs. Liboro, 46 Off. Gaz., No. 1 (Supp.), 211. *Ibid, Ibid.*

ID.; DATING OF WILL OR ATTESTATION CLAUSE UNNECESSARY. — The law does not require either the will or the attestation to be dated (Pasno vs. Ravina, 54 Phil., 379, 380). *Ibid, Ibid.*