

## COURT OF APPEALS DIGEST OF DECISIONS

**CERTIORARI; EXECUTION OF JUDGMENT; EXAMINATION OF JUDGMENT DEBTOR; CONTEMPT; EXCESS OF JURISDICTION.**—A judgment debtor can only be required to appear and answer concerning his property and income before the Court of First Instance of the province in which he resides or is found, so that an order issued by any other Court of First Instance declaring such judgment debtor in contempt and ordering his arrest for failure to appear for such examination is null and void as issued in excess of jurisdiction. *Chiong Bu Hong, vs. Bienvenido Ten, et al.*, CA-G.R. No. 27345-R, June 23, 1960, *Angeles, J.*

**CERTIORARI; CONTEMPT; LACK OF JURISDICTION OF COURT ISSUING ORDER; EFFECT; WAIVER.**—The power to punish for contempt should be used sparingly, with caution, deliberation, and with due regard to the provisions of the law and the constitutional rights of the individual. Disobedience of, or resistance to, a void mandate, order, judgment, or decree, or one issued by a court without jurisdiction of the subject-matter and party-litigant, is not contempt, and where the court has no jurisdiction to make the order, no waiver can cut off the rights of the party to attack its validity. (U.S. Federal Trade Commission vs. Fairfoot Products Co., 94 F. 3d, 844; 17 C.J.S. p. 19, note 34.) *Ibid.*

**CRIMINAL LAW; MITIGATING CIRCUMSTANCE; PLEA OF GUILTY, WHEN NOT MITIGATING.**—A judicial plea of guilty after the prosecution had introduced its evidence is no longer a mitigating circumstance (People vs. de la Peña, 66 Phil. 459). Besides, a plea of guilty as a mitigating circumstance is not applicable to a prosecution under special laws (Article 10, Revised Penal Code; People vs. Ramos, 44 O. G. 5288; U. S. Barba 29 Phil. 206; U. S. vs. Santiago, 35 Phil. 20; People vs. Malibez CA-47 O.G. 4226). *People vs. Custodio Tecson, CA-G.R. No. 18256-R, June 30, 1960, Piccio, J.*

**CRIMINAL PROCEDURE; PLEA OF GUILTY.**—Upon a judicial plea of guilty (Sec. 3 Rule 114, Rules of Court), interposed by the accused generally upon arraignment (before trial on the merits), the court, when satisfied that same had been interposed freely and voluntarily by the defendant who was well aware of its nature and consequences, may pronounce said accused "guilty" and forthwith convict him without requiring the prosecution to introduce its evidence. And it makes no difference that such plea was made after the introduction of prosecution's evidence. The effect is the same. *Ibid.*

**ACTIONS; ACTION FOR PARTITION; PRESCRIPTION.**—Generally, an action for partition among co-heirs and co-owners does not prescribe. This rule, however, applies only to "actions where-

in the rights of all parties to their respective shares of the inheritance is taken for granted but not to an action wherein the plaintiff's right to participate in the inheritance is denied." (*Bargayo vs. Camumot*, 40 Phil. 857, 870). *Julio Doler et al., vs. Eliseo Dejascent, et al.*, CA-G.R. No. 24528-R, July 18, 1960, *Amparo, J.*

**JUDGMENT; ENFORCEMENT; PRESCRIPTIVE PERIOD.**—A valid judgment may be enforced either by motion within five years after entry or by action after the lapse of said period but before it is barred by any statute of limitations, and a valid execution issued and levy made within the five-year period after entry of judgment may be enforced by the sale of the property levied upon, provided the sale is made within ten years after entry of such judgment. *Nestora Rigor Vda. de Quiambao, et al., vs. Manila Motor Company, Inc., et al.*, CA-G.R. No. 17031-R, July 23, 1960, *Natividad, J.*

**OBLIGATIONS AND CONTRACTS; VESTED RIGHT, MEANING OF.**—Vested right has been defined as accrued, fixed, settled, absolute, having the character or giving the rights of absolute ownership, not contingent, not subject to be defeated by a condition precedent. Primarily, "vested" is to be interpreted as meaning free from all contingency. In this sense, it is nearly equivalent to "possessed." However, the word is often used in a different sense from its technical or strictly legal meaning; thus, "vested" has been construed to mean not subject to be divested or indefeasible; transmissible. It has also been construed to mean payable. 67 C.J., pp. 239-240. *The United States of America vs. Pedro Veragel de Dios, et al.*, CA-G.R. No. 21474-R, July 25, 1960, *Sanchez, J.*

**CRIMINAL PROCEDURE; ORAL MOTION TO QUASH; EFFICACY; SECTION 3, RULE 113, RULES OF COURT.**—Section 3 of Rule 113 of the Rules of Court states that a motion to quash shall be in writing, signed by the defendant or his attorney, and "shall specify distinctly the ground of objection" relied upon. However, an oral motion to quash presented in open court, at an opportune time, that is, before arraignment, and based on the ground that more than one offense was charged in the information, should be considered as effectively placed before the court for its consideration and decision as if it had been in writing. To deny the motion for being void and inefficacious because it was not reduced to writing, is to place inordinate importance on the shadow rather than on the substance of the law, and to stress technicality while denying justice. Hair-splitting technicalities should be frowned upon and avoided if they do not square with the ends of justice. *People vs. Manuel Ballena, CA-G.R. No. 20810-R, July 25, 1960, Castro, J.*

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IV. A files an action to recover a parcel of land from B based upon a notarial deed of sale and A attaches a copy of the deed of sale to his complaint. B claims that he did not sell his property to A, and that the signature purporting to be his on the deed is a forgery. As lawyer for B, prepare an answer, supplying other details.

V. (a) Define and distinguish attorney's contingent fee and champertous fee.

(b) In the absence of a written contract between attorney and client, what factors are to be considered in determining the amount of attorney's fees?

VI. (a) In the event that several lawyers representing a party in a case should act differently on any matter relating to the litigation, which of these may properly claim the right to bind the client?

(b) What duties, if any, does an attorney owe to a client, after the termination of the relationship of attorney and client?

VII. Draft a motion for leave to intervene in a civil case. Supply necessary details.

VIII. (a) Draw an information for filing in the Court of First Instance, charging an accused for estafa. Supply the necessary details.

(b) Prepare a motion to quash said information on any of the grounds provided by law.

IX. What inhibitions, if any, are imposed upon members of the Bar who are likewise members of Congress in the practice of the law profession and why?

X. Prepare the following: (a) Jurat; (b) acknowledgement in a deed of sale consisting of more than two pages and covering three parcels of land; (c) attestation clause in a last will and testament; (d) affidavit of Good Faith in a Chattel Mortgage.