DIGEST OF DECISIONS OF THE COURT OF APPEALS

PROPERTY: POSSESSION; PRESUMPTION IN FAVOR OF ACTUAL POSSESSOR. — When a party is admittedly in the actual possession of the disputed land, all presumptions are, and all doubts must be resolved, in his favor, it being a rule of law that the present possessor is to be preferred should a question arise regarding the fact of possession (Art. 530, new Civil Code; Art. 445, old). *Victorina Culasito and Francisco Sical, plaintiffs and appellants, vs. Teodoro Clidoro, defendant and appellee, C.A. No.* 10111-*R, November* 7, 1953, *Reyes, J.B.L., J.*

EVIDENCE; INTRODUCTION OF ADDITIONAL EVIDENCE AFTER PARTY HAS RESTED HIS CASE; COURT'S DISCRETION. — It is discretionary with the trial court to admit further evidence after the party offering it has rested, which discretion will not be reviewed except in clear cases of abuse (Lopez vs. Libor, 46 Off. Gaz., (Supp. to No. 1, 211); and this discretion can be said to have been abused only if the additional evidence rejected by the court below would have altered or changed the result of the case. *Ibid, Ibid.*

CRIMINAL LAW; EVIDENCE; WITNESS; TESTIMONY; UNCONSCIOUS PARTNERSHIP. — It has been said that "Perhaps the most subtle and prolific of all the fallacies of testimony arises out of unconscious partisanship. Upon the happening of an accident the occasional passengers on board of a streetcar are very apt to side with the employees in charge of the car," (Wellman, The Art of Cross-examination, 161, 614 and 165). *The People of the Philippines, plaintiff and appellee, vs. Antonio Reyes, defendant and appellant, C. A. No.* 10277-*R, November* 11, 1953, *Dizon, J.*

ID.; DAMAGE TO PROPERTY THROUGH RECKLESS IMPRUDENCE; INDEMNITY; PAYMENT OF DAMAGES BY INSURANCE COMPANY DOES NOT RELIEVE ACCUSED OF HIS OBLIGATION TO REPAIR DAMAGES CAUSED THROUGH HIS NEGLIGENCE; CASE AT BAR. — Accused contends that inasmuch as the owner of the Ford car has already been paid his damages by an insurance company, the lower court erred in sentencing him to pay damages. It should be taken into account, in this connection, that the payment made by the insurance company was made pursuant to its contract with the owner of the Ford car and was clearly not made on behalf of accused. It cannot be said, therefore that the payment had relieved the accused of his obligation to repair the damages caused through his negligence. The insurance company, however, must be deemed to have been subrogated to the rights of the offended party as far as the damages awarded are concerned. *Ibid, Ibid.*

CRIMINAL LAW; EVIDENCE; RULE OF "RES INTER ALIOS ACTA"; CONFESSION OF CONSPIRATOR; ADMISSIBILITY.— The rule of *res inter alios acta* is well established and consistently adhered to in this jurisdiction. "The rights of a party cannot be prejudiced by the act, declaration or omission of another and proceedings against one cannot affect another x x x" (section 10, Rule 123, Rules of Court). Only the confession of a conspirator, made during the existence of the conspiracy, is admissible against his co-conspirator. Again a confession is admissible against a co-accused when it is adopted by the latter or, when given within his hearing, he kept silent about it. *People of the Philippines, plaintiff and appellee, vs. Pedro Obejera, Lupo Fortus and Gregorio Calibara, defendants and appellants, C.A. No.* 10052-*R, November* 13, 1953, *Martinez, J.*

CRIMINAL LAW AND PROCEDURE; SEPARATE TRIAL; USE OF CO-DEFENDANT AS PROSECUTION WITNESS AGAINST HIS CO-DEFENDANT; SECTION 9, RULE 115, RULES OF COURT. — It is well-settled that the granting of a separate trial when two or more defendants are jointly tried with an offense is discretionary with the trial court (section 8, Rule 115, Rules of Court; People vs. Go, L-1527, February 27, 1951); and, that when two or more persons are jointly prosecuted for the same crime, but separately tried, either of the said defendants is competent as a witness against the other, although the case against the witness himself is still pending (People vs. Parcon, 55 Phil., 970; People vs. Trazo, 58 Phil., 258). While section 9, Rule 115, of the Rules of Court, limits the exercise of the discretion of the court in discharging an accused person who is to be used as a witness, it does not prohibit the use of one co-defendant as a witness for the prosecution, when such co-defendant voluntarily takes the witness stand to testify against a co-defendant (People vs. Trazo, (Supra); People vs. Badilla, 48 Phil., 718; and U.S. vs. Remigio, 37 Phil., 599). *People of the Philippines, plaintiff and appellee, vs. Regalado Magsino et al., defendants and appellants, C.A. No.* 8073-*R, November* 16, 1953, *De Leon,J.*

LAND REGISTRATION; EVIDENCE; PRESUMPTION, "JURIS ET DE JURE" OF COMPLIANCE WITH NECESSARY CONDITION FOR GRANT BY THE STATE. — When the possession of lands by the common predecessors-in-interest of the claimants has been, at least, prior to July 26, 1894 and this possession has been passed on to the claimants and the evidence shows that it has been continuous, uninterrupted, open, adverse and in the concept of owner, there is a presumption *juris et de jure* that all the necessary conditions for a grant by the State have been complied with. Pursuant to the provisions of section 48 (b) of Commonwealth Act No. 141, said claimants are entitled to the registration of their title to the lands applied for (Pamintuan vs. Insular Government, 8 Phil., 485; Susi vs. Razon, 48, Phil., 424; Government of P.I. vs. Adelantar, 55 Phil., 793; Gov't of P.I. vs. Abad 56 Phil., 75). *Director of Lands, petitioner and appellee, vs. Rufina Rendon, movant and appellant, Eugenio Z. Rendon, oppositor and appellee, C. A. No.* 8463-*R, November* 20, 1953, *Ocampo, J.*

ID.; DECREE OF REGISTRATION MUST BE DEFINITE AND SPECIFIC IN ACCORDANCE WITH SURVEY PLAN AND TECHNICAL DESCRIPTION. — In a land registration proceeding the decree of registration must be definite and specific and in accordance with a plan and technical description of the property claimed as prepared by a competent surveyor who has surveyed the property, othewise the court cannot order the issuance of the corresponding decrees of registration of the respective titles of the petitioners. *Ibid, Ibid.*

DONATION; DONATION MORTIS CAUSA NOT EXECUTED WITH THE FORMALITIES OF A WILL, INVALID. — According to our jurisprudence, a donation *mortis causa* which has not been executed with the formalities of a will is of no force and effect. *Fidela Arceo, plaintiff and appellant, vs. Gerardo Arceo, Guillermo Arceo, Francisco Arceo and Raymundo Plata, defendants and appellees, C.A. No.* 9020-*R, November* 25, 1953, *Felix, J.*

LAND REGISTRATION; REGISTER OF DEEDS; ERRONEOUS ANNOTATION ON CERTIFICATE OF TITLE; CASE AT BAR. — The annotation of the affidavit at the back of the new transfer certificate of title (Exhibit A) which did have for the purpose to inscribe any lien or encumbrance on the pro-

---

DECISION OF THE COURT OF INDUSTRIAL RELATIONS (*Continued*)

CASTILLO, *J.*, concurring and dissenting.

I concur only insofar as the Resolution eliminates or nullifies the imposition upon the respondents of a fine of five hundred pesos (₱500.00). But as regards the reinstatement with back pay of Pedro Vinluan and the requirement that the respondents cease and desist from committing unfair labor practices, it appearing that they are supported by substantial evidence, the order sought to be reconsidered, I think, should not be disturbed.

Accordingly, the Order of March 19, 1954 issued by the trial court is hereby modified.

Manila, Philippines, August 7, 1954.

perty in question but to nullify the effect of the issuance of the new title and the transfer of the property as a consequence of the sale, for it aimed at the destruction of both these acts by claiming the right of ownership over the very land by virtue of a previous deed of donation made to affiants by their father, was erroneously made by the Register of Deeds. Such annotation, as a conveyance of registered land, falls short of its purpose, for according to section 50 of Act 496, it is necessary to use the required form "sufficient in law for the purpose intended," and the annotation of the affidavit cannot be considered to be the "operative act to convey and affect the land." (Philippine National Bank vs. Tan Ong Zse, 51 Phil., 317; Director of Land vs. Addison, 49 Phil., 19). *Ibid, Ibid.*

CERTIORARI; WHEN CERTIORARI MAY BE GRANTED NOTWITHSTANDING AVAILABILITY OF APPEAL. — Certiorari may be granted, notwithstanding the existence of an appeal or the availability of another adequate remedy for the correction of the alleged error, when the appeal is not an adequate remedy, such as where the order is of such nature as to call for prompt relief from its injurious effects (Silvestre vs. Torres and Oben, 57 Phil., 885; Alafriz vs. Nable, 72 Phil., 278.) *Gregorio Gelera and Francisco Gelera, petitioners, vs. Hon. Antonio G. Lucero, Judge of the Court of First Instance of Cavite, and Felicisima Aranzazu in her own behalf and as guardian ad-litem for her minor children Eduardo, Leticia and Herminio, all surnamed Gelera, respondents, C.A. No. 11578-R, November 25, 1953, Natividad, J.*

ID.; ID.; ACTS NOT CONSTITUTING GRAVE ABUSE OF DISCRETION. — The hearing of an action in case the defendant fails to appear for no known reason at the time set thereafter does not constitute such "grave abuse of discretion" as to warrant the issuance of a writ of certiorari. (Go Chanjo vs. Sy-Chanjo, 18 Phil., 405; Cababan vs. Weissenhagen, 38 Phil., 804.) *Ibid, Ibid.*

ATTORNEY AT LAW; HIS DUTIES; LAWYER'S ACTS CONSTITUTING NON-EXCUSABLE NEGLIGENCE. -- An attorney must always be ready to comply with the order of notification of the court and to protect the interest of his client." (Guieb vs. Valdez and Cardenas, CA-G. G. No. 4829-R, June 15, 1950.) Once informed that the case had been set for trial it is the duty of the attorney to ascertain by reliable means the exact date of such hearing. If he fails to do this, and instead relies, as counsel in the instant case did, on information received from non-official sources, he is guilty of non-excusable negligence. Appeal, not certiorari, is the proper remedy for correcting an error in denying a motion to set aside a judgment (Rios vs. Ros, 45 Off. Gaz., 1265), or in allowing an attorney to withdraw his appearance and proceeding with the trial in the absence of his client (Federal Films, Inc. vs. Pecson, 46 Off. Gaz., 1265). *Ibid, Ibid.*

PLEADING AND PRACTICE; AMENDED COMPLAINT, ADMISSIBILITY OF; WHEN PROPER. — An amended complaint which does not allege a new cause of action, or change the nature of the action, but merely amplifies certain allegations in the original complaint may be admitted before the presentation of evidence by either party (49 C.J., 495). *Ibid, Ibid.*

CRIMINAL LAW; SERIOUS PHYSICAL INJURIES; INDEMNITY. — Where aggrieved party has not as yet paid for the medical services of the physician who treated his injuries, the accused cannot be sentenced to pay indemnity for actually aggrieved party had not spent it. Action is, however, reserved to him to recover it from appellants as soon as he shall have paid it to the phyisician in payment of the medical treatment given to him by the Doctor for the injuries he had sustained. *People of the Philippines, plaintiff and appellee, vs. Igmidio Granale and Pedro Cerda, defendants and appellants, C. A. No. 8833-R, November 27, 1953, Martinez, J.*

ILLEGAL ENTRY AND DETAINER; APPEAL; APPEAL BOND UNNECESSARY WHEN SUPERSEDEAS BOND TO STAY EXECUTION IS GIVEN. — The Rules of Court, in section 5 of Rule 41, provide that the appeal bond shall be in the amount of ₱60, unless a different amount is fixed by the court or a supersedeas bond has been filed. In the case of Contreras vs. Dinglasan, 45 Off. Gaz. (No. 1) 257, the Supreme Court held that since the purpose of the appeal bond is to answer for the costs that may be adjudged against the appellant in the appellate court, it becomes unnecessary when a supersedeas bond to stay execution of the judgment is given, which has in part the same purpose. *Gregorio Salceda, petitioner, vs. Hon. Jose T. Surtida, Judge of the Court of First Instance of Camarines Sur. and Zoilo Balmaceda, respondents, C.A. No. 8949-R, November 28, 1953, Diaz, Pres. J.*

ID.; ID.; WHEN SUPERSEDEAS BOND NEED NOT BE GIVEN; RULE APPLICABLE TO APPEAL FROM COURT OF FIRST INSTANCE TO COURT OF APPEALS. — According to leading cases, notably, Mitschiener vs. Barrios, 42 Off. Gaz., 1901, Sogueco vs. Natividad, 45 Off. Gaz., Supp. (No. 9) 449, Aylon vs. Jugo, 45 Off. Gaz., (No. 1) 188, Hilado vs. Tan, L-1964, August 23, 1950, a supersedeas bond is unnecessary when the defendant has deposited in court the amount of all back rents declared by final judgment of the justice of the peace or municipal court to be due the plaintiff from him and an appeal bond has been filed to answer for costs; the reason being that such bond answers only for rents or damages up to the time the appeal is perfected from the judgment of the justice of the peace or municipal court and not for rents or damages accruing while the appeal is pending which are guaranteed by future deposits or payments to be made by the defendant. Following this reasoning a step farther, when, as in this case, the deposits already made by the defendant do not fully cover the amount fixed in the judgment appealed from and the supersedeas bond is made to answer for costs as well in the absence of a regular appeal bond, a supersedeas bond which covers the balance of such back rents and the probable amount of costs should be considered good and sufficient. Finally, there appears to be no reason why the propositions just set forth which, in the cases already cited, were applied to appeals from municipal courts to courts of first instance, should not apply with equal force to appeals from courts of first instance to higher courts where a supersedeas bond is filed for the first time on appeal from a court of first instance. *Ibid, Ibid.*

APPEAL; PAUPER'S APPEAL; MANDAMUS MAY ISSUE TO COMPEL GRANTING OF PAUPER'S APPEAL. — While, contrary to the respondents' contention, there is authority to the effect that mandamus may issue compelling a lower court to grant a meritorious petition to appeal as pauper which it has improperly denied (Comia vs. Castillo, 75 Phil., 526), it does not appear that the petition in this case is one which ought to have been granted. *Ibid, Ibid.*

CRIMINAL LAW; MOTOR VEHICLE LAW; ACCIDENT RESULTING IN DEATH OR SERIOUS BODILY INJURY; LAW APPLICABLE. — The appellant has been charged and found guilty of a violation of the Motor Vehicle Law (Act No. 3992). According to section 67 (d) thereof, as amended by Republic Act No. 587, if as the result of negligence or reckless or unreasonable fast driving any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver at fault, shall upon conviction, be punished under the provisions of the Penal Code. *The People of the Philippines, plaintiff and appellee, vs. Romeo Jose, accused and appellant, C.A. No. 3010-R, November 28, 1953, Ocampo, J.*

COMMERCIAL LAW; COLLISION OF VESSELS; DAMAGES; PROTEST; ARTICLE 835, CODE OF COMMERCE, NOT APPLICABLE TO SMALL BOATS.—A motor launch used in the Manila Bay for carrying back and forth the members of the crew who were off duty cannot be considered as included in the denomination of vessel as specified in article 835 of the Code of Commerce. Therefore, when such a motor launch is sunk,

protest is not a condition precedent, for the recovery of the damages sustained by its owner. *Madrigal Shipping Co., plaintiff and appellant, vs. Santiago Gancavco, defendant and appellee, No.* 8585-*R, November* 11, 1953, *Martinez, J.*

PLEADING AND PRACTICE; MOTION FOR DISMISSAL WITH RESERVATION TO SUBMIT EVIDENCE. — When defendant asked for the dismissal of the case in the court below he reserved his right to submit evidence in defense, should the motion therefor be eventually denied. The opposing party failed to object thereto; thus in furtherance of justice, this case should be remanded to the court below. We do not believe this to be in violation of the ruling in Arroyo vs. Asur, 43 Off. Gaz., 54. *Ibid.*

CRIMINAL LAW; MALVERSATION THROUGH FALSIFICATION OF PUBLIC DOCUMENT; BOND, NOT A NECESSARY ELEMENT; CASE AT BAR.—A bond is not necessary to make one civilly and criminally accountable and liable for government property in his custody. It is enough that he had accepted the responsibility entailed by his position and performed his duties as such custodian. *People vs. Teodoro Estandante, Francisco Viola, Felipe Caraso and Santiago Fajardo, defendants and appellants, No.* 9948-*R, November* 12, 1954, *Peña, J.*

SALE A RETRO; REDEMPTION; RUNNING OF PERIOD OF REDEMPTION PRESUPPOSES FULL PAYMENT OF PURCHASE PRICE. — The running of the period of repurchase in a sale *a retro* presupposes the payment in full of the price agreed upon for the transaction. Since, in the case at bar, the vendee had not completely satisfied to the vendor the purchase price of the properties bought, it is inconceivable that the period for the repurchase of the property could mature upon the lapse of the agreed redemption period and much less that the purchaser could lease the property bought and collect rents from the vendor for its occupation thereof, when the former has not complied with his obligation to the latter of paying in full the consideration of the sale. *Luz Labuga Celix, as Special Administratrix of the Estate of Bonifacio Celix, plaintiff and appellee, vs. Eufemia Cuaresma Vda. de Jumawan, as administratrix of the Estate of Sergio Jumawan, defendant and appellant, No.* 9238-*R, December* 19, 1953, *Felix, J.*

MANDAMUS; CAN NOT BE USED TO CONTROL JUDGE'S DISCRETION. — Mandamus will only lie where the court, officer, board or person concerned unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station, or when such court, officer, board or person has unlawfully excluded a person from the use and enjoyment of a right or office to which he is entitled. The writ is only available to compel an officer to perform a ministerial duty. Hence, it cannot be used to control the discretion of a judge, or to compel him to decide a case or a motion pending before him in a particular way. *Anselmo Quilaneta, petitioner, vs. The Honorable Segundo C. Moscoso, Judge of the Court of First Instance of Leyte and the Provincial Fiscal of Leyte, respondents, No.* 11939, *January* 20, 1954, *Natividad, J.*

PROHIBITION; REMEDY INTENDED TO PREVENT OPPRESSIVE EXERCISE OF LEGAL AUTHORITY; TEST OF ABUSE OF DISCRETION. — The remedy of prohibition is intended to prevent the oppressive exercise of legal authority. Its only basis is lack or excess of jurisdiction or authority on the part of an inferior tribunal, corporation, board or person, as gross abuse of discretion and there is abuse of discretion only where the exercise of judgment is so capricious and whimsical as to be equivalent to lack of jurisdiction. *Ibid.*

MANDAMUS OR PROHIBITION; ACTION OF JUDGE OR FISCAL, NOT CONTROLLABLE BY MANDAMUS OR PROHIBITION. — A judge has discretion to decide a case in accordance with his best judgment; a Fiscal, to prosecute offense committed within his jurisdiction. These duties are imposed by law on both officials, and the performance thereof involves exercise of judgment. Their actions on such matters, therefore, cannot be controlled either by mandamus or by prohibition. *Ibid, Ibid.*

CRIMINAL LAW; ROBBERY; INTENTION TO DEPRIVE ONE OF OWNERSHIP, WITH CHARACTER OF PERMANENCY, IMPORTANT; CASE AT BAR. — Since the accused, though breaking the locks of his father's desk, never had the intention of depriving his father of the ownership of the revolver and ammunitions with any character of permanency, but only to threaten his father into giving him money, and since the other essential element of taking (approderamiento) is not present in the instant case, the accused could not be convicted of robbery. He is, however, guilty of grave threats for having threatened his father. *People of the Philippines, plaintiff and appelles, vs. Agustin Castañeda Kho Choc, defendant and appellent, Nos.* 10231-*R,* 10234-*R, January* 23, 1954, *Felix J.*

BOARD OF MARINE INQUIRTY; ITS FINDINGS, NOT CONCLUSIVE AND BINDING UPON COURT OF FIRST INSTANCE. — An action for damages arising from and caused by the sinking of a vessel falls squarely within the jurisdiction of the Court of First Instance. In the exercise thereof, it is obvious that said court had the right to weigh the evidence presented before it and, on the strength thereof, to determine the question of whether appellee and its agents had been negligent. To hold that the decision rendered by the Board of Marine Inquiry is conclusive upon said court would virtually deprive the latter of the right to use its own discretion and compel it to accept the findings of a body that had conducted an investigation merely to decide whether the marine certificates of certain marine officers should be suspended or cancelled on account of misconduct, intemperate habits or negligence in the performance of their duties. Moreover, it would be obviously unfair to hold such findings as conclusive and binding upon the lower court and determinative of the rights of the herein appellee. *O. B. Ferry Service Co., plaintiff and appellant, vs. P. M. P. Navigation Co., defendant and appellee, No.* 10392-*R, January* 26, 1954, *Dizon, J.*

CONTRACTS; CHARTER PARTY; VAGUENESS OR AMBIGUITY RESOLVED AGAINST THE PARTY WHO PREPARED IT. — When a charter party is prepared under the direction of the owner of the vessel, it goes without saying that whatever vagueness or ambiguity there might be in its provisions must be resolved against it, pursuant to the provisions of article 1288 of the old Civil Code as well as of article 1377 of the new. *ibid.*

CORPORATION LAW; ONLY BOARD OF DIRECTORS HAS AUTHORITY TO BIND CORPORATION. — Under our Corporation Law only the board of directors of a corporation, acting as such, has the authority to bind the corporation. The general rule of law, invoked by the appellant, that if an officer of the corporation employs a person to perform services for the corporation and such services are performed with knowledge of the directors and they receive the benefits thereof without objection, the corporation is liable, only holds true where the statute is not specific. Where, as in this jurisdiction, the law clearly provides that "the expression of the corporate will is vested in the Board of Directors and therefore only the majority of the Board of Directors acting as such has the authority to bind the corporation" such rule does not apply (Superior Gas and Equipment Co. vs. Jurado, supra.) *Esteban Aguilar, plaintiff and appellant, vs. Philippine American Drug Co., (Botica Boie), defendant and appellee, No.* 7129-*R, January* 28, 1954, *Natividad, J.*

EMINENT DOMAIN; EXPROPRIATION; COMMISSIONER'S REPORT; SCOPE OF COURT'S AUTHORITY OVER COMMISSIONER'S REPORT. — The law clearly states that the court, in acting upon the commissioner's report in an expropriation case, may accept it or set it aside, accept it in part or reject it in part, and make such order or judgment "as shall secure

to the plaintiff the property essential to the exercise of his right of condemnation and to the defendant just compensation for the property so taken." (Rule 69, Rules of Court) Such authority, according to the Supreme Court in Manila Railroad Co. vs. Velasquez, 32 Phil., 286, 290, is not limited to accepting or rejecting in full any of the constituent items of the report, but the court may validly increase or diminish any or all of such items. Other cases hold that this authority may be exercised though there is nothing to indicate prejudice or fraud on the part of the commissioners. *The Municipality of San Fernando, Province of Pampanga, plaintiff and appellant, vs. Jose Valencia, Jr., and Jesusa Quiambao, defendants and appellants, No.* 8575-*R, January* 28, 1954, *Diaz, Pres. J.*

ID.; ID.; ID.; ID.; CRITERIA FOR DETERMINING REASONABLE VALUE OF LAND EXPROPRIATED. — What ought to be reviewed by the court is not so much the act, or the appearance of it, of fixing the value by a seemingly arbitrary standard like "splitting the difference" between values variously fixed by the commissioners, as the evidence that supports or fails to support it. In other words, a court may simply split the difference without elaborating on its reasons for so doing, and yet the value thus fixed may be supported by the preponderance of the evidence. On the other hand, it may choose to fix any of the values variously recommended and still incur in error because the award is not based upon sufficient evidence or upon generally accepted criteria for measuring values. Fair or reasonable market value is defined as that which the property would bring where it is offered for sale by one who desires, but it not obliged to sell it, and is bought by one who is under no necessity of having it. It is well settled that the value of property taken by eminent domain should be fixed as of the date of the proceedings. *Ibid.*

EVIDENCE; WITNESS; TESTIMONY; HOW TO ACCERTAIN TRUE MEANING OF TESTIMONY OF WITNESS. — To ascertain the true meaning of the testimony given by a witness "everything stated by him as well on his cross-examination as on his examination in chief, must be considered. Facts imperfectly stated in answer to one question may be supplied by his answer to another; when from one statement considered by itself an inference may be deduced, that inference may be strengthened or repelled by the facts disclosed in another." "We must not select isolated parts of the testimony; its general hearing must be taken altogether." And where there are apparent inconsistencies in the testimony of a witness, they should be reconciled if possible, for perjury is not to be presumed. (3 Moran, Rules of Court, 601-602, 1952 ed.) *Cipriano P. Ramirez, plaintiff and appellant, vs. Manuel Cinco, defendant and appellee, No.* 9899-*R, February* 2, 1954, *Gutierrez David, J.*

CRIMINAL LAW; HOMICIDE; SELF-DEFENSE; REASONABLE NECESSITY OF THE MEANS EMPLOYED TO REPEL AGGRESSION. — In a situation like the one at bar, where the contestants are in the open and the person assaulted can exercise the option of running away, the general rule that such person is not generally justified in taking the life of one who assaults him with his fists only, without the use of a dangerous weapon must be upheld. *People vs. Florencio Nicolas y Flores, defendant and appellant, No.* 8826-*R, February* 5, 1954, *De Leon, J.*

CORPORATION LAW; DIRECTOR; COMPENSATION; DIRECTOR NOT ENTITLED TO COMPENSATION IN THE ABSENCE OF EXPRESS PROVISION OR CONTRACT. — It has been held that a director can not recover for his services as president or as secretary or as treasurer in the absence of express provision or contract for such compensation. *Camera Exchange, Inc., plaintiff and appellant, First National Surety and Assurance Co. Inc., Surety-plaintiff and appellant, vs. Jose W. Carameng, defendant and appellee, No.* 10093-*R, December* 9, 1953, *Reyes, J.B.L., J.*

ID.; ID.; ID.; ID.; KNOWLEDGE AND CONSENT OF MAJORITY OF DIRECTORS AND OF HOLDERS OF THE CAPITAL STOCK, IMMATERIAL. — The view that the knowledge and consent of the majority of the Directors and of the holders of the capital stock validated the payment of salaries of defendant and his wife despite their membership in the board of directors of the plaintiff corporation, is unsound both in law and in fact. In law, because it is held "that mere presumption of an agreement to pay arises from the mere rendition of the services, no matter how valuable they may be, and in the absence of express agreement, it is presumed that services rendered by an officer are performed gratuitously" and "the rule denying officers of corporation compensation is not varied by the fact that they own nearly all of the stock of the corporation" *Ibid.*

ID.; ID.; ID.; ESTOPPEL; ESTOPPEL PRESUPPOSES FULL KNOWLEDGE OF PERTINENT FACTS. — Since the stockholders of the corporation have not been duly informed of the action of defendant and his wife in collecting the questioned salaries and disbursments, and a stockholders' meeting was not held prior to defendants' renouncing his controlling position in the corporate organization, no estoppel applies, since estoppel presupposes full knowledge of all pertinent facts. *Ibid, Ibid.*

ID.; TRUST PROPERTY; OFFICERS AND DIRECTORS OF CORPORATION, THEIR FIDUCIARY RELATION IN RESPECT TO BUSINESS OR PROPERTY OF CORPORATION. — Officers and directors in control of a corporation occupy a fiduciary relation towards the corporation and its stockholders, in respect to the business or property. *Ibid, Ibid, Ibid.*

PARTITION; CONSENT; ERROR; TRANSLATION OF ARTICLE 1081, OLD CIVIL CODE ERRONEOUS. — Where there is conflict between the language of the original text of the Civil Code and of its official translation, the text of the original text should govern. This rule is applicable to Article 1081 of the old Civil Code, the official translation of which is erroneous. *Lucia Gorospe-Sebastian, plaintiff and appellee, vs. Salvador Salazar and Angeles Gorospe-Salazar, defendants and appellants, No.* 8008-*R, January* 26, 1954, *Natividad, J.*

ID.; ID.; ID.; ARTICLE 1081, OLD CIVIL CODE CONSTRUED. —Article 1081 of the old Civil Code contemplates a case of error in the status of the person of one of the contracting parties which amounts to error in the consent. Such error may arise from pure mistake or from misrepresentation or fraud. *Ibid.*

CONTRACTS; FAILURE OF CONTRACT TO FULFILL REQUIREMENTS OF ARTICLE 1081 OF THE OLD CIVIL CODE, EFFECT OF. — Contracts of partition which fail to fulfill the requirements of article 1081 of the old Civil Code may be given effect either as donations or quite claims if the intention of the parties to treat them as such is clearly deducible from the deeds and their attendant circumstances. *Ibid, Ibid.*

HUSBAND AND WIFE; OWNERSHIP OF PROPERTY ACQUIRED DURING MARRIAGE; PRESUMPTION IN FAVOR OF THE CONJUGAL PARTNERSHIP. — All acquisitions by onerous title during marriage are presumed to be for the conjugal partnership and at its expense (old Civil Code, article 1401 (1); new Civil Code, article 153 (1). Hence, although the instant *pacto de retro* sale was made to the wife alone, there being no clear and convincing proof that the consideration of the sale paid by both spouses was exclusive money of the wife, said purchase *a retro* vested ownership of the land in the conjugal partnership of the spouses. *Marcelo Patayon, plaintiff and appellee, vs. Anatalia Ortal et al., defendants. Martiniano Dagayday, defendant and appellant No.* 1972-*R, February* 5, 1954, *Reyes, J.B.L., J.*

ID.; ID.; ID.; HUSBAND'S RIGHT TO DISPOSE OF THE CONJUGAL PROPERTY. — The husband is the administrator of the conjugal partnership (Civil Code of 1889, article 1412; new Civil Code article 165.) Consequently, a sale by him of conjugal property, in the absence of fraud upon the wife, is valid (old Civil Code Article 1413). On the other hand, if the wife not

(*Continued on page* 579)

REPUBLIC ACTS

REPUBLIC ACT NO. 1052

AN ACT TO PROVIDE FOR THE MANNER OF TERMINATING EMPLOYMENT WITHOUT A DEFINITE PERIOD IN A COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL ESTABLISHMENT OR ENTERPRISE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.

The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment.

SEC. 2. Any contract or agreement contrary to the provisions of section one of this Act shall be null and void.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1954.

REPUBLIC ACT NO. 1053

AN ACT TO AMEND REPUBLIC ACT NUMBERED THREE HUNDRED AND EIGHTY-FIVE AUTHORIZING CERTAIN OFFICIALS OF THE GOVERNMENT OF THE UNITED STATES OR ANY AGENCY THEREOF TO ADMINISTER OATHS AND AFFIRMATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Republic Act Numbered Three hundred and eighty-five, which authorizes certain officials of the Government of the United States or any agency thereof to administer oaths and affirmations in the Philippines, is hereby amended to read as follows:

"SECTION 1. Any person employed in the Philippines by the Government of the United States, or any agency thereof, to whom authority is delegated by the said Government or agency, to administer oaths and affirmations, to aid claimants for benefits granted by the United States in the preparation and presentation of their claims, and to make investigations and examine witnesses, shall have authority to administer oaths and affirmations during his employment in the Philippines in any investigation or matter connected with the performance of his duties and functions: *Provided, however,* That for any oath or affirmation administered by him, no fee shall be charged or collected."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 12, 1954.

REPUBLIC ACT NO. 1057

AN ACT TO AMEND REPUBLIC ACT NUMBERED NINE HUNDRED AND TEN ENTITLED "AN ACT TO PROVIDE FOR THE RETIREMENT OF JUSTICES OF THE SUPREME COURT AND OF THE COURT OF APPEALS, FOR THE ENFORCEMENT OF THE PROVISIONS HEREOF BY THE GOVERNMENT SERVICE SYSTEM, AND TO REPEAL COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND THIRTY-SIX" AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Republic Act Numbered Nine hundred and ten is hereby amended by inserting between its sections two and three a new section which shall be known as section Two-A thereof, and which shall read as follows:

"SEC. 2-A. Any Justice of the Supreme Court or of the Court of Appeals who ceased to hold such position prior to the approval of this amendatory Act, to accept another position in the Government or who resigned or retired from said courts after the effectivity of Commonwealth Act Numbered Five hundred and thirty-six, entitled "An Act authorizing the retirement of Justices of the Supreme Court, and making appropriations for the payment of a retirement gratuity", without enjoying the benefits thereunder, shall be entitled to the benefits under the provisions of this Act: *Provided,* That at the time of his cessation in office or retirement as Justice of the Supreme Court or of the Court of Appeals, he possessed all the requirements prescribed by this Act: *And provided, further,* That the benefits authorized hereunder shall accrue only from the date of the approval of this amendatory Act.

SEC. 2. Republic Act Numbered Nine hundred and ten is hereby further amended by inserting between its sections three and four a new section to be known as section Three-A thereof, and which shall read as follows:

"SEC. 3-A. In case the salary of Justices of the Supreme Court or of the Court of Appeals is increased or decreased such increased or decreased salary shall, for the purposes of this Act, be deemed to be the salary which a Justice who ceased to be such to accept another position in the Government was receiving at the time of his cessation in office: *Provided,* That any benefits that have already accrued prior to such increase or decrease shall not be affected thereby."

SEC. 3. The sum necessary to carry out the purposes of this amendatory Act and Republic Act Numbered Nine hundred and ten, is hereby appropriated out of any funds in the National Treasury not otherwise appropriated.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 12, 1954.

DIGEST OF DECISIONS OF THE COURT OF APPEALS *(Continued)*

having the representation of the partnership, disposes of the conjugal property without her husband's consent (article 1416, old Civil Code), her act is void. *Ibid.*

ID.; ID.; ID.; ID.; NON-JUDICIAL SEPARATION OF SPOUSES, EFFECT UPON POWER OF HUSBAND OVER CONJUGAL PROPERTY. — The fact that spouses are separated without judicial sanction (Civil Code of 1899, article 1432), does not diminish the power of the husband over the conjugal property. *Ibid, Ibid.*

APPEAL; ASSIGNMENT OF ERRORS BY APPELLEE IN CIVIL CASE, WHO HAS NOT APPEALED, NOT COGNIZABLE. — In a civil case, unlike in an election case, the appellee, on appeal, could not assign errors, unless he appealed from the decision of the court *a quo.* Therefore, we cannot take cognizance of his assignment of errors much less his arguments in support thereof. *Marcelo Saltarn, plaintiff and appellee, vs. Pascual Manaoy and Venancia Obdula, defendants and appellants, vs. Nicasio Revistual Morandante el al., third party defendants, No.* 4498-*R, Feb.* 8, 1954; *Peña, J.*

CRIMINAL LAW; AMNESTY PROCLAMATION NO. 76; CRIMES AGAINST CHASTITY NOT COVERED BY AMNESTY. — Supplementing Amnesty Proclamation No. 76, intended for the leaders and members of the association known as Hukbalahap and Pambansang Kapatiran ng Magbubukid (PKM), the then Secretary of Justice issued Circular No. 27 on June 29, 1948, stating that petitioners under the proclamation should be those accused of the crimes of rebellion, sedition, illegal association, assault upon, resistance and disobedience to persons in authority and/or illegal possession of firearms, committed before June 21, 1948, or any other crime that may be shown to have been committed merely as an incident to or in furtherance of the commission of the crimes of rebellion, sedition, illegal associa-

(Continued on page 580)

TEXAS LAWYER TALKS ON JURY SYSTEM AT FRANCISCO COLLEGE

Atty. R. Richard Roberts
Member, Texas Bar, U.S.A.

"The system of trial by jury is not a perfect system."

Thus spoke R. Richard Roberts, a member of the Texas and the United States bars and a partner of one of the largest law firms in the United States, Vinsons, Elkins, Weems & Sears, at the symposium on "Trial System in Criminal Cases" held at the Francisco College, Friday, November 19. He was the guest speaker.

The American lawyer stressed that nowhere in the world today can there be found a system of trial that is perfect. He discoursed on the merit of the jury system adopted generally in the United States although such a system, according to him, is not without flaw, especially in the trial of civil cases.

Mr. Roberts disclosed that he has advocated for his native state of Texas the trial of civil cases by a judge with court commissioners or assessors in place of the jury system. He said that at present the jurors who are selected to judge civil cases are invariably those who have "blank minds" on the subject of the suit. Since the subjects of civil suits require in most cases expert knowledge, it would better serve the ends of justice to vest the judge with the power of decision and to appoint court commissioners or assessors to assist him with their expert knowledge, he explained.

Starting his speech, Mr. Roberts outlined the procedure in jury trial from the time the jurors are summoned, impanelled, examined, challenged and sworn in, up to the time they are given the Court's charge or instructions and convened to deliberate on the case and render their verdict. While there are various safeguards provided by the system against bias on the part of the jurors or undue influence exerted upon them by the parties, Mr. Roberts said that it has several loopholes.

Mr. Roberts pointed out some aspects in the practical application of the system of trial by jury which may result in miscarriages of justice. The procedure is such, he said, that a mere technicality may provide sufficient ground for a re-trial, thereby resulting in protracted litigations. To illustrate his point, he recounted some of his personal experiences. He recalled some cases in which re-trial was ordered due to the omission, though inadvertent, of some points in the Court's instructions to the jury. He also mentioned a case he handled wherein the whole jury was changed because the opposing counsel made some remarks in his statement to the jury which tended to anticipate questions on the weight and insufficiency of evidence.

Mr. Roberts has been in the active practice of law for the last nineteen years and is presently in the Philippines as Vice-President of the San Jose Oil Corporation which has recently been granted a concession by the Philippine government to explore 600,000 hectares of public lands for oil.

Mr. Roberts was introduced to the Francisco College faculty and students by Vice-Dean Proceso A. Sebastian of the College of Law. Mr. Sebastian was former Philippine Ambassador to Italy and later, to Indonesia.

The symposium, held under the auspices of the Francisco College Debating and Oratorical Club, was participated in by four speakers representing all the classes in the College of Law. Adjudged the best developed thesis was "Trial in Capital Offenses by a Collegiate Court" delivered by Abraham F. Briones, class '55. Mario Reyes, class '58, with his piece on "Trial by Jury" was declared the evening's best speaker. Ramon Belleza, class '57, was awarded first honorable mention for his thesis on "Trial by a Single Judge." The other speaker was Manuel M. Echanova, class '56, who proposed a system of "Trial by Single Judge with the Aid of Assessors," and to whom second honorable mention was awarded.

All faculty members of the College of Law composed the board of judges.

DIGEST OF DECISIONS OF THE COURT OF APPEALS

(*Continued from page* 579)

tion or assault upon, resistance and disobedience to persons in authority; it being understood, however, that crimes against chastity shall in no case be deemed covered by amnesty. *People of the Philippines, plaintiff and appellee, vs. Eligio Camo, Crispulo Camo and Jose D. Camo, defendants, Jose D. Camo, defendants and appellant, No.* 9558-*R, February* 11, 1954, *Peña, J.*

CRIMINAL LAW; EVIDENCE; POSSESSION AND USE OF FALSIFIED DOCUMENT; PRESUMPTION.—When a person has in his possession a falsified document and makes use of the same, presumption arises that such person is the forger. *People vs. Avelino Z. Dala, defendant and appellant, No.* 10638-*R, February* 20, 1954, *De Leon, J.*

ID.; ID.; PHOTOSTATIC COPIES, ADMISSIBILITY. — The lower court did not err in admitting the photostatic copies of the checks in question as evidence. The production of the orginal checks is not indispensable when it is not disputed that the offended parties did not sign the checks issued in their respective names; when the accused identified his own signatures appearing in the photostats; and there is evidence that the checks in question were correct photostatic copies of the originals. *Ibid.*

CRIMINAL LAW AND PROCEDURE; SPEEDY TRIAL. — The right to a speedy trial is a relative one. A speedy trial is one conducted according to the law of criminal procedure and the rules and regulations which include, among others, the granting of postponements of trial which while viewed with abhorence and granted sparingly by the courts can no less be excluded from our procedural system of dispensing justice than the dust from the air we breathe. *People vs. Florencia Borinaga, defendant and appellant, No.* 9771-*R, February* 27, 1954, *De Leon, J.*