RECENT DECISIONS OF THE SUPREME COURT REVIEWED

1. CONSTITUTIONAL LAW—SEGREGATION OF LEPERS—HABEAS CORPUS.—*Angel Lorenzo vs. The Director of Health*, G. R. No. 27484, September 1, 1927. *Facts:* This is a petition for a writ of *habeas corpus*. Petitioner alleged that he was a leper, that leprosy is not an infectious disease, and that his confinement in the San Lazaro Hospital in the city of Manila was in violation of his constitutional rights. The return of the writ stated that the leper was confined in the San Lazaro Hospital in conformity with the provisions of section 1058 of the Administrative Code. But to this was appended, for some unknown reason, the avernment that each and every fact of the petition not otherwise admitted by the return was denied. *Held:* The decision of the lower court denying the petition was affirmed. The following rulings were handed down:

(1) *Constitutional Law; Segregation of Lepers; Determination of Facts Involved in Constitutionality of Statutes.*—Section 1058 of the Administrative Code empowering the Director of Health and his authorized agents "to cause to be apprehended, and detained, isolated, or confined, all leprous persons in the Philippine Islands" was enacted by the legislative body in the legitimate exercise of the police power which extends to the preservation of the public health.

(2) *Id.; Id.; Id.*—In the case of a statute purporting to have been enacted in the interest of the public health, all questions relating to the determination of matters of fact are for the Legislature. If there is a probable basis for sustaining the conclusion reached, its findings are not subject to judicial review.

(3) *Id.; Id.; Id.*—Judicial notice will be taken of the fact that leprosy is commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease is supported by high scientific authority. The appellate court refuses to require the trial court to receive evidence to determine if leprosy is or is not a contagious disease.

(4) *Habeas Corpus; Procedure.*—When an application for the writ of *habeas corpus* is presented and allowed, the return of the writ provided by law is made. Unless the petitioner traversed the return, the only issue is whether the facts stated in the return as a matter of law authorized the restraint. (In Banc, per J. Malcolm.) Briefed by A. Sólidum.

2. THIEF DISTINGUISHED FROM ESTAFA—TAKING OF PAWN TICKETS.—*P. P. I. vs. Simeon Yusay*, G. R. No. 26957, September 2, 1927. *Facts:* Defendant was charged with the crime of theft in the lower court and was found guilty thereof. It appears that the offended party, Leonor Gil de Lazaro, was the owner of two sets of earrings, valued at P600.00, which she caused to be placed in pawn with C. N. Hodges for a loan of money in the amount of P50.00 and P30.00 on the two sets, respectively. While the earrings were thus held in custody by Hodges, as pledgee, the accused presented himself to be the owner and pledgor, procured the jewels to be surrendered to him upon payment of the amount due upon the pledges. Having thus gotten the jewels into his hands, the accused appropriated the same to his own use. It further appears that the accused, prior to presenting himself at the pawnshop,

had stolen the pawn tickets pertaining to these pledges from Leonor Gil de Lazaro, the true owner, and by this means was able to give the serial numbers of the pawn tickets, giving it to be understood that the pawn tickets had been accidentally torn and destroyed. The information filed charged the accused with the theft of the jewels aforesaid. *Held:* The defendant in taking possession of the pawn tickets with intent of gain and without the consent of the owner of the same but without employing force and intimidation, committed the crime of theft penalized by paragraph 1 of Art. 517 of the Penal Code; in securing the redemption of the jewels pledged to the prejudice of the pawn shop by falsely claiming to be the true owner and pledgor thereof, he committed the crime of estafa penalized by paragraph 1 of Art. 535 of the Penal Code; and in availing himself of the numbers of the pawn tickets stolen by him with which to identify the jewels without presenting the pawn tickets to the pawn shop, he made the theft a necessary means to commit the crime of estafa. There being a discrepancy between the facts alleged in the information and those proved during the trial of the case, the decision of the court below was revoked. The Provincial Fiscal was ordered to file another information in conformity with the facts proved during the trial of the case. (In Banc, per J. Villa-Real; Justices Street and Villamor dissented.) *Briefed by A. Sólidum.*

3. PARTITION—TORRENS TITLE AS DEFENSE.—*Potenciana Naval et als., vs. Asuncion Ventura et al.*, G. R. No. 27057, September 2, 1927. *Facts:* Plaintiffs filed a complaint requesting the immediate partition of the property described therein, the immediate submission of the statement of account of the administration of said property by Jose Serrano and Asuncion Ventura, and the payment to the plaintiffs of the sum of ₱5,000 as damages. One of the defenses set up by the defendants was that the court did not have jurisdiction over the real property in question for having been registered in the name of Potenciana Naval and Asuncion Ventura and Jose Serrano. *Held:* "The question now is whether the court has jurisdiction over those parcels of land already registered and whether those already registered can be subject of proceedings looking towards their partition between the heirs. We answer in the affirmative. The prime reason for this statement is that Jose Serrano was in the nature of a trustee for the estate. Whatever he did, therefore, was not for his own benefit or the benefit of his wife but was for the estate. The case of Severino vs. Severino (1923) 44 Phil. 343 is in point." (J. Malcolm)—*Briefed by A. Sólidum.*

4. PUBLIC WATERS—ARTIFICIAL ESTERO. — *The Government of the P. I. vs. Urbano Santos*, G. R. No. 27202, September 2, 1927. *Facts:* This action was instituted in the Court of First Instance of Pampanga by the plaintiff for the purpose of obtaining a judicial declaration that the *estero* Caladiao in the municipality of Sexmoan, Pampanga, is a navigable stream of public use and ownership; to recover possession of a part of said stream from the defendant; and to compel him to open the stream to the public, and to remove the dikes and dams which he has built in said river, with the consequence of obstructing the public in the free use thereof. It appears that many years ago Ciriaco Roncal was the owner of a large part of a neck of land about 300 meters wide between the Malabug river and the Suluc Mabuanbuan river in Sexmoan, Pam-

panga, which was covered with mangrove swamp. All of this property is relatively low and in the most depressed portion subject to the rise and fall of the tide. In order to get out the *bakawan* wood for fuel purposes and the produce of some nipa palms on the land, Roncal cleared away the superficial growth in the lowest part of the depression and made a ditch about one meter deep so as to form a more ready and complete exit for the water collected in the depression. This step seems to have helped along the processes of nature, and the Caladiao *estero* was thus formed. Many years ago the property on either side of the *estero*, in the part with which this case is concerned, was acquired by the defendant Urbano Santos who began to prepare the ground for a fish pond. To this end he surrounded the land by a dike; and, in order to control the waters that would have entered or flowed out in either direction through the *estero*, he built head-gates in the two places where the dike crosses the stream. By this means he inclosed so much of the bed of the *estero* as was within his premises, thereby effectually preventing the use of said stream by the public in passing from the Malabug river to the Mabuanbuan river, or the reverse direction. Furthermore, a few years ago the defendant caused the land comprising his fish pond, and including the part of the *estero* which he had inclosed, to be registered and secured Torrens title thereto without any reservation to the public of the bed of the new stream. The Lower Court dismissed the case. *Held:* Affirmed on the facts. "It is very clear from the evidence that the *estero* Caladiao is a purely artificial result of the efforts of the present and former owners to make an easier exit from their land to neighbering rivers; and although in its present state the stream will float good-sized bancas and has a depth of two meters or more, yet it is obvious that it cannot be designated with any propriety as a public stream. This probably accounts for the fact that no effort was made by the local or provincial authorities to get any reservation made with respect to this stream at the time when the title to the land was registered." (J. Street) *Briefed by A. Sólidum.*

5. RECOVERY OF PROPERTY—PRESCRIPTION.—*Fausto Montero etc. vs. Claro Luistro and Aurelia de la Cruz*, G. R. No. 26985, September 3, 1927. *Facts:* On October 5, 1878, one Marcelino de la Cruz died leaving as heirs his widow, Pilar Ramirez, and two children. At the time of his death, the deceased was in possession of certain real property on which a house was located. After his death, the widow assumed exclusive management of the property until she transferred it in January, 1922, to her daughter, Aurelia de la Cruz, married to Claro Luistro. In September of the same year, a special administrator of the property of the deceased Marcelino de la Cruz was appointed, who thereupon began action to recover possession of the property in question with damages. It further appears that forty-five years passed from the death of Marcelino de la Cruz before this action was begun. During this period of time, the widow was universally accepted as the owner of the property until of her own free will she transferred it to a favorite daughter. She secured a possessory information in her own name from the Spanish government. She paid the taxes. She managed the property. The Lower Court decided in favor of the defendants. *Held:* Affirmed. This is not a "case of one in the nature of a trustee or the case of minor heirs who are being defrauded, but it is the case of an old woman whose control of the property has never been challenged and whose dominion over the prop-

erty has ripened into title by the passage of many years." (J. Malcolm) *Briefed by A. Sólidum.*

6. PROCEDURE FOR DECLARATION OF HEIRSHIP.—*In the Matter of the Estate of the deceased Pascual Canilao Guintu*, G. R. No. 27078, September 3, 1927. *Facts:* The deceased left a will in which he instituted as heirs his widow and two brothers. The will was admitted to probate on November 14, 1921. On September 10, 1926, the father of the deceased asked the court to declare him as one of the heirs of the deceased, the latter not having left any descendant. The administrator of the estate opposed this petition and contended that inasmuch as the order admitting the said will to probate already final and irrevocable, the court lacked jurisdiction to amend the same. This petition was granted by the Lower Court. On appeal, the question presented was whether the omitted heir should present his petition to declare him as heir in the probate proceeding or whether he should institute a separate ordinary action for the same purpose. *Held:* While the properties of the estate are under administration in a Court of First Instance in pursuance with a probate proceeding, an ordinary action cannot be instituted either in said court or in any other court by any person claiming to be an heir to said estate, against the executor or other persons who likewise claim to be heirs, with the purpose of determining the rights of the plaintiff to the estate. The object of the hearing mentioned in art. 753 of the Code of Civil Procedure is precisely to settle and determine such questions and until the same are settled and determined during such hearing in accordance with the said article, any ordinary action for the same object will not prosper. (Pimentel vs. Palanca, 5 Jur. Fil., 457.) Hence, the petition for heirship must necessarily be brought in the probate proceeding itself. (J. Villamor). *Briefed by A. Sólidum.*

7. INSOLVENCY—DEPOSITS NOT CONSIDERED PREFERRED UNDER THE LAW.—*Involuntary Insolvency of Guan Jo Co., Inc.; Schnurmacher (claimant) vs. Palanca (assignee)*, R. G. No. 27705, September 6, 1927. *Facts:* On May 7, 1923, Leo Schnurmacher placed the sum of ₱5,000 with the firm Guan Jo Co., Inc. of Manila in the character of a deposit, for which a receipt was issued to him. The firm is now insolvent and there remains in the hands of the assignee ₱467.65. Schnurmacher claims that the return of his deposit is a preferential claim superior to other claims including the claim of the assignee for expenses of the insolvency proceeding. The lower court issued an order declaring the claim of Schnurmacher preferential and denied the claim of the assignee. *Held:* The order of the lower court is reversed. "If the money deposited by Schnurmacher with the insolvent firm had been kept intact for return in specie and had been found in the hands of the insolvent subject to the demand of the creditor, said money would of course have been properly returnable to the claimant under subsection 3 of section 48 of the Insolvency Law (Act 1956). But such is not the case. It is evident that the money, though deposited, was placed in the hands of the insolvent Guan Jo Co., Inc., without any expectation that it should be kept segregated. On the contrary, Guan Jo Co., Inc. used the money. A deposit of this kind, like a bank deposit, creates a mere debt, to which no preference attaches under the Insolvency Law or any other law. On the other hand, the legal expenses incurred in the administration of the in-

solvent estate are expressly made a preferential charge under section 50 of the Insolvency Law." (2nd division, Street, J.) *Briefed by E. Arévalo.*

8. TAX EXEMPTION—INCOME OF CHURCH PROPERTY.—*The Roman Catholic Bishop of Nueva Segovia vs. The collector of Internal Revenue*, G. R. No. 27234, September 7, 1927. *Facts:* It appears that the plaintiff is a corporation sole incorporated under secs. 154 to 164 of Act No. 1459 and is operated for religious, charitable and educational purposes. For carrying the purposes for which it was created, the plaintiff maintains churches, schools, charitable institutions, etc. It also owns real estates and buildings, shares of stocks and money loaned at interest, from which it derives revenue which constitute the bulk of its income, for carrying on its religious, charitable and educational work. The Collector of Internal Revenue levied and collected the sum of ₱1,319.54 as income tax on the net income of the plaintiff in 1920 from sources mentioned above. The plaintiff paid said tax under protest and brought this action to recover the same. The lower court held that the tax was legally levied and collected, in view of the proviso incorporated in section 11 (a), par. 6 of the Income Tax Law, Act 2833. *Held:* That the proviso incorporated in par. 6, sec. 11 (a) of the Income Tax Law, which reads, "Provided, however, That the income of whatever kind and character from any of its properties, real or personal, except income expressly exempted by this law, shall be liable to the tax imposed under this rhapter" did not have the effect of taking the income on which the tax under consideration is levied out of the operation of the exemption contained in the law. Paragraph 6 of sec. 11 (a) of Act 2833 would be rendered meaningless if it be held that the income of the corporation sole is not excepted from taxation. From the facts stipulated it is certain that the income from plaintiff's properties is expressly exempted by law and that no part of the net income inures to the benefit of any private stockholder or individual. Judgment reversed. (In Banc, per Malcolm, J.) *Briefed by E. Arévalo.*

12. PLEADING—INFORMATION FOR ABDUCTION AS BASIS OF CONVICTION FOR ILLEGAL DETENTION.—*P. P. I. vs. Hipolito Undiana et al.*, R. G. Nos. 26853, 26854, 26855, September 10, 1927. *Facts:* Pedro Cabunut, with his six co-accused, went to the house of Maria Aragones, his former sweetheart, and asked the parents of Maria for some food to eat. While Maria was cooking rice, the defendants attacked her parents and afterwards dragged her from the house to the fields. On the road, the defendants were met by Benigno de la Cruz who on trying to help Maria, was attacked and wounded by Gregorio Garcia and Hipolito Undiana. The defendants continued dragging Maria, until they reached a place about 40 meters from the house where Pedro Lasam appeared and succeeded in freeing Maria from the defendants. Three informations were presented: two for the crime of frustrated forcible abduction; and a third for injuries. In the two causes for frustrated abduction, lewd designs not having been proved, the lower court found the accused guilty of the crime of illegal detention and imposed the penalty corresponding to the consumated crime of illegal detention. In the case for injuries the accused were found guilty and were convicted. *Held:* Under an information for the crime of forcible abduction under art. 445 of the Penal Code, a judgment may be rendered for the crime of illegal detention when lewd designs has not been proved. Paragraph 3 of art. 481

cannot be applied to the instant case because it was proved that the defendants did not voluntarily set the girl free. An information for frustrated abduction cannot involve a charge for a consumated crime of illegal detention. Judgment modified as to the defendants who were found guilty of the crime of illegal detention by imposing upon them the penalty corresponding to the crime of frustrated illegal detention; judgment affirmed as to the defendants found guilty of the crime of physical injuries. (In Banc, per Avanceña, C. J.) *Briefed by E. Arévalo.*

13. INSOLVENCY — PREFERRED CREDITORS — PARTICIPATION IN ELECTING THE ASSIGNEE.—*Voluntary Insolvency of "Central Capiz"; Timoteo Unson et al. (claimant) vs. Smith, Bell & Co. et al., (Creditors)*, G. R. No. 27178, September 10, 1927. *Facts:* Three damage suits were instituted by Unson and wife, Jose Altavas and Antonio Belo against the Capiz Central in the Court of First Instance of Capiz. Each of the plaintiffs obtained an attachment against the property of said Capiz Central. While these damage suits were pending, the present insolvency proceeding was instituted in the Court of First Instance of Iloilo against the Capiz Central. The respective plaintiffs in the damage suits and the assignee in insolvency entered into a compromise, by the terms of which, the respective claims of the plaintiffs were recognized as just. The compromise agreements were approved by the Capiz court and later by the Iloilo court which declared that the three credits adjudged were entitled, successively, to preference over claims of unpreferred creditors. The creditors, Smith Bell & Co. et al., appealed from this decision of the lower court and contend that the compromise agreement was not valid; that the attachments in the damage suits was not regularly made; and that the claimants Altavas and Belo waived their attachment liens by virtue of their taking part in the election of the assignee. *Held:* Under the provision of sec. 33 of Act No. 1956 authorizing the assignee to defend actions pending against the insolvent at the time of the adjudication in the same manner and with like effect as it might have been defended by the insolvent, the assignee has the power to make compromise agreement; and his action will be binding in the absence of collusion or breach of trust. The attachments in question had been regularly issued. An attachment regularly issued and not dissolved by a subsequent adjudication of insolvency creates a provisional lien in favor of the attaching creditor which will entitle him to preference in the distribution of the assets of the insolvent unless it be shown that the writ was obtained upon false allegation of facts. The participation of a creditor who has a valid attachment against an insolvent, in the election of the assignee contrary to the provision of sec. 29 of Act 1956, does not result in depriving him of his lien. The law does not so declare. Decision affirmed. (In Banc, Street, J.) *Briefed by E. Arévalo.*

14. REGISTRATION OF ORDER OF ATTACHMENT—DUTY OF REGISTER OF DEEDS.—*Chua Pua Hermanos vs. Register of Deeds of Batangas*, G. R. No. 27449, September 10, 1927. *Facts:* In an action for recovery of a sum of money commenced in the Court of First Instance of Batangas by Chua Pua Hermanos against Jose Katigbak, the plaintiff obtained an attachment against the property of the defendant consisting of house and lot. On August 13, 1926, execution was issued upon a judgment in favor of the plaintiff and levied upon property attached. On

September 4, 1926, said property was sold at public auction to the plaintiff for which a sheriff's deed was issued to him. The Register of Deeds of Batangas refused to record this sheriff's deed on the ground that a similar sheriff's deed in favor of Samuel Murray has already been registered. It appears in this connection that Murray, after the attachment in the first ease has been levied, commenced an action in the Court of First Instance of Manila against Jose Katigbak for a sum of money; and in due time Murray obtained judgment upon which execution was issued and levied upon the same property attached in the first case. On August 21, 1926 said property was sold at public auction to Murray for which a sheriff's deed was issued to him and the deed was duly recorded by the Register of Deeds of Batangas. *Held:* No lien was acquired by Chua Pua Hermanos by virtue of the attachment obtained against the property of Katigbak for the reason that such attachment was invalid inasmuch as no copy of the order of the attachment was filed with the register of deeds are required by sec. 429 of the Code of Civil Procedure. The fact that a sheriff's certificate of sale in favor of Murray has already been registered is no obstacle to the recording of a similar sheriff's certificate of sale issued in favor of Chua Pua Hermanos. The register of deeds does not exercise a quasi-judicial power in determining the rights of persons under sheriff's deeds or certificates of sale. "His duty with respect to the notation or recording of these instruments, so far as relates to unregistered property, is ministerial only. The noting of these instrument of record adds nothing to their intrinsic effect, such step being devised only as a means of notification of the claimant's right to the public in accordance with the American system of registration." The order of the lower court sustaining the action of the Register of Deeds of Batangas is reversed and the respondent register of deeds is directed to record appellant's certificate of sale upon tender by the appellant of the proper fee. (In Banc, per Street, J.) *Briefed by E. Arévalo.*

9. ELECTIONS—BALLOTS CAST FOR ONE NOT A CANDIDATE.—*Proceso Echarri v. Feliciano Gomez*, G. R. No. 26672, September 9, 1927. As a result of the general elections of June 2, 1925, Feliciano Gomez was returned Provincial Governor elect of the Province of Laguna, with a majority of 21 votes in his favor and against Proceso Echarri, the other candidate for the same position. Echarri having filed a protest with the court against the result of the election, the court appointed ten Commissioners for the revision of the ballots and the recounting of the votes. The protestant later amended his protest by specifying the irregularities found by the commissioners to have been committed. The lower court in its decision found that Gomez received a majority of 232 votes over Echarri, who appealed from the decision to the Supreme Court. The respondent Gomez altho he did not appeal from the decision of the trial court, also make a specification of errors alleged to have been committed by the court below. *Held*: Rules for the appreciation of ballots established by the Supreme Court in the cases of Cailles v. Gomez and Barbosa, 42 Phil. 522; Lucero v. de Guzman, 45 Phil. 901, and Mandac v. Samonte, 25 Off. Gaz. 2257 (Spanish-Reporter), followed. "To the rules already established in the decisions of this Court, we shall only add that when instead of writing the complete Christian name of a candidate, a diminutive or an augmentative is used, a contraction or abbreviation of said name in spanish, or in any local dialect, the ballot is not nullified solely on account of said cir-

cumstance, if from the reading of the name and surname of the candidate it can clearly be inferred that it was the intention of the elector to vote for such candidate. In the determination of the validity of a ballot in which a candidate has been voted for two or more different offices, we have not followed the doctrine laid down in the case of Valenzuela v. Carlos and Lopez de Jesus, 42 Phil. 452, which declares valid such a ballot, for the reason that the decision in the case was rendered in conformity with the provision of Article 452 of the Administrative Code, as amended, and before Article 19 of Act No. 3210 became in force, which declares null a ballot in which it appears that a person is voted for an office for which he is not a candidate. We have applied the provision of this new law and we have declared null the ballots in which are voted for two different positions persons who are candidates for only one of them, for the reason that as regards the other position it is considered that such person was voted without being a candidate therefor, which nullifies the ballot. (Mandac v. Samonte, 25 Off. Gaz. 2257 (Spa.) In the absence of conclusive proof, the presumption is that the counting of the ballots had been made in accordance with law, and that the *acta* of the result of the votation and of the acts of the board of inspectors reflects the truth and should prevail. (Mandac v. Samonte, 25 Ga. Of. 2257 (Spa.)—Judgment affirmed, but it is ordered that the respondent-appellee be given a majority of 427 votes.—(In Banc, per Villa-Real, J.)—*Briefed by J. S. Nava.*

EVIDENCE—TESTIMONY ON FACT OCCURRING BEFORE DEATH.—*The Estate of Marcelino Tongco*, represented by Josefa Tongco, Administratrix v. *Anastacia Vianzon*, R.G. No. 27498, Sept. 20, 1927. *Facts:* Marcelino Tongco, husband of defendant Vianzon, shortly before his death, "presented claims in a cadastral case in which he had asked for titles to certain properties in the name of the conjugal partnership consisting of himself and his wife. The corresponding decrees for these lots were issued in the name of the conjugal partnership not long after his death." On April 28, 1926, within the one-year period provided by the Land Registration Law, the widow Vianzon "presented a motion for a revision of certain decrees. Issue was joined by the Administratrix of the estate." The lower court ordered that new decrees and certificates of title be issued for the three lots in question as the exclusive property of Anastacia Vianzon. A motion for a new trial was denied. On July 19, 1926, the administratrix brought an action against Anastacia Vianzon "for the recovery of specified property and for damages. The issue was practically the same as in the cadastral case. The lower court rendered judgment for the defendant. A motion for new trial was denied. On agreement of the parties these two cases were heard together on appeal by the Administratrix. *Held*: "Counsel for the appellant, however, asserts that if the testimony of the widow be discarded, as it should be, then the presumption of the Civil Code, fortified by the unassailable character of Torrens Titles, arises, which means that the entire fabric of appellee's case is punctured. Counsel relies on that portion of section 383 of the Code of Civil Procedure as provides that "Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, *against* an executor or administrator or other representative of a deceased person, * * * upon a claim or demand *against* the estate of such deceased persons * * * cannot testify as to any matter of fact occurring before the death of such deceased person * * * ." Counsel is eminently correct in emphasizing that the object and purpose of this statute is to guard against the temptation to give false testimony in regard to the transaction in question on the part of the sur-

viving party. He has, however, neglected the equally important rule that the law was designed to aid in arriving at the truth and was not designed to suppress the truth. The law twice makes use of the word "against." The actions were not brought "against" the administratrix of the estate, nor were they brought upon claims "against" the estate. In the first case (The property case, because on appeal the order of these cases was inverted—Reporter) at bar, the action is one by the administratrix to enforce a demand "by" the estate. In the second case at bar (the cadastral case—Reporter), the same analogy holds true for the claim was presented in cadastral proceedings where in one sense there is no plaintiff and there is no defendant. (Director of Lands v. Roman Archbishop of Manila, (1920) 41 Phil. 120—nature of cadastral proceedings; Fortis v. Gutierrez Hermanos (1906) 6 Phil. 100—in point by analogy; Maxilom v. Tabotabo (1907) 9 Phil. 390 and Kiel v. Estate of P. S. Sabert, (1924) 46 Phil. 193—both clearly distinguishable as can be noted by looking at page 197 of the last cited case; Sedgwick v. Sedgwick (1877) 52 Cal. 336, 337; Myers v. Reinstein, (1885) 67 Cal. 89; McGregor v. Donelly (1885) 67 Cal. 149, 152; Booth v. Pendola (1891) 88 Cal. 36; Bernardis v. Allen (1902) 136 Cal. 7; Calmon v. Sarraille (1904) 143 Cal. 292, 296; Whitney v. Fox (1897) 166 U. S. 637, 638.) Moreover, a waiver was accomplished when the adverse party undertook to cross-examine the interested person with respect to the prohibited matters. (4 Jones on Evidence, pp. 767 *et seq.*; Stair v. McNulty (1916) 133 Minn. 136, Am. Cas. 1918D 201). We are of the opinion that the witness was competent."—Judgment affirmed.—(In Banc, per Malcolm, J.)—*Briefed by J. S. Nava.*

10. ELECTIONS—INELIGIBILITY OF CANDIDATES.—*Rufo San Juan v. Perfecto Abordo*, R. G. No. 28320, Sept. 20, 1927. Abordo was returned Provincial Governor elect by the provincial board of Palawan, acting as board of canvassers, in the general elections held on June 2, 1925. San Juan filed his protest with the lower court and Abordo likewise filed a counterprotest. During the pendency of the court proceedings, San Juan presented another protest before the Executive Bureau against the person who was then occupying the office of provincial governor, on the ground of lack of residence in the province at the time of his election. This protest before the Executive Bureau culminated in a proclamation No. 48, series of 1926, of the Governor General, declaring that Abordo had not the required residence in Palawan at the time of his election as provincial governor, and declaring further that said office vacant. The lower court in its decision of January 25, 1927, declared that Rufo San Juan obtained 1340 votes, and Abordo 1067 votes which were declared null by the court by reason of Abordo's ineligibility to the office of provincial governor of Palawan. Abordo appealed from this decision to the Supreme Court. The appellee, however, presented a motion on September 8, 1927, asking for the dismissal of the appeal on the ground, among others, that Abordo was declared ineligible to the office in question by virtue of the proclamation No. 48, series of 1926, of the Governor General. Issue: Whether or not the appellant, who was declared to be ineligible for the office in question, under article 408 of the Election Law, can prosecute his appeal before the Supreme Court. *Held*: "If the appellant desires to obtain the logical result of his appeal, that is, that after the examination of the ballots he be declared with more votes than his rival; in the hypothesis that this were feasible, such a result would be entirely ineffectual and illusory, for, having been declared ineligible to occupy the disputed office, the sentence,

which in that case might be rendered in his favor, could not possibly be executed. The same difficulty will occur in case it were possible to declare as a draw the election between the parties herein. If, on the other hand, the appellant wants to raise in this appeal the question of ineligibility of the appellee, such a pretension could not prosper, for the reason that the Tribunals authorized to take cognizance of electoral protests, have no jurisdiction over the eligibility of a candidate elected to fill an office. (Topacio v. Paredes, 23 Phil. 240 (Spanish-Reporter). The determination of questoins of eligibility for elective provincial positions has been vested by Law upon the Executive Power."—Appeal dismissed.—(In Banc, per Villamor, J.)—*Briefed by J. S. Nava.*