RECENT DECISIONS

Decision Reported in Full

UNITED STATES SUPREME COURT

MINERSVILLE SCHOOL DIST., et al.

versus

GOBITIS, et al., No. 690.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

A grave responsibility confronts this Court whenever in course of litigation it must reconcile the conflicting claims of liberty and authority. But when the liberty invoked is liberty of conscience, and the authority is authority to safeguard the nation's fellowship, judicial conscience is put to its severest test. Of such a nature is the present controversy.

Lillian Gobitis, aged twelve, and her brother William, aged ten, were expelled from the public schools of Minersville, Pennsylvania, for refusing to salute the national flag as part of a daily school exercise. The local Board of Education required both teachers and pupils to participate in this ceremony. The ceremony is a familiar one. The right hand is placed on the breast and the following pledge recited in unison: "I pledge allegiance to my flag, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all." While the words are spoken, teachers and pupils extend their right hands in salute to the flag. The Gobitis family are affiliated with "Jehovah's Witnesses", for for whom the Bible as the Word of God is the supreme authority. The children had been brought up conscientiously to believe that such a gesture of respect for the flag was forbidden by command of scripture.

The Gobitis children were of an age for which Pennsylvania makes school attendance compulsory. Thus they were denied a free education and their parents had to put them into private schools. To be relieved of the financial burden thereby entailed, their father, on behalf of the children and in his own behalf, brought this suit. He sought to enjoin the authorities from continuing to exact participation in the flag-salute ceremony as a condition of his children's attendance at the Minnersville school. After trial of the issues, Judge Maris gave relief in the district Court on the basis of a thoughtful opinion, 24 F. Supp. 271; his decree was affirmed by the Circuit Court Appeals, 3 Cir. 108 F. 2d 683. Since this decision ran counter to several per curiam dispositions of this Court, we granted certiorari to give the matter full reconsideration. 309 U.S.—,60 S. Ct. 609, 84 L. Ed.—. By their able submissions, the Committee on the Bill of Rights of the American Bar Association and the American Civil Liberties Union, as friends of the Court, have helped us to our conclusion.

We must decide whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious

grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment.

Centuries of strife over the erection of particular dogmas as exclusive or all-comprehending faiths led to the inclusion of a guarantee for religious freedom in the Bill of Rights. The First Amendment, and the Fourteenth through its absorption of the First, sought to guard against repetition of those bitter religious struggles by prohibiting the establishment of a state religion and by securing to every sect the free exercise of its faith. So persuasive is the acceptance of this precious right that its scope is brought into question, as here, only when the conscience of individuals collides with the felt necessities of society.

Certainly the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief. Propagation of belief—or even of disbelief in the supernatural —is protected, whether in church or chapel, mosque or synagogue, tabernacle or meetinghouse. Likewise the Constitution assures generous immunity to the individual from imposition of penalties for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in government. (Cantwell vs. Connecticut, 309 S. Ct. 900, 84 L.Ed., decided this Term, May 20, 1940.)

But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellowmen. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good? To state the problem is to recall the truth that no single principle can answer all of life's complexities. The right to freedom of religious belief, however dissident and however obnoxious to the cherished beliefs of others—even of a majority—is itself the denial of an absolute. But to affirm that the freedom to follow conscience has itself no limits in the life of a society would deny that very plurality of principles which, as a matter of history, underlies protection of religious toleration. Compare Mr. Justice Holmes in Hudson County Water Co. vs. McCarter, 209 U.S. 349, 355, 28 S. Ct. 529, 531, 52 L.Ed. 828, 4 Ann. Cas. 560. Our present task then, as so often the case with courts, is to reconcile two rights in order to prevent either from destroying the other. But, because in safeguarding conscience we are dealing with interests so subtle and so dear, every possible leeway should be given to the claims of religious faith.

In the judicial enforcement of religious freedom we are concerned with a historic concept. See Mr. Justice Cardozo in Hamilton vs. Regents, 293 U. S. 245, at page 265, 55 S.Ct. 197, at page 205, 79 L.Ed. 343. The religious liberty which the Constitution protects has never excluded legislation of general scope not directed against doctrinal loyalties of particular sects. Judicial nullification of legislation cannot be justified by attributing to the framers of the Bill of Rights views for which there is no historic warrant. Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen

from the discharge of political responsibilities. The necessity for this adjustment has again and again been recognized. In a number of situations the exertion of political authority has been sustained, while basic considerations of religious freedom have been left inviolate. Reynolds vs. United States, 98 U. S. 145, 25 L.Ed. 244; Davis vs. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637; Selective Draft Law Cases, 245 U. S. 366, 38 S.Ct. 159, 62 L.Ed. 349, L.R.A. 1918C, 361, Ann. Cas. 1818B, 856; Hamilton vs. Regents, 293 U. S. 245, 55 S. Ct. 197, 79 L.Ed. 343. In all these cases the general laws in question, upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable. Nor does the freedom of speech assured by Due Process move in a more absolute circle of immunity than that enjoyed by religious freedom. Even if it were assumed that freedom of speech goes beyond the historic concept of full opportunity to utter and to disseminate views, however heretical or offensive to dominant opinion, and includes freedom from conveying what may be deemed an implied but rejected affirmation, the question remains whether school children, like the Gobitis children, must be excused from conduct required of all the other children, in the promotion of national cohesion. We are dealing with an interest inferior to none in the hierarchy of legal values. National unity is the basis of national security. To deny the legislature the right to select appropriate means for its attainment presents a totally different order of problem from that of the propriety of subordinating the possible ugliness of littered streets to the free expression of opinion through distribution of handbills. Compare Schneider vs. State of New Jersey, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed.—.

Situations like the present are phases of the profoundest problem confronting a democracy—the problem which Lincoln cast in memorable dilemma: "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?" No mere textual reading or logical talisman can solve the dilemma. And when the issue demands judicial determination, it is not the personal notion of judges of what wise adjustment requires which must prevail.

Unlike the instances we have cited, the case before us is not concerned with an exertion of legislative power for the promotion of some specific need or interest of secular society—the protection of the family, the promotion of health, the common defense, the raising of public revenues to defray the cost of government. But all these specific activities of government presuppose the existence of an organized political society. The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. "We live by symbols." The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution. This Court has had occasion to say that '* * * the flag is the symbol of the nation's power,—the emblem of freedom in its truest, best sense. * * * it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak

against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression." Halter vs. Nebraska, 205 U. S. 34, 43, 27 S.Ct. 419, 422, 51 L.Ed. 696, 10 Ann. Cas. 525. And see United States vs. Gettysburg Elec. R. Co., 160 U.S. 668, 16 S.Ct. 427, 40 L.Ed. 576.

The case before us must be viewed as though the legislature of Pennsylvania had itself formally directed the flag-salute for the children of Minersville; had made no exemption for children whose parents were possessed of conscientious scruples like these of the Gobitis family; and had indicated its belief in the desirable ends to be secured by having its public school children share a common experience at these periods of development when their minds are supposedly receptive to its assimilation by an exercise appropriate in time and place and setting, and one designed to evoke in them appreciation of the nation's hopes and dreams, its sufferings and sacrifices. The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. To stigmatize legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of the common school as a lawless inroad on that freedom of conscience which the Constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence. The influences which help toward a common feeling for the common country are manifold. Some may seem harsh and others no doubt are foolish. Surely, however, the end is legitimate. And the effective means for its attainment are still so uncertain and so un-authenticated by science as to preclude us from putting the widely prevalent belief in flagsaluting beyond the pale of legislative power. It mocks reason and denies our whole history to find in the allowance of a requirement to salute our flag on fitting occasions the seeds of sanction for obeisance to a leader.

The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process is not for our independent judgment. Even were we convinced of the folly of such a measure, such belief would be no proof of its unconstitutionality. For ourselves, we might be tempted to say that the deepest patriotism is best engendered by giving unfettered scope to the most crochety beliefs. Perhaps it is best, even from the standpoint of those interests which ordinances like the one under review seek to promote, to give to the least popular sect leave from conformities like those here in issue. But the court-room is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncracies among a people so diversified in racial origins and religious allegiances. So to hold would in effect make us the school board for the country. That authority has not been given to this court, nor should we assume it.

We are dealing with the formative period in the development of citizenship. Great diversity of psychological and ethical opinion exists among us concerning the best

way to train children for their place in society. Because of these differences and because of reluctance to permit a single, iron-cast system of education to be imposed upon a nation compounded of so many strains, we have held that, even though public education is one of our most cherished democratic institutions, the Bill of Rights bars a state from compelling all children to attend the public schools. Pierce vs. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468. But it is a very different thing for this Court to exercise censorship over the conviction of legislatures that a particular program or exercise will best promote in the minds of children who attend the common schools an attachment to the institutions of their country.

What the school authorities are really asserting is the right to awaken in the child's mind considerations as to the significance of the flag contrary to those implanted by the parent. In such an attempt the state is normally at a disadvantage in competing with the parent's authority, so long—and this is the vital aspect of religious toleration—as parents are unmolested in their right to counteract by their own persuasiveness the wisdom and rightness of those loyalties which the state's educational system is seeking to promote. Except where the transgression of constitutional liberty is too plain for argument, personal freedom is best maintained—so long as the remedial channels of the democratic process remain open and unobstructed—when it is ingrained in a people's habits and not enforced against popular policy by the coercion of adjudicated law. That the flag-salute is an allowable portion of a school program for those who do not invoke conscientious scruples is surely not debatable. But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise.

The preciousness of the family relation, the authority and independence which give dignity to parenthood, indeed the enjoyment of all freedom, presuppose the kind of ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties. That is to say, the process may be utilized so long as men's right to believe as they please, to win others to their way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith, are all fully respected.

Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to courts is committed the guardianship of deeply-cherished liberties. See Missouri, K. & T. R. Co. of Texas vs. May, 194 U. S. 267, 270, 24 S.Ct. 638, 639, 48 L.Ed. 971. Where all the effective means of inducing political changes are left free from interference, education in the abandonment of foolish legislation is itself a training liberty. To fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather than to transfer such a contest to the judicial arena, serves to

vindicate the self-confidence of a free people.

Reversed.

Mr. Justice McREYNOLDS concurs in the result.

Mr. Justice STONE (dissenting).

I think the judgment below should be affirmed.

Two youths, now fifteen and sixteen years of age, are by the judgment of this Court held liable to expulsion from the public schools and to denial of all publicly supported educational privileges because of their refusal to yield to the compulsion of a law which commands their participation in a school ceremony contrary to their religious convictions. They and their father are citizens and have not exhibited by any action or statement of opinion, any disloyalty to the Government of the United States. They are ready and willing to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. It is not doubted that these convictions are religious, that they are genuine, or that the refusal to yield to the compulsion of the law is in good faith and with all sincerity. It would be a denial of their faith as well as the teachings of most religions to say that children of their age could not have religious convictions.

The law which is thus sustained is unique in the history of Anglo-American legislation. It does more than suppress freedom of speech and more than prohibit the free exercise of religion, which concededly are forbidden by the First Amendment and are violations of the liberty guaranteed by the Fourteenth. For by this law the state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions. It is not denied that such compulsion is a prohibited infringement of personal liberty, freedom of speech and religion, guaranteed by the Bill of Rights, except in so far as it may be justified and supported as a proper exercise of the state's power over public education. Since the state, in competition with parents, may through teaching in the public schools indoctrinate the minds of the young, it is said that in aid of its undertaking to inspire loyalty and devotion to constituted authority and the flag which symbolizes it, it may coerce the pupil to make affirmation contrary to his belief and in violation of his religious faith. And, finally, it is said that since the Minnersville School Board and others are of the opinion that the country will be better served by conformity than the observance of religious liberty which the Constitution prescribes, the courts are not free to pass judgment on the Board's choice.

Concededly the constitutional guaranties of personal liberty are not always absolute. Government has a right to survive and powers conferred upon it are not necessarily set at naught by the express prohibitions of the Bill of Rights. It may make war and raise armies. To that end it may compel citizens to give military service. Selective Draft Law Cases, 245 U.S. 366, 38 S.Ct. 159, 62 L.Ed. 349, L.R.A. 1918C, 361, Ann. Cas. 1918B, 856, and subject them to military training despite their religious objections. Hamilton vs. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343. It may suppress religious practices dangerous to morals, and presumably those also which are inimical to public safety, health and good order. Davis vs. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637. But it is a long step, and one which I am unable to take, to the position that government may, as a supposed educational measure and a means of disciplining the young, compel public affirmations which violate their religious conscience.

The very fact that we have constitutional guaranties and the specificity of their command where freedom of speech and of religion are concerned require some accommodation of the powers which the government normally exercises, when no question of civil liberty is involved, to the constitutional demand that those liberties be protected against the action of government itself. The state concededly has power to require and control the education of its citizens, but it cannot by a general law compelling attendance at public schools preclude attendance at a private school adequate in its instruction, where the parent seeks to secure for the child the benefits of religious instruction not provided by the public school. Pierce vs. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 45 S.Ct. 571, L.Ed. 1070, 39 A.L.R. 468. And only recently we have held that the state's authority to control its public streets by generally applicable regulations is not an absolute to which free speech much yield, and cannot be made the medium of its suppression, (Hague vs. Committee for Industrial Organization, 307 U.S. 496, 514, et sek., 59 S.Ct. 954, 963, et sek., 83 L.Ed. 1423) any more than can its authority to penalize littering of the streets by a general law be used to suppress the distribution of handbills as a means of communicating ideas to their recipients. Schneider vs. State, 308 U. S. 147, 60 S.Ct. 146, 84 L.Ed.—.

In these cases it was pointed out that where there are competing demands of the interests of governments and of liberty under the Constitution, and where the performance of governmental functions is brought into conflict with specific constitutional restrictions, there must, when that is possible, be reasonable accommodation between them so as to preserve the essentials of both and that it is the function of courts to determine whether such accommodation is reasonably possible. In the cases just mentioned the Court was of opinion that there were ways enough to secure the legitimate state and without infringing the asserted immunity, or that the inconvenience caused by the inability to secure that end satisfactorily through other means, did not outweigh freedom of speech or religion. So here, even if we believe that such compulsions will contribute to national unity, there are other ways to teach loyalty and patriotism which are the sources of national unity, than by compelling the pupil to affirm that which he does not believe and by commanding a form of affirmance which violates his religious convictions. Without recourse to such compulsion the state is free to compel attendance at school and require teaching by instruction and study of all in our history and in the structure and organizations of our government, including the guaranties of civil liberty which tend to inspire patriotism and love of country. I cannot say that government here is deprived of any interest or function which it is entitled to maintain at the expenses of the protection of civil liberties by requiring it to resort to the alternatives which do not coerce an affirmation of belief.

The guaranties of civil liberty are but guaranties of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them. They presuppose the right of the individual to hold such opinions as he will and to give them reasonably free expression, and his freedom, and that of the state as well, to teach and persuade others by the communication of ideas. The very essence of the liberty which they guarantee is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to

his religion. If these guaranties are to have any meaning they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion.

History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities. The framers were not unaware that under the system which they created most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection. I cannot conceive that in prescribing, as limitations upon the powers of government, the freedom of the mind and spirit secured by the explicit guaranties of freedom of speech and religion, they intended or rightly could have left any latitude for a legislative judgement that the compulsory expression of belief which violates religious convictions would better serve the public interest than their protection. The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions or otherwise give any indication that compulsory expressions of loyalty of government as to override the constitutional protection of freedom of speech and religion. And while such expressions of loyalty, when voluntarily given, may promote national unity, it is quite another matter to say that their compulsory expression by children in violation of their own and their parents' religious convictions can be regarded as playing so important a part in our national unity as to leave school boards free to exact it despite the constitutional guaranty of freedom of religion. The very terms of the Bill of Rights preclude, it seems to me, any reconciliation of such compulsions with the constitutional guaranties by a legislative declaration that they are more important to the public welfare than the Bill of Rights.

But even if this view be rejected and it is considered that there is some scope for the determination by legislatures whether the citizen shall be compelled to give public expression of such sentiments contrary to his religion, I am not persuaded that we should refrain from passing upon the legislative judgment "as long as the remedial channels of the democratic process remain open and unobstructed." This seems to me no more than the surrender of the constitutional protection of the liberty of small minorities to the popular will. We have previously pointed to the importance of a searching judicial inquiry into the legislative judgment in situations where prejudice against discreet and insular minorities may tend to curtail the operation of those political processes ordinarily to be relied on to protect minorities. See United States vs. Carolene Products Co., 304 U.S. 144, 152, 58 S.Ct. 778, 783, 82 L.Ed. 1234, note 4. And until now we have not hesitated similarly to scrutinize legislation restricting the civil liberty of racial and religious minorities although no political process was affected. Meyer vs. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446; Pierce vs. Society of the Sisters of the Holy Names of Jesus and Mary, supra; Farrington vs. T. Tokushigo, 273 U.S. 284, 47 S.Ct. 406; 71 L.Ed. 646. Here we have such a small minority entertaining in good faith a religious belief, which is such a departure from

the usual course of human conduct, that most persons are disposed to regard it with little toleration or concern. In such circumstances careful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief, is especially needful if civil rights are to receive any protection. Tested by this standard, I am not prepared to say that the right of this small and helpless minority, including children having a strong religious conviction, whether they understand its nature or not, to refrain from an expression obnoxious to their religion, is to be overborne by the interest of the state in maintaining discipline in the schools.

The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey, if it is to adhere to that justice and moderation without which no free government can exist. For this reason it would seem that legislation which operates to repress the religious freedom of small minorities, which is admittedly within the scope of the protection of the Bill of Rights, must at least be subject to the same judicial scrutiny as legislation which we have recently hold to infringe the constitutional liberty of religious and racial minorities.

With such scrutiny I cannot say that the inconveniences which may attend some sensible adjustment of school discipline in order that the religious convictions of these children may be spared, presents a problem so momentous or pressing as to outweigh the freedom from compulsory violation of religious faith which has been thought worthy of constitutional protection.

THE ARTIST IN LAW

"THE quality that distinguishes the artist in law from the legal technician is the presence of emotion, or as Cardozo puts it, a mood of exaltation, a yearning for what is fine or high."—JOHN C. H. WU, *The Art of Law*.

Digest of Current Cases

BROKERS AND MERCHANTS, DISTINGUISHED.—*Ker & Company, Ltd., Plaintiff-Appellant vs. Collector of Internal Revenue, Defendant-Appellee, G. R. 46667, June 20, 1940.*—Plaintiff sent a cable to S & Co., of Calcutta, India, offering a price for certain merchandise. After the price was agreed upon, plaintiff entered into a contract of sale with local buyers quoting a higher price than that agreed to by the Calcutta firm. The price for the local buyers was fixed by plaintiff. After this contract of sale was entered into, plaintiff instructed the Calcutta firm to send the goods to, and draw a draft on, the local buyers. This draft, drawn against a local bank, bore the price agreed upon between plaintiff and the local buyers, and was accompanied with a letter of guarantee executed by plaintiff. The goods were received and in due course the draft was paid by the buyers to the local bank. After the proceeds of the draft were received by the Calcutta firm, the latter paid plaintiff the difference between the price agreed upon between them and the price for which the merchandise was actually sold to the local buyers. Plaintiff contends that in the foregoing commercial transaction it acted as a merchandise broker, not as a merchant, and therefore is not subject to the payment of percentage tax on merchants' sales as provided for in Sec. 1459 of the Revised Administrative Code. *Held:* Plaintiff is a merchant and not a merchandise broker. A broker never contracts in his own name but in that of his principal. Here, plaintiff entered into a perfected contract of purchase and sale with the Calcutta firm and later in its own name entered into an independent contract of sale with the local merchants with a higher price fixed by plaintiff. A broker receives a determined and fixed commission. Here, the difference collected by plaintiff cannot be regarded as a commission because (1) no commission was stipulated and (2) the sum collected depended wholly and exclusively upon the plaintiff. A broker does not guarantee the payment of the goods sold to a third person. In the case at bar, plaintiff guaranteed the payment of the draft issued against the local merchants. From the foregoing it is evident that plaintiff acted as a merchant and is, therefore, subject to the payment of sales tax. Judgment affirmed. (Per Concepcion, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* CESAR C. CLIMACO.

CONTRACTS.—*Manila Chauffeurs' League, petitioner vs. Bachrach Motor Co. Inc., respondents, G. R. No. 47138, June 17, 1940.*—Certain differences arose between the former Manila Chauffeurs' League, of which the petitioner is the successor, and the respondent company, as a consequence of which, they submitted the matter to the Court of Industrial Relations. While the case was pending, the parties arrived at an agreement and presented it to the court which, in turn, attached it to the records of the case and, by virtue of Art. 4 of C. A. 163, declared it, in effect, its decision. Par. XIII of the agreement reads as follows, "The company expects that the drivers will cooperate with the administration of the company in that they shall furnish the company with enough drivers to have at least EIGHTY PER CENT (80%) of the regis-

tered auto-calesas in operation every day and that the company shall do its utmost to see that the said auto-calesas are in good running condition. The Association shall see to it that its members shall render regular, efficient, and economical service, with the exception that on the occasion of typhoons or floods, which will endanger life or property of the association and of the company, the association will not be required to furnish the drivers." Almost a year after the said agreement, the new president of the League sent a letter to the president of the company requesting among other things, "That the company be pleased to agree to the proposition that the League should instantly enjoy the right to furnish all such auto-calesas drivers as are or may be needed by the company, or, at least, until the full limit in the number of drivers shall have been reached whereby all members of this League shall first be actually employed and none be left in the waiting list. This, in simpler terms, means that that company will please not employ any driver for its auto-calesas who is not a member of this League, unless this League, thru the undersigned, be first duly consulted." In answer to this, the company substantially denied the request. On August 8, 1939, the petitioner presented before the Court of Industrial Relations a motion asking the said tribunal to order the respondent company to readmit certain drivers affiliated with the League who were summarily dismissed or suspended from service by the company, and also to give the president of the League the exclusive power of employing and readmitting drivers to each and every auto-calesa of the respondent company. The Court of Industrial Relations denied the motion, saying that the concession asked for in the motion by the petitioner is not included in the agreement previously had between the two parties, nor is it within its power to amend said agreement so as to accommodate the request of the petitioner. With respect to the case of the driver affiliated to the League who was dismissed by the Company by reason of his permitting other drivers to drive the cab entrusted to his care, the court also denied the motion of the League for his reinstatement. The petitioner presented a motion for the reconsideration of the two orders, which motion was denied. Against this denial, this petition for certioari was interposed. *Held:* The clause of the agreement above-mentioned does not give any basis for the claim of the petitioner. At most, it only says that the petitioner should cooperate with the administration of the company in furnishing the drivers for the operation of the auto-calesas of the company. Neither does the said paragraph expect such cooperation to extend to all the drivers necessary to operate all the cabs, but only to 80% of its total number. The above interpretation is doubly reinforced when we take into consideration the various obligations assumed by the company in consquence of its operation of said cabs. It invests a big sum as capital. It answers for all costs of hospitalization, doctors' bills, medicine, and compensation for persons injured in accordance with the compensation law. It also assumes other civil responsibilities as provided for by other laws. For all that, it is but logical and just that the corpoation should have the exclusive right to choose freely the drivers it has to employ, without any imposition on the part of the petitioners. With respect to the driver dismissed, the petitioner argues that the League being an industrial partner of the respondent company in the auto-cab business, the only basis for dismissing any of its members is that expressly provided for in Art. 138 of the Code of Commerce which provides that "An in-

dustrial partner can not engage in any kind of business transactions whatsoever, unless expressly permitted to do so by the company, and should he do so, the capitalist partner may, at their option, remove him from the company." Without deciding whether the petitioner is really an industrial partner of the respondent company, we think that the article above-cited is not applicable in the present case inasmuch as no business transaction is involved here but merely that of a driver of the company permitting another driver to drive the cab without the consent whatsoever of the company. Orders confirmed, with costs against the petitioner. (Per Concepcion, J.; Avanceña, C.J., Imperial, Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* FELICISIMO SAN LUIS.

ELECTION LAW.—*Cipriano Abanil, et al., Petitioners-Appellees vs. Justice of the Peace of Bacolod, et al., Respondents-Appellants, G. R. No. 47243, June 17, 1940.*—In the year 1937 the total number of registered voters in Talisay, Negros Occidental, was 3,658. In 1938 the electoral census of the place showed that the number of registered voters had increased to 18,288. A few days before the election for assemblyman on November 8, 1938, 17,344 petitions were filed in the Justice of the Peace Court of Bacolod, Negros Occidental, for the exclusion of the names of an equal number of persons from the permanent list of registered voters of Talisay, Negros Occidental. At the hearing of the petitions for exclusion, the Justice of the Peace of Bacolod declared the challenged voters who were absent in default. The attorneys for the challenged voters moved that, since the presentation of evidence had not yet commenced, all the petitions be forwarded to the Court of First Instance of Negros Occidental. Counsel for the petitioners in the said 17,344 exclusion cases objected on the ground that the aforesaid attorneys had no authority to represent those who were absent. The Justice of the Peace of Bacolod ruled that said attorneys could represent only the 87 challenged voters present in the court room and accordingly remanded their cases to the Court of First Instance of Negros Occidental. Although the petitioners did not present any evidence in support of their petition against those who were declared in default, the Justice of the Peace of Bacolod ordered their exclusion from the list of voters. The present petition for certiorari was instituted in the Court of First Instance of Negros Occidental by the petitioners for the purpose of having the judgment of the Justice of the Peace of Bacolod in the aforesaid exclusion proceedings set aside. The instant appeal was taken from the judgment of the Court of First Instance of Negros Occidental setting aside the decision of the respondent Justice of the Peace of Bacolod and ordering the restoration of the excluded voters in the permanent electoral census of Talisay, Negros Occidental. *Held:* It was mandatory on the Justice of the Peace of Bacolod to grant the motion of the attorneys for the challenged voters to have all the exclusion cases remanded to the Court of First Instance of Negros Occidental. Section 113 of the Election Code provides that if the Judge of the Court of First Instance is in the province, the proceeding for the inclusion in or exclusion from the list of voters shall, upon petition of any interested party filed before the presentation of evidence, be remanded to the said Judge who shall hear and decide the same in the first and last instance. Judgment reversed and case remanded to the Court of First Instance of Negros Occidental with instruction to hear and decide the petitions for exclusion on the merits in the first and last instance. (Per Laurel, J.; Avance-

ña, C.J., Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* LUCIANO E. SALAZAR.

EVIDENCE (Testimony of an Accomplice).—*People of the Philippines, Plaintiff-Appellee vs. Ildefonso Sarmiento and Pio Jumarang, Defendants-Appellants, G. R. No. 46776, June 17, 1940.*—Defendants-Appellants were convicted by the lower court of the crime of robbery with homicide. Jumarang's guilt was made to rest solely upon the uncorroborated testimony of Sarmiento (co-accused) which, in very important respects, was contradicted by his own previous written statements made before the J. P. and ratified before the fiscal. Thus, while in his confession, he admitted having planned, with Jumarang the death of the deceased, in his testimony in court he averred that, when he was invited by Jumarang to go to deceased's place, he had no knowledge of the purpose which Jumarang had in mind. Jumarang when subjected to very strict questioning by the constabulary and by the officials, consistently denied participation and reiterated the same in open court. *Held:* That the testimony of an accomplice should be received with caution, since, as is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others rather than himself. (People vs. Mandangan 52 Phil. 62) The general rule is that the testimony of an accomplice shall not be sufficient ground for conviction, unless supported by other evidence. (People vs. De Otero 51 Phil. 201) There are, undoubtedly, certain exceptional instances in which the sole testimony of an accomplice may, even if uncorroborated, be sufficient, as when it is shown to be sincere in itself, because given unhesitatingly and in a straightforward manner, and is full of details which, by their nature, could not have been the result of deliberate afterthought. In the instant case, the testimony of Sarmiento is lacking in those characteristics of sincerity. Judgment reversed as to Jumarang and affirmed with respect to Sarmiento. (Per Moran, J.; Avanceña, C.J., Imperial, Diaz, Laurel, and Concepcion, JJ., concurring.)—*Briefed by* DOMINADOR C. SAYON.

INFORMATION (Robbery with Rape).—*People of the Philippines, Plaintiff-Appellee vs. Castor de Guzman, et al., Defendants-Appellants G. R. No. 47228, June 17, 1940.*—The trial court convicted the defendants of the crime of robbery in band with rape. The evidence adduced showed that defendants entered the house of the offended party in the night-time, armed with bolos and canes, and took ₱78 worth of articles. The seven defendants took turns in raping the mistress of the house. *Held:* 1. The defense of alibi is always received with caution. It should be proved by probable evidence which reasonably satisfies the court of such defense. *Alibis* cannot stand and prevail over clear and convincing testimonies of credible witnesses as the positive identification made by the offended party raped in this case. 2. Since the crime of robbery with rape is specially defined in R. P. C. 294 par. 2, not as two distinct offenses but as an indivisible complex crime, and penalized with a single penalty, a complaint signed and filed by the offended party, the victim of the rape, is not necessary. An information filed by the fiscal is sufficient. (Per Laurel, J.; Avanceña, C.J., Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* NORBERTO J. QUISUMBING.

JURISDICTION (Injunction and Appointment of Depositary).—*Doroteo Kabayao, Plaintiff-Appellee vs.*

Faustino de Vera, Defendant-Appellant, G. R. No. 44973, June 17, 1940. —The plaintiff-appellee purchased the hacienda "Calubcub" from the Philippine National Bank, while the defendant-appellant was working a portion of the said hacienda consisting of 60 hectares, under a contract of lease with the bank, for the crop-year 1933-34. In January, 1934, when the lease was about to expire, the plaintiff notified the defendant that he would not extend the lease, to which the defendant was agreeable so long as the plaintiff paid him the fair value of the expenses he had incurred in preparing the fields for the crop-year 1934-35. The plaintiff and the defendant could not agree as to the amount of the expenses incurred by the defendant, the plaintiff estimating it at ₱673.82 and the defendant at ₱2,000. The plaintiff now brings this action on March 6, 1934, charging the defendant with allowing his carabaos loose, thus damaging the growing crop of the plaintiff, and of threatening the plaintiff, asking for a preliminary writ of injunction against the defendant and for the appointment of a judicial depositary of the sugar or the *quedanes* for the sugar. The plaintiff also prayed that the defendant be ordered to vacate the portion of the hacienda which he was illegally occupying and to order him to pay ₱8,235 as damages. On February 13, 1934, an order was issued for a preliminary writ of injunction, and for the appointment of the provincial sheriff as the depositary. The lower court then rendered a decision making permanent the writ of injunction and ordering the defendant to surrender the possession of the hacienda. The defendant appealed and the questions to be decided are: (1) Whether the court of First Instance has jurisdiction to take cognizance of this action. The defendant contends that his right of possession according to the plaintiff expired on April, 1933 and the action was brought on March 6, 1934, or within a year from the time that the defendant lost his right of possession, hence the action should be for forcible entry and detainer and therefore under the exclusive jurisdiction of the Justice of the Peace Court; (2) whether the issuance of the writ of injunction against the defendant was justified; whether the defendant was the lessee or merely the administrator of the hacienda "Calubcub" when the writ was issued against him; and whether the appointment of the judicial depositary was in order. *Held:* 1. The Court of First Instance has jurisdiction. In the case of Gumiran vs. Gumiran (21 Phil. 174) it was held: "The original, exclusive jurisdiction of justices of the peace, in an action to recover possession of real property, under Sec. 80 of Act No. 190, as amended, is limited to the conditions mentioned in said sections. If the dispossession did not take place under the conditions mentioned in said section, the Courts of First Instance had jurisdiction in the premises, and the parties need not wait until the expiration of one year before commencing the action." (See also Melliza vs. Towle Muller, 34 Phil. 345) The present action is not one of forcible entry and detainer but of injunction and the appointment of a depositary. The justice of the peace court lacks jurisdiction to appoint a depositary. 2. The issuance of the preliminary writ of injunction was justified for the reason that when the contract was about to expire the defendant allowed his carabaos to damage the growing crop of the plaintiff who together with his laborers were also menaced by the defendant. 3. The defendant is entitled to be reimbursed for his expenses in planting the crop for 1934-35. The defendant was the

lessee and not the mere administrator of the hacienda as alleged by the plaintiff, as evidenced by the contract between the bank and the plaintiff recognizing the rights of the defendant as lessee of the hacienda for the year 1933-34. The defendant is allowed ₱673.82 as reimbursement for his expenses. 4. As to the appointment of the depositary, the trial court was justified in doing so because of the prayer for the payment of damages caused by the defendant and because of the fact that if judgment were rendered in favor of the plaintiff, it could not be made effective, as it was alleged by the plaintiff in an affidavit that outside of the sugar in question the defendant has no other property which may be levied upon for the satisfaction of the judgment. Judgment affirmed. (Per Concepcion, J.; Avanceña, C.J., Imperial, Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* CARLOS LEDESMA.

LAND REGISTRATION.—*Victoriano Hernandez, Plaintiff-Appellee vs. Mariano Katigbak Vda. de Salas, Defendant-Appellant, G. R. No. 46840, June 17, 1940.*—A was the registered owner of a large tract of land. B, in pursuance of his registered right, repurchased a portion of it and later sold it to C, who in turn sold a part of it to D, who failed to register the deed of sale. D. sold all his rights to the plaintiff. In another civil action instituted by X against Y, a writ of execution was issued against the latter and his properties levied upon. The levy was duly recorded in the Register of Deeds and noted on the transfer certificate of title. D filed a third party claim, but an indemnity bond was filed. X was the highest bidder and a deed of execution was issued in his favor. There having been no redemption, the final deed of sale was made and a transfer certificate of title issued in favor of X, defendant's predecessor in interest. The question is: who has a better right—the purchaser at the execution sale, predecessor in interest of the defendant, or the purchaser in the private sale, predecessor in interest of the plaintiff. *Held:* When the property sold on execution is registered under the Torrens System, registration is the operative act that gives validity to the transfer and a purchaser on execution sale is not required to go behind the registry to determine the conditions of the property. Such purchaser acquires such right, title and interest as appear on the certificate of title, subject to no liens, encumbrances or burdens that are not noted thereon. Judgment reversed. (Per Moran, J.; Avanceña, C.J., Concepcion, Diaz, Imperial, Laurel, JJ., concurring.)—*Briefed by* DOMINGO B. LAUREA.

LAND REGISTRATION (Finality of Adjudication of Title).—*Heirs of Crisanto Lichauco, Asuncion Nable Jose and Amparo Nable Jose, Petitioners-Appellees vs. The Director of Lands, et al., Oppositors-Appellants, G. R. No. 46347, June 21, 1940.*—In 1903, Crisanto Lichauco and the three sisters, Salud, Amparo and Asuncion, all surnamed Nable Jose, filed an application for the registration of the hacienda "El Porvenir." This was granted in 1906 and the corresponding Certificate of Title was issued to the applicants. In 1912 the Director of Lands filed a petition in Court asking for the re-survey of the land, claiming that the original survey had been inaccurate. The petition was granted and a new plan of the land was drafted with the approval of the Bureau of Lands. Pursuant to the new plan, the old Certificate of Title issued in 1903 was cancelled by order of the Court promulgated in 1923, and a new Title was issued, covering

all the lands included in the new plan. It appears that the new plan covered a bigger area than the original plan. It included land belonging to the public domain which is covered by the free patent applications of about 70 individuals. In 1933, upon petition of the latter, the Supreme Court declared null and void its resolution in 1923 approving the new plan. On August 7, 1934, the petitioners asked the Court of First Instance to approve this new plan and to order the issuance of a new Certificate Title. This was granted. The only question presented was whether the Court had jurisdiction to grant the petition, which was in effect a petition to reopen the original registration proceedings terminated in 1906, in order to revise the boundaries of the land. *Held:* Even if there really existed an error of closure as claimed, the court below was without authority to entertain the petition of August 7, 1934. It is well settled that after the issuance of the decree of registration of a land upon which a judgment has become final, no error can be corrected any longer regarding the area of the land. What the lower court has attempted was not the correction of an error of closure, but a re-trial of the case and the subsequent approval of an entirely new decree of registration. This is not permissible. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, and Concepcion, JJ., concurring).—*Briefed by* JOAQUIN GONZALEZ.

LEGAL ETHICS.—*Vidal Aguirre and Ramon Z. Aguirre, Plaintiffs vs. Tomas L. Ramos, Attorney, Defendant, Exp. Adm. 743, June 21, 1940.*—The defendant attorney is charged by the Solicitor-General with having violated the terms of his oath and with malpractice committed in this wise: He was engaged by the plaintiff to file a complaint for the recovery of a parcel of land. The condition was that upon recovery of the land he would be paid ₱1000 as fees; but that if he could effect an amicable settlement he would get only ₱200 to cover his traveling expenses and necessary services. He received ₱200 from the plaintiffs but never made any effort to settle the case amicably nor to prosecute the complaint. In spite of repeated demands therefor, he refused and failed to return the ₱200 received by him. His defense was payment. Later, however, he deposited with the Cashier of the Supreme Court the amount of ₱200. *Held:* The defendant's defense is not tenable. His guilt has been satisfactorily and conclusively proven and it has been established that he never made any such payment. But the special investigator recommends that the defendant be only suspended from the exercise of his profession until he delivers to the offended parties the amount demanded, probably on the ground that the defendant acted without malice nor intent to retain funds that are not his. Nevertheless, we are of the opinion that the said acts are unbecoming a member of the bar and merit, at least, a severe reprimand. An attorney must at all times deal with his client honorably and in all good faith, so as to retain and inspire confidence in the legal profession. Giving due regard to the recommendation that he acted without bad faith, we are still of the opinion that he be suspended for such a reasonable length of time as will serve to punish him and foster confidence that members of the bar should inspire. The defendant is also hereby reprimanded severely and the delivery of the amount of ₱200 deposited with the cashier to the offended parties is ordered. (Per Imperial, J.; Avanceña, C. J., Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* MARY F. CONCEPCION.

SALE (Fictitious).—*Rosendo V. Onglengco, Petitioner-Appellant vs. Roman Ozaeta and Melitona Hernandez, Respondents-Appellees, G. R. No. 46675, June 20, 1940.*—The Court of Appeals annulled the sale of a parcel of land in favor of petitioner on the ground that it was a fictitious sale and was presumptively fraudulent as having been executed subsequent to a judgment against his vendors. Petitioners argue that said sale could not be declared null and void without proof that his vendors were thereby rendered insolvent and that their judgment creditors could not recover in any other manner what was due them. *Held:* The pronouncement of the Court of Appeals regarding the fictitious character of the sale under which the petitioner claims title is based on facts which we cannot review. The Court of Appeals did not order the rescission under Article 1291 of the Civil Code but the annulment of the aforesaid sale. Contracts capable of rescission are those validly entered into, as an action to rescind is founded upon and presupposes the existence of a contract. It is therefore futile on the part of the petitioner to invoke Article 1291, par. 3 of the Civil Code in view of the Court of Appeal's ruling that the sale was fictitious, and hence non-existent. (Per Laurel, J.; Avanceña, C.J., Imperial, Diaz, Moran, JJ., concurring.) —*Briefed by* ALEXANDER SYCIP.

USURY LAW (Jurisdiction).—*C. N. Hodges, Petitioner-Appellant vs. People of the Philippines, Respondent-Appellee, G. R. No. 46719, June 22, 1940.*—On April 8, 1935, a criminal action was filed against the petitioner-appellant for violation of Act No. 2655 of the Philippine Legislature, known as the Usury Law, alleging that the petitioner, within the period covering July 25, 1929 to July 20, 1931, had charged an annual interest at the rate of 20.98% per annum on a loan of ₱10,000.00. The Justice of the Peace of Iloilo, with whom the complaint was filed, held the case to be outside his jurisdiction, and, after making the preliminary investigation, forwarded the case to the Court of First Instance of the Province. The latter convicted and sentenced the petitioner to imprisonment for 2 months and a fine of ₱200, and to return to the offended party the total amount of usurious interest received by him in the sum of ₱524.64 with subsidiary imprisonment in case of insolvency. The Court of Appeals affirmed the original jurisdiction of the Court of First Instance over the case on the ground that although the penalty provided by law for the offense is one which brings it properly within the jurisdiction of the justice of the peace, nevertheless, since under sections 6 and 10 of the Usury Law if the action is brought within 2 years after the delivery or payment of the usurious interest the defendant may be sentenced to return to the offended party the full amount of said usurious interest with subsidiary imprisonment in case of insolvency, the result would be that the period of imprisonment, in case of insolvency, may exceed that provided for by law as that period which should properly come within the original jurisdiction of the justice of the peace. Hence this appeal through certiorari. *Held:* Without discussing the merits of the above holding, the allegation of the complaint show that this action was not brought within the 2 years provided for in section 6 of the Usury Law. Therefore, taking into consideration said section 6, together with section 10, of said law, the only penalty that may be imposed on the petitioner is imprisonment not exceeding 6 months or a fine not exceeding ₱200 or both. The case is properly within the original jurisdiction of the Justice of the Peace

Court. Petition granted. Case remanded to the Justice of the Peace Court of Iloilo. Costs *de oficio*. (Per Avanceña, C.J.; Imperial, Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* ROSA SANTOS.

USURY LAW (Recovery of Interest)—*Pilar C. Vda. de Adorable, as administratrix of the intestate estate of Benedicto Adorable, Plaintiff-Appellant, vs. Felix de Guzman and Esperanza Gloria, Defendants-Appellees, G. R. No. 47102, June 21, 1940.*—Plaintiff, as administratrix of her husband Adorable, brought this action to foreclose a mortgage executed by the defendant in Nov. 1931 to secure the payment of 3,900 cavanes of palay to B. Adorable. The defendants answered that the mortgage in question was in fact a usurous loan; that the principal was only 3,000 cavanes of palay but with the rate of 30% interest per annum; that way back in 1924 the original loan was ₱2,500, but by subsequent novations evidenced by mortgages which were in fact loans with 20% to 30% interest per annum, resulted in the present mortgage. The trial court found that the plaintiffs have advanced to the defendants the total sum of ₱7,725 by way of usurious loans on different dates, and that the defendants have paid ₱4,846 on the principal and ₱4,028 on the interest. The issues of the appeal are: Whether or not the mortgages in question were usurious loans; and if so, whether the interests already paid, which could no longer be recovered because the action for recovery has already prescribed, may nevertheless be applied to the principal. A procedural question related to survivor's disqualification: the defendant's testifying to some matters of fact occurring before the death of the lender. *Held*: (1) The prohibition in Sec. 383 CCP par. 7 does not apply when the fraudulent transactions of the deceased are shown by other proofs. Assuming that the defendant's statements were inadmissible, the unrefuted testimonies of the administratrix herself and the other witnesses prove the true amounts received to be usurious. (2) Altho under Sec. 6, Act. No. 2655 as amended, the action to recover alleged usurious interests paid prescribes in two years, and in this case, is now barred, such interests should be credited as payments on account of the principal, for the following reasons: the mere fact that the action to recover has prescribed does not make the exaction of usurious interest any less repugnant to morals and justice. The law does not expressly provide the remedy, but this recourse is certainly within its spirit and intention. Besides, to hold otherwise, would be to benefit and aid an infringer of the law, permitting a usurious lender to enrich himself to the prejudice of the borrower, exacting the whole of the principal together with the interests condemned by law. (Per Concepcion J.; Avanceña, C. J., Imperial, Diaz, Laurel, Moran, J. J., concurring. —*Briefed by* RAUL O. DEL CASTILLO.

WILLS.—*In Re Testate Estate of the Deceased Hilarion Martir; Hermogenes N. Martir, Applicant-Appellee, vs. Angela Martir, Oppositor-Appellant, G. R. No. 46995, June 21, 1940.*—A 4-page will was attested in the following manner: "This will is composed of four pages and had been made and published by Hilarion Martir who was the testator therein named, and that said will was signed at the foot and on the left margin of each and every page thereof in the presence of the said witnesses." Said attestation clause appears wholly on page 3 and at the foot thereof and on the same page one of the three attesting witnesses

signed his name. But for lack of conveniently sufficient space on page 3, the other two attesting witnesses had to sign their names on the upper part of page 4. From the decision of the Court of First Instance of Occidental Negros allowing probate of the will, the oppositor herein appealed and assigned as errors the following: (a) that the will was void because the first sheet is not numbered as required by law; (b) that Arabic numerals, instead of letters, were used in the paging of the other sheets of the will; (c) that fraud and undue influence were used on the testator; and (d) that the attestation clause was insufficient in law for two reasons: (1) the statement of the attestation clause that the will consists of four pages when it is written on sheet 3, and (2) the said clause does not recite that the testator signed each and every page of the will in the presence of the witnesses. *Held:* (a) The principal object of the requirement with reference to the numeration of the pages of the will is to forestall any attempt to suppress or substitute any of the pages thereof. In the absence of collusion or fraud and there being no question regarding the authenticity of the first page and the genuineness of the signatures appearing thereon, the mere fact that the first sheet is unnumbered is not sufficient to justify the invalidation of the will. (Abangan vs. Abangan, 40 Phil. 476; Unson vs. Abella, 43 Phil. 504.). (b) With reference to the use of Arabic numerals instead of letters on the pages of the will, this point is no longer controversial. Arabic numerals are sufficient to indicate the correlation of the pages and to apprise abstraction of any of them. (Unson vs. Abella, 43 Phil. 504; Aldaba vs. Roque, 43 Phil. 378). (c) On the point of fraud, deceit and undue influence, the lower court found to the contrary. On the other hand, it appears that the oppositor waived her right to present evidence on this point. The fact that the testator lived for over a year after the execution of the will and that he did not change or revoke the will is very significant. (d) The first contention against the sufficiency of the attestation clause is not well taken. An examination of the will shows that it really consists of four pages, the first page bearing no number and the other three pages correlatively numbered in Arabic numerals. Regarding the second contention, the court is of the opinion that when the witnesses certified in the attestation clause that the same was signed in their presence, they could not possibly refer to another person than the testator himself. The circumstances point to the regular execution of the contested will, and as there is no evidence of bad faith or fraud, the will should be admitted to probate although it may suffer from minor imperfections of language or from other non-essential details. (Teofila Adeva Vda. de Leynez vs. Ignacio Leynez, G. R. No. 46097, October 18, 1939. (Per Laurel, J.; Avanceña, C. J., Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* ISIDRO T. ALMEDA.