RECENT CASES

DISQUALIFICATION OF JUDGES — BIAS OR PREJUDICE NOT A GROUND — REMEDY.—A petition was filed to disqualify Judge Eusebio M. Lopez, associate judge of the second division of the People's Court, on the ground that in his concurring opinion in the dismissal of treason case No. 353, People v. Francisco, he made expression which showed that he could not possess that unprejudiced, dispassionate, unbiased and impartial state of mind in regard to the cases of political collaborators pending in the People's Court; that in effect, to him, political collaborators cannot be guilty of treason with which they stand charged. By a four to four vote, the Supreme Court denied the petition (section 2, Rule 56, Rules of Court) there being no legal provision nor any applicable judicial rule or legal principle based on reason and justice to support the ground of disqualification alleged in the petition; that "bias or prejudice" is not among the grounds of disqualification provided in section 1, Rule 126, Rules of Court and in section 7, Commonwealth Act No. 682 in connection with judges of the People's Court. (People v. Lopez, et al. G.R. No. L-1243, April 14, 1947)

The Supreme Court, in previous cases, has adhered to the principle that in order to disqualify a judge there must exist a ground authorized by law to disqualify him and it is not for the courts to add other grounds of disqualification. (Perfecto v. Contreras, 28 Phil. 538; U. S. v. Baluyot, 40 Phil. 38; Benusa v. Torres, 55 Phil. 537, citing 15 R.C.L. 539) Rule 126, section 1, expressly enumerates without ambiguity the cases in which judges and judicial officers may be disqualified from acting as such and the express enumeration of such cases excludes the others. (U.S. v. Baluyot, supra; II Moran 652; Love v. Wilcox, 119 Tex. 256; 28 SW (2d) 515; 70 ALR 1484; Elliot v. Hipp. 134 Ga. 844; 68 SE 736; 30 Am. Jur. 53 p. 768)

Thus, it was held that "Prejudice and animosity or hostility on the part of the judge" do not constitute a cause under the law (sec. 8, Act 190) for the disqualification of said judge. (Benusa v. Torres, *supra*) Accordingly, the following have not been considered grounds for disqualification: intervention of a justice of the Supreme Court as Attorney General during an earlier stage of a litigation in a mere matter of procedure such as requiring a report from a judge (Jurado v. Hongkong Shanghai Bank Corporation, 1 Phil. 395); extreme delicacy (Joaquin v. Barretto, 25 Phil. 281); the fact that the judge has

presided in another case involving the same subject matter (Clark v. Manila Candy Company, 27 Phil. 310); the fact that the judge has ordered an investigation of the fiscal and a prosecution of the defendant who was a witness in another case tried before said judge (U.S. v. Lumanpao, 20 Phil. 168); that the judge who was trying an action for civil damages had previously tried the defendant for the crime of libel upon which the civil action is based (Perfecto v. Contreras, 28 Phil. 538); that the judge before whom the accused was tried on a charge of murder had attended the funeral of the murdered man (U.S. v. Baluyot, supra); that the judge trying a land registration proceeding was formerly the Director of Lands (Govt. of P.I. v. Heirs of Abella, 49 Phil. 34); or that the respondent judge took great interest and an active part in the filing of criminal charges against the petitioners to the extent of appointing a deputy fiscal when the regular provincial fiscal refused to file the proper information. (Tayko v. Capistrano, 53 Phil. 886; see II Moran 652-654)

In case a judge is challenged to take cognizance of a case, the procedure to be followed is that outlined in section 2, Rule 126. While the challenged judge is the only one empowered to decide the question (section 2, Rule 126, Rules of Court), any arbitrariness he may commit is not without remedy because the appellate court may make correction or order re-trial (Dias v. Torres, 57 Phil. 897); and if the arbitrariness should amount to misbehavior or inefficiency, the judge may be "impeached" (In re Horilleno, 43 Phil. 212) under Rule 129 of the Rules of Court.

At common law, there are dicta to the effect that a judge maybe disqualified on the ground of his bias or prejudice. (Ex p. Cornwell, 144 Ala. 497; Ex p. Hudson, 3 Okl. Cr. 393) Prejudice of a judge against the state may disqualify him to sit in a criminal case. (State ex. rel McAllister v. State, 278 Mo. 570; 213 SW 85; State v. Brown, 8 Okla. Crim. Rep. 40; 126 P. 245, Ann. Cas. 1914 G 394) The defendant has no right to insist that he be tried before a judge prejudiced in his favor, or before any particular judge; and none of his rights are invalidated by the substitution of a judge who is impartial as between himself and the State. (State v. Brown, *supra*) Since the objection or prejudice against the State must be raised, if at all, by the State's prosecuting officers, no evils are likely to arise by permitting a change of judges for such prejudice. (State ex rel. McAllister v. State, *supra*)

The stand taken by the majority in this petition appears to be supported by law and authority. It is generally held, in the absence of statutory provision, that bias or prejudice on the part of a judge, which is not based on interest, does not disqualify him.

(Fulton v. Longshore, 156 Ala. 611) "As the law stands we can only express passive disapproval of Judge Lopez' action." (concurring opinion of Justice Tuason with whom Chief Justice Moran agrees.) Furthermore, the disqualification of a judge on the ground of bias or prejudice is not looked upon with favor (Johnson v. State, 31 Tex. Cr. 456; 20 SW 985), and its liability to abuse has induced rigid construction of statutes providing therefor. (Henry v. Speer, 201 Fed. 869; 20 CCA 207; Van Dyke v. Gila County Super Ct (Ariz) 211 P. 576; State v. Donlan, 32 Mont. 256; 80 P 244; 33 C. J. 9993).

ANGEL C. CRUZ.

RECEIVERSHIP — POWER TO APPOINT SHOULD BE EXERCISED WITH GREAT CAUTION AND ON CLEAR SHOWING OF NECESSITY.

The petitioners were defendants in an action instituted by the respondents for the recovery of a parcel of land and damages. Both parties claimed the land which the defendants held and cultivated. At the instance of the respondents a receiver was appointed to take possession of the land and the products thereon. This is a petition for certiorari to vacate the order of appointment. The Supreme Court found the circumstances of the case insufficient to warrant the appointment and in granting this petition reiterated well-established principles of the courts in our jurisdiction and those of the United States relative to receivership. (Ylarde v. Hon. Juan Enriquez, Bienvenido Sabado, et al, GR No. I-1401, June 25, 1947)

The appointment of a receiver lies within the sound discretion of the court. (Rule 61, Sec. 1, Rules of Court; Mendoza v. Arellano, 36 Phil. 59; Teal Motor Co. v. Court of First Instance of Manila, 51 Phil. 547; Sabado v. Gonzales, 53 Phil. 770; Tuazon v. Concepcion, 54 Phil. 408; China Banking Co. v. M. Michelin & Cie. 58 Phil. 261; Sanson v. Barrios, 63 Phil. 198; Sanson v. Araneta 64 Phil. 549; 53 C.J. 34; 45 Am. Jur. 26-27) Even when stipulated for by the parties it is not a matter of right. (Carolina Portland Cement Co. v. Baumgartner 99 Fla. 98)

Receivership is not only extraordinary but also harsh, severe, drastic, heroic, and costly. (53 C. J. 34; 45 Am. Jur. 25; Delcambre v. Murphy, 5 SW 2nd 789, 791) It should, therefore, be granted sparingly and with great caution. (Velasco v. Gochico, 28 Phil. 39; Mendoza v. Arellano, 36 Phil. 59; Tuazon v. Concepcion, 54 Phil. 408; Philippine Motor Alcohol Corp. v. Mapa, 1 Phil. 714) Should there be other safe and adequate remedies they must first be exhausted. (Bonaplata v. Ambler, 2 Phil. 392; Sanson v. Araneta, 64 Phil. 549; 45 Am. Jur. 28-29) It should be the last of the provisional remedies to be applied. (Sabado v. Gonzales, 53 Phil. 770; Elkhorn Hazard Coal

Co. v. Fairchild, 191 Ky 276, 230 SW 61)

Before a receiver is appointed the consequences and effects should be considered or at least estimated to avoid causing irreparable injustice or injury to others who are entitled to as much consideration. (Claudio v. Zandueta, 64 Phil. 812; Calo & San Jose v. Roldan, GR No. L-252 March 30, 1946; Aquino v. Angeles David et al, GR No. L-375, August 27, 1946)

The rule that property in the possession of one party should not be transferred to another by preliminary injunction (Cordillo v. del Rosario, 39 Phil. 829; Evangelista v. Petreno, 27 Phil. 648; Palafox v. Madamba, 19 Phil. 444; Denesa v. Arbes, 13 Phil. 273; 53 C.J. 26) should apply with equal force in receivership which is more drastic and costly than injunction.

Our Supreme Court has sustained the appointment of a receiver where it is necessary to preserve the property in litigation or its fruits. (Napa v. Weissenhagen, 29 Phil. 180; Hibberd v. Headwaters Mining Co., 32 Phil. 565; Berbari v. Imperial & Chicote, 43 Phil. 222; Gonzales v. Dir. of Lands, 43 Phil. 274; Sabado v. Gonzales, 53 Phil. 770; Almarez v. Florentino, 46 Phil. 407; Tuazon v. Concepcion, 54 Phil. 408; Orlanes v. Asiatic Petroleum Co., 59 Phil. 433; Munoz v. Locsin & Melendreras Vda. de Munoz, 63 Phil. 811)

In cases where the appointment was improper or unnecessary the Supreme Court sustained the lower court's refusal to appoint or ordered the discharge of one already appointed. (Bonaplata v. Ambler, 2 Phil. 392; Valenton v. Murciano, 3 Phil. 537; Rocha v. Crossfield, 6 Phil. 355; Molina v. Riva, 7 Phil. 302; Strong v .Van Buskirk-Crook Co., 10 Phil. 190; Agency v. Ruiz, 11 Phil. 204; Arey v. Wislezemus, 26 Phil. 625; Javier v. Osmeña, 34 Phil. 336; Monteverde v. Nakata, 30 Phil. 608; Lizarraga Hermanos v. Abada, 40 Phil. 124; Sellner v. Hugo, 57 Phil. 1010; Piopong v. San Jose, 57 Phil. 1009; Haw Pia v. Cruz, 1942 O.G. 279; Calo & San Jose v. Roldan, GR No. L-252, March 30, 1946)

Prohibition will issue to arrest further proceedings in cases of appointment in excess of jurisdiction (Encarnacion v. Ambler, 3 Phil. 623; Repide v. Sweeney, 3 Phil. 735; Blanco v. Ambler, 3 Phil. 753); and certiorari will issue to to set aside an order improperly granting or denying appointment (Rocha v. Crossfield, 6 Phil. 355; Claude Neon Lights Fed. Inc. v. Phil. Advertising Corp., 57 Phil. 607; Sellner v. Jugo, 57 Phil. 1010); but mandamus to compel appointment is not available. (Sanson v. Barrios, 63 Phil. 198; 38 C. J. 656)

The party, therefore, seeking the appointment must clearly show a need for and prove his right to a receivership. For securing the appointment without just cause, he is liable for damages to be ascertained and decreed in the main action. (Rule 61, Sec. 3, Rules

of Court; Yap Unki v. Chua Jamco 14 Phil. 602; De la Riva v. Molina Salvador 32 Phil. 277; Nava v. Holifenia 53 Phil. 783)

IRENE R. CORTES

CRIMINAL PROCEDURE — BILL OF PARTICULARS.

Respondent Joseph Arcache was accused of treason for economic collaboration. At the trial counsel for the accused verbally petitioned the respondent judges to have the phrase "and other similar equipments" set forth in counts 2 and 3 of the information stricken therefrom, unless the prosecution furnished a bill of particulars as to what the phrase included. The special prosecutor objected to said petition on the ground that it was out of time, since respondent had already entered a plea of not guilty to the charge. The Supreme Court decided that the submission of the bill of particulars may be required, being but an amendment as to mere matters of form, which will serve to apprise the accused clearly of the charges against him, and thus enable him to prepare intelligently whatever defense or defenses he might have. (People v. Abad Santos, et al. GR. No. L-447, June 17, 1946)

The present decision appears to be the first well defined rule on the subject, there being no provision of law expressly authorizing the filing of specifications in criminal cases. And except for the dictum in the case of U.S. v. Schneer, 7 Phil. 523, to the effect that a defendant in a criminal case for estafa after pleading "not guilty" has no absolute right to a bill of particulars, there seems to be no fixed rule on the matter sanctioned by Philippine jurisprudence. However, the court has followed American judicial trend on the matter. In the United States it is well settled that where an information is substantially good but does not exactly allege the nature and extent of the crime of which the defendant is accused, the court has power under its inherent authority to regulate trials, to order that the accused be furnished with a bill of particulars upon his request in a proper case. (State v. Davis, 97 A 818; State v. Lewis, 72 SE 475) As to the proper time a bill should be demanded, there appears to be some divergence of opinion. While the general rule is that it should be invoked before the trial or in the preliminary stages of the proceedings in order not to be considered as waived (Matis v. State, 34 So. 287), other courts permit the granting of a bill of particulars in proper cases before the actual trial (as the present court did) or before the determination of the issue on the merits. (Sawyer v. State, 74 Fla. 60; People v. Hassil, 173 NE 112; State v. Carver, 49 Me. 588) But there seems to be no fixed rule upon the subject and the question of whether the demand for a bill of particulars is seasonably made or not is one which rests upon the sound discretion of the court considering

the circumstances of each case. At any rate there must be a showing that the bill of particulars is necessary for the proper administration of justice. (Eastman v. State, 70 So. 576)

The present decision is in line with the practice of our courts in extending great liberality to persons charged with crimes to enable them to prepare for defense. Once the bill of particulars is filed, it operates to confine the people in its proof to the specifications therein set out (US v. Adams Express Co., 199 Fed. 140), thereby avoiding any possible surprise which might be detrimental to the rights and interests of the accused.

FEDERICO G. CABLING

EVIDENCE — PROBATIVE VALUE OF EXTRA-JUDICIAL CONFESSION — CORPUS DELICTI:

This is an appeal from a decision of the Court of First Instance of Manila convicting the defendant-appellants of robbery. The only basis of conviction was the extra-judicial confession of the accused, the testimony of the other witness being hearsay. In acquitting the defendants, the Supreme Court held that the appellants' guilt was not proven beyond reasonable doubt. (People v. Alfonso Nazario y Bautista, et al. G.R. No. L-470, February 28, 1947)

A judgment of conviction can not be based solely on the extra-judicial confession of the accused, uncorroborated by evidence of *corpus delicti.* (Rule 123, Sec. 96, Rules of Court; U.S. v. Cruz, 2 Phil. 148; U.S. v. Agatea, 40 Phil. 596) The term *corpus delicti* with reference to a particular crime, means that a certain crime has been actually committed by someone, and is composed of two elements: first, that a certain result has been produced; and second, that someone is originally responsible. (People v. Marquez G.R. No. L-429, August 21, 1946; 14 AM. Juris. p. 758) A confession standing alone ought not to be considered sufficient proof of *corpus delicti.* (Springfellow v. State 59 Am. Dec., 247)

It is not necessary to prove every element of the crime apart from the extra-judicial confession, but there should be some evidence other than the extra-judicial confession tending to show that a crime has in fact been committed. (People v. Batangon, 54 Phil. 834) Where there is no direct evidence, *corpus delicti* may be proved by circumstantial evidence. To justify conviction, the evidence, whether it be direct or circumstantial must be of such character as to leave no room for doubt that the elements constituting the offense have been established. (State v. Martin, 47 S.C. 71; State v. Gillis, 5 L.R.A. (N.S.) 571; Perovich v. U. S. 205 U. S. 86).

BIENVENIDO C. CASTILLO

MARRIAGE — PROVING A FOREIGN MARRIAGE — EMANCIPATION.

The writ of habeas corpus will not issue at the instance of a father who seeks to regain the custody of a minor daughter when the latter has been validly married and is living with her husband such marriage having emancipated her from parental authority. (Ching Huat v. Co Heong, alias Co Hong, Co. Yong, G. R. No. L-1211, Jan. 30, 1947)

The petitioner contended that he had not lost and was still entitled to the rightful custody of his minor daughter, alleging that the latter's marriage with the respondent was null and of no effect on account of a marriage previously entered into by the respondent in China with a Chinese woman. The court found this to be unsupported by evidence. The law which governs this situation is found in Sec. 19 of Act No. 3613 which states thus: "All marriages performed outside of the Philippines in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in these Islands." A cursory reading of this section will show that it is necessary to prove that the marriage performed outside of the Philippines was in accordance with the laws in force in the country where the parties were, and this can only be done by showing what those laws were and by giving evidence of the performance of the marriage outside of the Philippines in accordance therewith. Thus: "To establish a valid foreign marriage pursuant to this comity provision, it is first necessary to prove before the courts of the Islands the existence of the foreign law as a question of fact, and it is then necessary to prove the alleged foreign marriage by convincing evidence." (Adong v. Cheong Gee, 43 Phil. 43, 49; Son Cui v. Guepangco, 22 Phil. 216) "There is lacking proof so clear, strong, and unequivocal as to produce a moral conviction of the existence of the alleged prior Chinese marriage." (Sy Hoc Lieng v. Encarnacion, 16 Phil. 187; 228 U.S. 335) These are in line with the holding that our courts will not take judicial notice of foreign laws and that said laws must be proven as a matter of fact. (Phil. Manufacturing Co. v. Union Insurance Society of Canton, 42 Phil. 378; International Harvester Co. v. Hamburg American Line, 42 Phil. 84; Fluemer v. Hix, 54 Phil. 610; Sy Hoc Leong v. Encarnacion, 16 Phil. 137; 228 U.S. 335; Adong v. Cheong Song Gee, 43 Phil. 43) It is significant to note that the policy of the law is to protect the validity of marriage as much as possible and to prevent the ever-lurking danger of having a marriage annulled on the strength of a bare, unsubstantiated allegation of a foreign marriage previously contracted. The reason is that marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply inte-

rested (Adong v. Cheong Seng Gee, 43 Phil. 43) and that the law presumes matrimony. (U. S. v. Villafuerte y Rabano [1905], 4 Phil. 476; Son Cui v. Guepangco, 22 Phil. 216; U. S. v. Memoracion and Uri [1916], 34 Phil. 633; Teter v. Teter [1884], 101 Ind. 129; Sison v. Ambalada, 30 Phil. 118; Que Quay v. Collector of Customs, 33 Phil. 128) An American court has even gone further. It declared that it is settled law that when a marriage has been consummated in accordance with the forms of the law, it is presumed that no legal impediments existed to prevent the parties from entering into such marriage, and the fact, if shown, that either or both of the parties have been previously married and that such husband or wife of the first marriage is still living, does not destroy the prima facie legality of the last marriage. The presumption in such a case is that the former marriage has been legally dissolved, and the burden of proving that it was not rests upon the party seeking to impeach the last marriage. (Wenning v. Teeple, 144 Ind. 189) This holding was cited with approval in a Philippine case. (Son Cui v. Guepangco, *supra*) Hence, even if the petitioner in the present case had succeeded in proving the existence of the laws of the country where the alleged former marriage was performed and the performance of such marriage in accordance therewith, he would still have been under the obligation to prove that such former marriage had not been legally dissolved.

CELSO ED. F. UNSON

EVIDENCE — APPRECIATION OF THE TESTIMONY OF WITNESSES

This action was brought to compel the resale of land sold *a retro* by the plaintiff. The defendants answered that the plaintiff's right to repurchase had already expired. On this question of fact the Supreme Court relied on the findings of the trial court. (Hernandez v. Calzado, CA-G.R. No. 43, May 31, 1947)

It is a settled principle that the appellate court will not disturb the findings of fact made by the trial judge as to the credibility of witnesses, in view of his opportunity to observe the conduct and demeanor of the witnesses while testifying, and that his findings will generally be accepted and acted upon. (People v. Reyes, 47 Phil. 635; People v. De Asis, 61 Phil. 384; People v. Garcia, 63 Phil. 296; People v. Masin, 64 Phil. 757; People v. Sope, G.R. No. L-16, January 31, 1946; People v. De la Cruz, G. R. No. L-133, April 30, 1946; People v. Macalindog, CA-G. R. No. 349, May 25, 1946; People v. Borbano, G.R. No. L-37, May 25, 1946) The appellate court will not reverse any findings of fact by the trial court made upon conflicting testimony and depending largely upon the credibility of witnesses, who testified in the presence of the trial

judge, unless the court below failed to take into consideration some material fact or circumstance, or to weigh accurately all of the material facts and circumstances presented to it for consideration. (U.S. v. Ambrosio, 17 Phil. 295; U.S. v. Melad, 27 Phil. 488; Baltazar v. Alberto, 33 Phil. 336; Melliza v. Towle, 33 Phil. 345; U.S. v. Remigio, 37 Phil. 599; People v. Cabrera, 43 Phil. 64; Caragay v. Arquiza, 53 Phil. 72; Garcia v. Garcia, 63 Phil. 419; In re Testate Estate of Veyra, CA-G.R. No. 4, March 21, 1946) When the trial court has overlooked important evidence, it is the duty of the appellate court to revise the findings of fact made by the court below and to render judgment accordingly. (U.S. v. Singson, 41 Phil. 53; People v. Istoris, 53 Phil. 19; People v. Abana, G. R. No. L-39, Feb. 1, 1946) There is reversible error when the trial court is unduly influenced in its appreciation of the testimony of the witnesses. (People v. Bautista, CA-G.R. No. 226, Feb. 23, 1946)

JOSE A. SALOMON

OFFER OF COMPROMISE AND ACCEPTANCE THEREOF.—Plaintiff had unsuccessfully petitioned to set aside the sale of certain mortgaged property by the sheriff. Now he seeks to have the defendant (mortgagee-purchaser) resell to him the property, basing his action on an offer to resell contained in the brief of the defendant in the previous case for annulment of the sale. Plaintiff acted on this offer after the entry of judgment of the Supreme Court.

Held: An offer of compromise settlement must be accepted within a reasonable time, and acceptance or rejection thereof may be inferred from the circumstances. (15 C. J. S. Sec. 7) The plaintiff's failure to act on the offer before the judgment was entered was an implied rejection of said offer. A compromise has for its purpose the avoidance or termination of a law suit. Art. 1809, Civil Code) With the rendition of judgment the reason which induced the defendant to make her proposition ceased to exist. (Batangan v. Cojuangco, G. R. No. L-224, May 31, 1947)

This case, which seems to be one of first impression in this jurisdiction, hinges on whether or not the defendant's offer has been duly accepted by the plaintiff. The Rules of Court is not of any help on the point. The Supreme Court assumed the following premises: 1. "A compromise is a contract ." (Art. 1809, Civil Code) A compromise and settlement is merely a kind of contract and the general rules relating to the formation of contracts are controlling. (11 Am. Jur. p. 262; 5 R. C. L. p. 876) 2. There must be a definite proposition and an acceptance thereof in order to effect a compromise. (11 Am. Jur. p. 263; 5 R. C. L. p. 879) "Consent is shown by the concurrence of the offer and acceptance with respect to the thing and to the cause which are to constitute the contract." (Art.

1262, Civil Code)

JOSE A. SALOMON

HABEAS CORPUS. — JUDGMENT OF CONVICTION WITHOUT PLEA PROPERLY ENTERED BY ACCUSED MERELY DEFECT OF PROCEDURE.

Arraigned for murder, accused pleaded not guilty. At the trial, his counsel made a statement that the accused would plead guilty to the crime of homicide. Without inquiring from the accused whether or not he would plead to the crime of homicide, the lower court immediately convicted him of said crime. Accused failed to appeal but filed this petition for habeas corpus. The Supreme Court denied the same on the ground that judgment of conviction rendered without a plea properly entered by the accused is merely a defect of procedure, not of jurisdiction, though it may have the effect of voiding the judgment. (Ramon Domingo, Petitioner v. The Director of Prisons, Respondent, G. R. No. 1229, February 28, 1947)

The judgment is in conformity with the established doctrine that when a court has jurisdiction of the offense charged and of the person of the accused, its judgment, order, or decree is valid and is not subject to collateral attack by habeas corpus, and this holds even if the judgment, order, or decree is erroneous. (Moran, Vol. II p. 326; Andres v. Wolfe, 5 Phil. 60; Gonzales v. Wolfe, 12 Phil. 439; Felipe v. Director, 24 Phil. 121; Cowper v. Dade, 29 Phil. 222; McMicking v. Shields, 49 Phil. 971; People v. Valte, 43 Phil. 907; Perkins v. Director, 58 Phil. 271; Barbuco v. Director, SC-G. R. No. 46901, October 7, 1939; Talavera v. Superintendent, SC-G. R. No. 46356, April 25, 1939) The above ruling is reiterated recently in the case of Talabon v. Warden, G. R. L-1153, June 30, 1947, holding that non-compliance with the constitutional provision that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based," is not jurisdictional and hence not a ground for a petition for habeas corpus.

In the United States a prisoner can not raise in a habeas corpus proceeding the contention that the commitment under which he is held is void because there was neither an arraignment nor a plea required or entered before proceeding with the trial or because it does not appear that he was informed of his rights (29 C. J. 29; 25 Am. Jur. Habeas Corpus 49; 12 R. C. L. 1205); or that there was denial of the accused's right to have compulsory process to procure the attendance of witnesses. (Ex parte Harding, 120 U. S. 782) The doctrine of the case under comment is reasonable and wise for to hold otherwise would be not only to adapt the writ of habeas corpus to the ordinary uses of the writ of error but also to warrant, by its means, intolerable interference with the or-

dinary and regular process of judicial proceedings.

There is, however, a modern tendency in the U. S. to extend the scope of habeas corpus to preserve the constitutional safeguards of human liberty. (25 Am. Jur. Habeas Corpus 49) For example, relief by habeas corpus has been declared available to a person who is imprisoned under an order rendered against him without permitting him to be heard (Escoe v. Zerbst, 295 U. S. 490); or under a judgment rendered in violation of a constitutional immunity from a second prosecution and trial for the same offense. (Re Nielson, 131 U. S. 176)

TOMAS AÑONUEVO