University of Miami Law Review

Volume 9
Number 3 *Miami Law Quarterly*

Article 9

5-1-1955

Quarterly Synopsis of Florida Cases

QUARTERLY SYNOPSIS OF FLORIDA CASES*

*The Florida Supreme Court decided about two hundred and forty-seven cases during the period reported from September 9, 1954 through December 30, 1954. Those opinions (excluding memorandum decisions and a few others not considered of sufficient importance to be noted here) found in 74 S.2d 56 to 75 So.2d 914 are herewith reported. In addition ten federal cases interpretative of Florida law are included. These were found from 213 F.2d 876 to 214 F.2d 792 (1954) and 121 F. Supp. 458 to 123 F. Supp. 882 (1954).

ATTORNEY AND CLIENT. *Disciplinary proceeding.* Respondent was found guilty of professional misconduct in that he solicited professional employment personally or by his runner. The court held that disbarment was too severe a punishment but that suspension was justified.[1]

CHATTEL MORTGAGE. *Priority: Recordation.* Notwithstanding a Florida Statute[2] making a mortgage, covering a motor vehicle, which was not registered or noted on the face of the certificate of title for such vehicle, invalid as against creditors of mortgagor, unrecorded and unnoted mortgage was prior in rights to the rights of the general creditor of the mortgagor who had not obtained a lien upon the mortgaged property.[3]

CIVIL RIGHTS. *Punishment: Violation of prison regulations.* Prosecution of a prison official under the Federal Civil Rights Act. Defendant allegedly violated state law[4] in inflicting illegal punishment on a state prisoner for alleged violations of prison regulations. The court held that no federal offense is charged in this case because the act does not operate merely because the federal law or the state law under which the officer purports to act is violated, but is applicable only when some one is deprived of a federal right by that action.[5]

CONFLICT OF LAWS. *Contracts: Substituted service.* Proceeding upon a writ of prohibition to prohibit a circuit judge from proceeding further in an action based upon substituted service.[6] A foreign corporation, which had qualified to do business in Florida through brokers, supplying instruc-

*This issue of the *Quarterly Synopsis* was written by Meyer M. Brilliant and edited by Jerry Mosca.

1. State *ex rel.* Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954).
2. FLA. STAT. § 319.27(2) (1953).
3. Murray v. G.F.C. Corp., 214 F.2d 344 (5th Cir. 1954).
4. FLA. STAT. § 952.05 (1951).
5. United States v. Walker, 121 F. Supp. 458 (N.D.Fla. 1954).
6. FLA. STAT. § 47.16 (1951).

tions and warranties, was engaged in a business or business venture within Florida and was therefore amenable to substituted service.[7]

CONSTITUTIONAL LAW. *Eminent Domain.* A statute[8] gave a public utility corporation the right by summary method, pending condemnation proceedings, to secure a right of way or easements for the transmission of lines for public purposes. The court held that the constitutional guarantee[9] of due process and of adequate compensation first being paid for property taken were not violated. The reasoning was that such action was necessary to avoid the delays incident to condemnation proceedings.[10] Otherwise, a few owners would be permitted to delay the taking until damages had been assured.[11]

Admission to the Bar: Equal protection: Undue hardship. This is a suit for a declaratory decree praying for an interpretation of a statute[12] insofar as it abolishes the diploma privilege and regulates admission to the bar. The statute fixed an arbitrary date,[13] after which all applicants to practice law are required to take an examination. The court held that the legislature may under its police power regulate admission to the bar concurrently with the supreme court. The court also held that the fixing of this date did not impose an undue hardship or deny equal protection of the law[14] to those who could not attain a degree by the specified date.[15]

Primary election. Mandamus proceeding to have the primary election law,[16] which requires a majority vote for nomination of candidates by political parties for election to public office, be declared in violation of the constitutional provision[17] that a plurality of votes is needed to elect an elective official. The court held that it is not a violation since the constitutional provision has reference only to final election and does not apply to a primary or to a nomination.[18]

CONTRACTS. *Attorney and Client: Fees.* In an action by attorneys to recover fees for legal services allegedly over and above those comprehended by and performed under a retainer contract with the client, a judgment adverse to the attorneys was affirmed.[19]

---

7. State *ex rel.* Guardian Credit Indemnity Corp. v. Harrison, J., 74 So.2d 371 (Fla. 1954).
8. FLA. STAT. § 74.01 *et seq.* (1951).
9. DECLARATION OF RIGHTS § 12; FLA. CONST. ART. XVI, § 29; U.S. CONST. AMEND. XIV.
10. FLA. STAT. § 74.14 (1953).
11. Belcher v. Florida Power & Light Co., 74 So.2d 56 (1954).
12. FLA. STAT. § 454.031(3) (1951).
13. Enrollment must not have been later than July 25, 1951 and the degree must be obtained not later than July 25, 1954.
14. DECLARATION OF RIGHTS, § 1; U.S. CONST. AMEND. XIV.
15. Fuller v. Watts, 74 So.2d 676 (Fla. 1954).
16. FLA. STAT. § 100.061 *et seq.* (1951).
17. FLA. CONST. ART. XVI, § 8.
18. Wagner v. Gray, 74 So.2d 89 (Fla. 1954).
19. Turk & Newman v. Wofford, 75 So.2d 201 (Fla. 1954).

CRIMINAL LAW. *Evidence: Character.* It was error for the trial court to admit, in rebuttal of proof of the defendant's good character, which he had placed in issue, evidence of specific acts of bad conduct. But the admission was not harmful or prejudicial to the rights of the defendant, where the record left no room for reasonable doubt that the defendant was guilty.[20]

Former Jeopardy: Motion for a mistrial: Consent. The defendant, charged with robbery, motioned for a mistrial which was granted. At a later trial, the defendant made a motion to quash on the ground of former jeopardy. The court held that the defense of former jeopardy is not available when a mistrial is granted with the defendant's consent or when the circumstances show an urgent necessity in the interest of justice.[21]

Habeas corpus: Contempt. Habeas corpus proceeding to test the legality of a contempt order. The trial judge had no authority to compel the defense counsel in a trial of a criminal case to deliver to the county solicitor a transcript used by defense counsel in his interrogation of the prosecuting witness on cross-examination, to be used by the county solicitor on redirect examination. The defense counsel was not guilty of contempt for refusing to do so.[22]

Habeas corpus: Opportunity to raise question at former trial. Habeas corpus may not be used to raise for the first time questions that the petitioner had a fair and adequate opportunity to raise, and could and should have raised, during the former trial of the case.[23]

Habeas corpus: Person designated by statute to execute death sentence. Petitioner was convicted of murder in the first degree and sentenced to death by electrocution. By petition for habeas corpus he attempted to raise the presumption that the person designated by statute[24] to execute the death sentence might not be present to pull the switch. If such person is not present, a deputy may perform the duty and there is no provision in the statute for the appointment of a deputy. The court held that the electrocutioner does not have to be identified, but only designated by office. The statute names the first assistant engineer as the person who shall perform the duty and the presumption is that all public officials will carry out their duties.[25]

Intoxicating liquors: Sales by minor. Appellee, a female minor, was married in 1953. Thereafter she went to work as a waitress in an establishment where foods and alcoholic beverages are dispensed for consumption

20. Olsen v. State, 75 So.2d 281 (Fla. 1954).
21. McLendon v. State, 74 So.2d 656 (Fla. 1954).
22. Whitaker v. Blackburn, Jr., 74 So.2d 794 (Fla. 1954).
23. Irvin v. Chapman, 75 So.2d 591 (Fla. 1954).
24. FLA. STAT. § 922.11 (1951).
25. North v. Chapman, 74 So.2d 787 (Fla. 1954).

on the premises. The State Beverage Department preferred charges against the employer for employing a person under 21 years of age in violation of a statute.[26] The court held that the statute[27] removing the disability of nonage of married female minors did not affect the statute making it unlawful for vendors of alcoholic beverages to employ persons under twenty-one years of age.[28]

Judge absent from view of scene. A view of the place where a homicide occurred was ordered by the trial judge. The trial judge voluntarily absented himself from such view. The court held that this constituted reversible error because by statute,[29] the presence of the trial judge at the scene of the view is mandatory, and also that this right was not waived by the failure by the defendant to object to the view until after a verdict of guilty.[30]

Nuisance: Self-incrimination. The state brought suit to restrain as a nuisance[31] an alleged lottery and bookmaking business carried on by the defendants. The defendants interposed the defense against self-incrimination.[32] The court held that the state could not base its case solely on the fact that the defendants had purchased a federal gambling stamp and had paid the excise tax imposed by the United States on their gross gambling income.[33]

Witnesses: Special agent of Federal Bureau of Investigation. A judgment of conviction for violating federal law prohibiting dealing in interstate commerce with motor vehicles known to be stolen will not be reversed because a special agent of the Federal Bureau of Investigation was a witness. The defendant was not deprived of a fair trial because the jury may have given preponderant weight to the testimony of such witnesses because of their standing and reputation.[34]

Witnesses: Impeaching credibility by extrajudicial statement. State's attorney attempted to impeach the credibility of the accused on cross-examination by reading extrajudicial statements attributed to the accused and wholly inconsistent with his prior testimony. State's attorney also asked accused whether he had made such statements without permitting defense counsel to examine a copy of the statements. The court held that although the questions were withdrawn by the state's attorney and the jury properly instructed to disregard the incident, that reversible error had already been committed.[35]

---

26. FLA. STAT. §§ 450.070, 562.13 (1951).
27. FLA. STAT. § 743.03 (1951).
28. Hunter, Jr. v. Bullington, 74 So.2d 673 (Fla. 1954).
29. FLA. STAT. §§ 914.01, 918.05 (1951).
30. McCollum v. State, 74 So.2d 74 (Fla. 1954).
31. FLA. STAT. §§ 64.11, 823.05 (1951).
32. FLA. CONST. DECL. RIGHTS, § 12; U.S. CONST. AMEND. V.
33. Boynton v. State, 75 So.2d 211 (Fla. 1954).
34. Elder v. United States, 213 F.2d 876 (5th Cir. 1954).
35. Williams v. State, 74 So.2d 797 (Fla. 1954).

DECLARATORY JUDGMENT. Airplane pilots had been employed by an airline during a strike and were released at the end of the strike. They were refused re-employment because of interference by the union. They sought a determination of their status by proceedings for a declaratory decree. The court held that they did not set out a case for declaratory relief. They had to elect either to challenge the validity of their discharge, and seek reinstatement and back pay, or to accept their discharge as final, and bring suit for breach of contract. The declaratory decree statute[36] cannot be used in a case wherein the decree prayed for would serve no useful purpose.[37]

DIVORCE. *Constructive service: Fraud.* The wife sought to set aside a divorce decree granted to the husband on the ground that the affidavit for constructive service was false and fraudulent. There had been a prior prosecution against the husband in the same court arising from the same affidavit. The Supreme Court held that the trial court had no right in dismissing the wife's complaint to consider the facts and circumstances surrounding the prior prosecution where those facts had not been made a part of the record in the cause before it.[38]

Custody: Modification of decree. A petition was made for modification of a divorce decree wherein custody of a minor child was granted solely to the father. The court found that the evidence of changed circumstances was sufficient to justify partial change of custody to the mother.[39]

EQUITY. *Employment contracts: Injunction.* Contracts of employment, with provisions not to compete or to work for a competitor, will not be enforced in the absence of special equities. A permanent injunction will not issue to enjoin such breach of contract.[40]

INSURANCE. *Liability.* Defendant was involved in an accident while driving a car owned and leased by U-drive-it. Both were covered by separate insurance against liability and in different companies. However, lessor's policy contained a clause exempting liability for such loss as is covered on a policy in another company. The court held that defendant's insurance company is the only one liable.[41]

Master and Servant: Independent contractor. A minor brought an action for personal injuries sustained in the operation of the automobile of the defendant's insured. The minor, for a fee, had agreed to drive the intoxicated insured to a sanitorium in insured's automobile. Insured fell asleep on the way. When he awoke, he attempted to take the wheel and the accident resulted. The court held that the minor was an independent

---

36. FLA. STAT. § 87.01 *et. seq.* (1951).
37. Mountain v. National Airlines, Inc., 75 So.2d 574 (Fla. 1954).
38. Thames v. Thames, 75 So.2d 191 (Fla. 1954).
39. Bryan v. Bryan, 75 So.2d 189 (Fla. 1954).
40. Arond v. Grossman, 75 So.2d 593 (Fla. 1954).
41. Continental Cas. Co. v. Weekes, 74 So.2d 367 (Fla. 1954).

contractor and could not avail himself of any Workmen's Compensation remedies.[42]

Notice of Loss: Waiver. Prospective purchaser of a truck and trailer took them for a trial run on Thursday, after promising to return the following Saturday. He failed to return, and the owner reported the loss to the insurance company about five weeks after the disappearance, filing proof of loss December 7th. The court held that the owner had complied with the theft policy provision requiring notice to the company "as soon as practicable" and filing of proof of loss within sixty days after occurrence of loss. After receiving such notice the company waived any failure of prompt notice and proof of loss because of a general denial of liability on the ground that it was an embezzlement rather than a theft.[43]

INTERNAL REVENUE. *Confiscation and forfeiture of car: Gambling tax.* A libel seeking forfeiture of an automobile used in gambling operations by the owner who had not paid the gambling occupational tax.[44] The court held that the automobile was not subject to a forfeiture on such grounds because the forfeiture statutes[45] never contemplated forfeitures except where the car is used in those activities which the federal government is attempting to prohibit, such as illegal dealings in alcoholic beverages and narcotics.[46]

LABOR RELATIONS. *Agriculture workers: Exemption.* The work performed by the employees of a fruit company in hauling fruit from the farms to the employer's place of business was not part of an essential to the growing and producing of fruit, within the meaning of the Act.[47] Therefore, such employees were not agriculture workers and exempt from the Act.[48]

LANDLORD AND TENANT. *Caveat emptor: Injuries.* The tenant had the same opportunities as the landlord to discover defects in the premises at the time of leasing. Therefore, the rules of caveat emptor applies and the tenant takes the property as he finds it. The court held that the tenant did not have a cause of action for injuries sustained when plaster fell from the ceiling which had begun to deteriorate prior to the time of the lease.[49]

LEASE: *Renewal.* A lease provided for additional annual renewals. Use of the word "renewal" in the absence of other clauses, did not make the execution of a new lease mandatory. The lessee had otherwise complied

42. National Surety Corp. v. Windham, 74 So.2d 549 (Fla. 1954).
43. American Ins. Co. of Newark, N.J. v. Burson, 213 F.2d 487 (5th Cir. 1954).
44. 65 STAT. 529 (1951), 26 U.S.C. § 3290 (1953).
45. 53 STAT. 401 (1936), 26 U.S.C. § 3116 (1944).
46. United States v. One 1953 Oldsmobile, 122 F. Supp. 488 (N.D. Fla. 1954).
47. Fair Labor Standards Act of 1938, 52 STAT. 1060, 13(a)(b), as amended, 29 U.S.C. § 201 *et. seq.* 213 (a)(b) (1949).
48. Chapman v. Durkin, 214 F.2d 360 (5th Cir. 1954).
49. Sampson v. Stanley Corp., 75 So.2d 186 (Fla. 1954).

with the requirements necessary to the exercise of the option for the further term. The court held that the failure of the parties to "execute" a new lease did not operate to eliminate the lessee's rights under the renewed lease.[50]

MECHANICS LIEN. *Loss of Profits.* The Mechanics' Lien Law[51] gives a lien only for work done and material furnished, so that overhead and profits, as separate items, are not within the purview of the act.[52]

Notice of intention to claim a lien: Privity. Plaintiff, owner of a certain lot, made a contract to have the contractor erect three houses thereon. Defendant furnished material for such construction and says there was due it the sum of $777.14. The court held that the plaintiff was not in privity with the material man, had paid the contractor as per terms of the contract and had no notice of intention to claim a lien.[53] Appellee could claim a lien for no amount larger than the sum remaining due on the contract at the time the service of the notice was made.[54]

MASTER AND SERVANT. *Directed Verdict: Wilful injury.* Appellant charged that defendant corporation, through its employees or agents acting within the scope of their employment, had him falsely arrested and violently beaten without provocation, thereby causing him pain, anguish, humiliation, and loss of time in his employment. The court reversed a verdict directed for the defendant, and held that to justify directing a verdict, every inference favorable to the party against whom it is directed must be accorded. If reasonable men might differ as to whether any relief could be granted, then the motion for a directed verdict[55] must be denied. The evidence was sufficient to take the case to the jury.[56]

MORTGAGES. *Eminent Domain: Limited right to repay.* A proceeding was initiated to condemn land encumbered by a mortgage which limited the right of the mortgagors to repay the indebtedness. The award money was paid into the registry of the court. The court held that the mortgagee had to make an election. He could elect to receive the full principal of the mortgage indebtedness out of the award moneys, plus unpaid interest up to the date of the distribution orders, or elect to release his lien[57] against the award moneys and the land and thereafter look solely to the mortgagors personally for the principal and future interest.[58]

---

50. Leibowitz v. Christo, 75 So.2d 692 (Fla. 1954).
51. FLA. STAT. § 84.01 *et. seq.* (1951).
52. Surf Properties, Inc., v. Markowitz Bros. Inc., 75 So.2d 298 (Fla. 1954).
53. FLA. STAT. § 84 (1951).
54. Beam v. Jerome Lumber & Supply Co., 74 So.2d 537 (Fla. 1954). Provision of FLA. STAT. § 84.05(11) (1953) requiring owner of property dealing with contractor to withhold 20% of contract price to insure payment of laborers and materialmen, not applicable (enacted after contract executed).
55. FED. R. CIV. P. 50 (1950).
56. Collazo v. John W. Campbell Farms Inc., 213 F.2d 255 (5th Cir. 1954).
57. FLA. STAT. §§ 73.01, 73.02, 73.11, 73.12 (1951).
58. Watts v. Duval County, 75 So.2d 316 (Fla. 1954).

ESTATE BY ENTIRETY: *Subsequent Assignment of Mortgage and Note to Wife.* Husband and wife bought a tract of land and took title as an estate by the entirety. They gave a purchase-money mortgage, both signing the note. The mortgagees subsequently assigned the note and mortgage to the wife. The wife could not enforce the mortgage against her own property. By the purchase of the note, she had simply paid the debt.[59]

Statute of Limitations: Taxes. A twenty year statute of limitations[60] applicable to mortgages did not apply to an amount paid out by the mortgagee for taxes on mortgaged property, since that was not part of the original mortgage debt. The mortgagee was entitled to recover such amount in a mortgage foreclosure suit commenced more than twenty years after maturity of the secured debt.[61]

Forfeitures: Usury. Lenders, in consolidating plaintiff's debts, retained part of the loan to discharge plaintiff's mortgage which was held by a third person. But, instead of paying such prior mortgage immediately, the lenders made only the regular monthly payments in the name of the plaintiff. The court held that such a delay in paying the prior mortgage constituted a delay in the advancement of a substantial portion of the loan. The absence of an abatement of the interest on the amount so retained, constituted a violation of the usury statute.[62] The forfeitures[63] are to be double the amount of interest already paid.[64]

MUNICIPAL CORPORATIONS. *Civil service.* Civil service regulations required that employees in a classified service must serve a probationary period before their employment status became permanent. A fireman sought to have his military service while on leave from the fire department credited toward his completion of such probationary period. The court held that there could not be any such credit and that to be eligible to participate in a promotional examination for fire lieutenant, he must have completed the two years.[65]

Zoning: Ordinance unconstitutional in part. Proceeding on an application for a building permit to construct a gasoline station in a business zone. Part of an ordinance[66] that was severable could be severed from the part of the ordinance that was unconstitutional because it represenhts an unconstitutional delegation of legislative power and because of vagueness.[67]

59. Brocato v. Brocato, 74 So.2d 58 (Fla. 1954).
60. FLA. STAT. § 95.28 (1951).
61. H.K.L. Realty Corp. v. Kirtley, 74 So.2d 876 (Fla. 1954).
62. FLA. STAT. § 687.03 (1951).
63. FLA. STAT. § 687.04 (1951).
64. Mindlin v. Davis, 74 So.2d 789 (Fla. 1954).
65. City of Miami v. Crews, 75 So.2d 684 (Fla. 1954).
66. LAKELAND ZONING ORDINANCE § 7 (1950).
67. Phillips Petroleum Co. v. Anderson, 74 So.2d 544 (Fla. 1954).

NATURALIZATION. *Ineligibility. Exemption from serving in armed forces.* An alien who applies or has applied for exemption or discharge from training or service in the armed forces of the United States, on the ground that he is an alien, and is exempted on such a ground, shall be permanently ineligible to become a citizen of the United States.[68]

NEGLIGENCE. *Last clear chance.* While appellant was operating a surveyor's transit in an intersection, he was struck by appellee's truck. The court charged the jury on the law of contributory negligence, but refused to instruct on the doctrine of last clear chance. It was held that, whether driver had the time and means to avert the accident was for the jury, and refusal to charge on the doctrine of last clear chance constituted harmful error.[69]

Insurance: Mistrial. The plaintiff was struck by an automobile and sues the owner and also the driver, who was driving with the owner's consent, for the injuries sustained. The jury returned a verdict for the plaintiff in the amount of $75,000. The defendants appealed and assigned as error a denial of their motion for a mistrial because the plaintiff's attorney, during the *voir dire* examination, asked jurors if they had any interest in any insurance company. The court affirmed the verdict for the plaintiff.[70]

REAL PROPERTY. *Declaratory Judgment: Ejectment.* Suit by a purchaser at a sheriff's sale for a declaratory decree declaring his rights to the land, which was in the defendant's possession. The court held that where the defendant held under an unrecorded deed[71] executed by a judgment debtor before the judgment, the purchaser had an action in ejectment, and a suit for a declaratory judgment would not lie for the purpose of trying title to real property.[72]

FIXTURES. A lease required the tenant to provide air conditioning equipment at his own expense. Also, it provided that the trade fixtures should remain the property of the tenant and he could remove same at the expiration of his lease, provided that the removal could be made without damage to the premises. The court held that the air conditioner, the condensers, motors and compressors housed in the basement of the building were trade fixtures and did not become part of the realty.[73]

Homestead: Abandonment: Judgment. A proceeding in equity to subject certain real estate of the defendant to the payment of a judgment secured against the defendant the judgment was promulgated May 1, 1953. Prior to the entry of this judgment and while the suit was pending, the

68. *In re* Mauderli, 122 F. Supp. 241 (N.D. Fla. 1954).
69. Wawner v. Sellic Stone Studio, 74 So.2d 574 (Fla. 1954).
70. Springer v. Morris, 74 So.2d 781 (Fla. 1954).
71. FLA. STAT. § 695.01 (1951).
72. Cape Sable Corp. v. McClurg, 74 So.2d 883 (Fla. 1954).
73. Ridgefield Investors, Inc. v. Holloway, 75 So.2d 208 (Fla. 1954).

defendant filed her claim for homestead exemption to the property. The defendant did not live on the property from May, 1952 to April, 1953. The court held that since the defendant had sound reasons for being way from the property, that no abandonment of the homestead right resulted and the judgment was not effective against the property.[74]

PROCEDURE. *Appeal and error.* Persons, whose petition for intervention had been properly denied and who had been allowed ten days within which to file a brief as amicus curiae on constitutional questions involved, were not parties to the proceeding, and had no right or authority to prosecute an appeal therefrom.[75]

Custody of minor: Parties to Agreement. The parents of a minor child made an agreement whereby the father was to get custody of the child. This agreement was incorporated in the court decree. The grandmother of the child brings a petition for leave to file a bill in the nature of a bill of review to set the decree aside on the ground that such agreement was infected with deceit. The court denied such petition because the grandmother was not a party to the agreement but considered the appeal as a writ of certiorari.[76]

Deportation: Re-entry into United States. A habeas corpus proceeding to test a deportation order. The alien was on a fishing vessel when it became necessary to enter a foreign port because of bad weather. Such entry was made without any intent or knowledge on the part of the alien. When the alien made false representations that he was an American citizen when the vessel re-entered the United States, the court held that he was not subject to deportation because his entry into a foreign port without intent to leave the United States did not constitute a fraudulent re-entry.[77]

Equity: Objection to the use of a master. The chancellor referred the case to a master with instructions to hear witnesses and to make findings of fact based on testimony taken before him, and also to report findings as well as conclusions relative to the law applicable.[78] The plaintiff objected to the use of a master. The court held that in the face of such an objection, the chancellor did not have the power to use a master.[79]

JURISDICTION: *The grant bail to a parolee.* The circuit court does not have power or jurisdiction[80] to grant bail to a parolee who is held under

---

74. Saint-Gaudens v. Bull, 74 So.2d 693 (Fla. 1954).
75. State v. Florida State Improvement Comm'n, 75 So.2d 1 (Fla. 1954).
76. Thomasson v. Angel, 74 So.2d 295 (Fla. 1954).
77. Savoretti v. United States *ex rel.* Pincus, 214 F.2d 314 (5th Cir. 1954).
78. Acts of 1931, c. 14658, § 57; RULES OF CIVIL PROCEDURE, Rule 3.14(b); FLA. CONST. Art. 5, §§ 11, 14, 19, 20.
79. Slatcoff v. Dezen, 74 So.2d 59 (Fla. 1954).
80. FLA. STAT. § 947.22(1) (1951).

a parole violation warrant issued by the FLORIDA PAROLE COMMISSION, in the absence of discretion by such commission.[81]

Mandamus: *Expulsion from a club without notice.* A club member was expelled from a country club without any notice or a hearing. He seeks reinstatement by mandamus proceedings. Without being concerned with the merits of the case, the court held that there was a denial of procedural safeguards and hence a violation of the "principles of natural justice."[82]

STATUTES. *Libel and Slander*: *Statute of limitations.* In the absence of a savings clause, plaintiff's disability by reason of insanity existing when a right of action for slander of title accrued would not toll the running of the statute of limitations,[83] which is two years.[84]

TAXES. *Income*: *Interest deduction.* Action against the United States for federal income taxes paid and for interest thereon. The plaintiff paid a larger tax than was allegedly due because certain interest payments made by him to his wife for money loaned by the wife to him, were disallowed as deductions from his income. The court held, that since the loans from his wife were bona fide, he was entitled in determining his liability for federal income taxes[85] to deductions for interest paid upon such loans.[86]

Cooperation by taxpayer: *Wilful evasion.* The defendant was charged with attempting to defeat and evade paying income taxes.[87] He had made no attempt to conceal his activities and made every effort to cooperate with the agents of the Internal Revenue Department in ascertaining the facts. The court held that the presumption that the evasion had not been wilfully attempted would have to be repelled by clear and convincing evidence in order to authorize a conviction.[88]

TORT. *Libel and slander*: *Privilege.* The State Insurance Commissioner held a hearing relative to whether or not an insurance agent's license should be revoked. The plaintiff sought to recover for allegedly libelous statements made during the course of the hearing. The court held that the hearing was quasi-judicial in nature and that any defamatory words published were absolutely privileged so long as they were relevant and material to the subject matter of the inquiry.[89]

TRADE-MARK. *Infringement*: *Unfair competition.* Plaintiff brings a civil action for trade-mark infringement and unfair competition. Plaintiff used a trademark consisting of the name and picture of Johnnie Walker in its

81. Blackburn v. Jackson, 74 So.2d 80 (Fla. 1954).
82. LaGorce Country Club v. Cerami, 74 So.2d 95 (Fla. 1954).
83. FLA. STAT. § 95.11(6) (1951).
84. Watson v. Chyna, 75 So.2d 216 (Fla. 1954).
85. 52 STAT. 460 (1938), 26 U.S.C. § 23(b) (1943).
86. Virgin v. United States, 123 F. Supp. 882 (S.D. Fla. 1954).
87. 52 STAT. 513 (1938), 26 U.S.C. § 145(b) (1943).
88. Berkowitz v. United States, 213 F.2d 468 (5th Cir. 1954).
89. Robertson v. Industrial Insurance Company, 75 So.2d 198 (Fla. 1954).

whiskey business. The defendant used the name Johnnie Walker as a trade-mark in its cigar business. The court held that the trade-mark belonged to the plaintiff and was infringed by the defendant.[90]

WILLS *Attestation: Witnesses.* A will, which was executed by the testator in the presence of two witnesses, who saw the testator place his signature thereon, and to whom he declared that the will was his last will and testament, was invalid[91] in view of the fact that only one of such witnesses subscribed his name to the will; the other refusing to do so.[92]

Attorney's Fee: Undue influence. Counsel for the proponent of a second will claims a fee from the estate. The second will was declared void because secured by undue influence.[93] The court held that the attorney had brought nothing to such estate and was not entitled to be paid by it, notwithstanding that he had acted in good faith.[94]

Competency. A suit to set aside a trust agreement on the ground that the settlor was aged, infirm, senile, and unable to understand the nature and effect of the agreement. The court held that feebleness of body or mental weakness does not tend to create a presumption of incompetence, and the evidence sustained a finding that the settlor was competent.[95]

WORKMEN'S COMPENSATION. *Administrator: Dependents.* An administrator could not recover compensation for the death of an employee who was killed in an accident arising out of and in the course of his employment, but who left no dependents.[96] A showing of dependency is a prerequisite to recovery of compensation for the death of an employee.[97]

Award: Impaired earning capacity. An award was made for a non-scheduled injury[98] based upon a finding that the bodily function as a whole had been impaired. The court held that the award must be set aside because it was not based upon a finding that the earning capacity had been impaired.[99]

Benefits: Negligent third party. The widow of a workman killed while in the scope of his employment by a negligent third party was entitled to the benefits provided for by statute[100] whether she recovered from the negligent third party or not.[101]

Course of employment. During a lull in his work due to a rainstorm, the claimant drove to a nearby stand for coffee. He was injured by reason

90. John Walker & Sons, Ltd. v. Tampa Cigar Co., 124 F. Supp. 254 (S.D. Fla. 1954).
91. FLA. STAT. § 731.01 *et. seq.* (1951).
92. *In re* Estate of Isaac Watkins, 75 So.2d 194 (Fla. 1954).
93. FLA. STAT. §§ 732.14, 734.01(2) (1951).
94. Redfern v. Brunstetter, 74 So.2d 360 (Fla. 1954).
95. Murrey v. The Barnett National Bank of Jacksonville, 74 So.2d 647 (Fla. 1954).
96. FLA. STAT. § 440.01 *et. seq.*, 440.16(2)(a)-(f) (1951).
97. Amsler v. Sox Meat Packers, Inc., 75 So.2d 297 (Fla. 1954).
98. FLA. STAT. §§ 440.02(9), 440.15(3)(a) (1951).
99. Ball v. Mann, 75 So.2d 758 (Fla. 1954).
100. FLA. STAT. §§ 440.16, 440.39(3) (1951).
101. Cushman Baking Co. v. Hoberman, 74 So.2d 69 (Fla. 1954).

of a hazard existing in the roadway adjacent to the employer's premises. The court held that the accident arose out of and in the course of employment. Although he was employed by two employers, the one he was working for at the time of the accident is the only one liable to him.[102]

Divorce: Common law wife. Workmen's compensation proceedings brought by a woman claiming to have become the common-law wife of the decedent after she had received a final decree of divorce from the decedent. The court held that the evidence justified a finding that although the claimant and the decedent had lived together following their divorce, something was yet to be done to complete a common-law marriage.[103]

Dual employment: Special employer. The managers of adjoining hotels entered into an arrangement whereby the beach boys employed by each hotel were to participate in water shows presented by the other hotel on its own premises and under its direction. A beach boy regularly employed by one of the hotels was injured while working on the other hotel's premises. The court held that the hotel putting on the show was a special employer[104] and liable for the injuries sustained.[105]

Suit against third person. Employees had been injured in a collision with a third party's truck, and neither the employer nor its insurance carrier had sued the third party within one year.[106] The employees were entitled to bring an action for the sole benefit of themselves or their dependents and could recover full damages, notwithstanding the fact that they had, meanwhile, received full compensation under the Workmen's Compensation Law.[107]

Suspension of payments: Wilful violation of safety regulations. Plaintiff was injured in an automobile accident. The carrier suspended payments on the ground that claimant's injury was occasioned by his refusal to observe safety regulations.[108] The violation was that he was travelling over sixty miles per hour and attempting to pass two cars while on the left side of the road when the accident occurred. The court held that the evidence does not justify the conclusion that claimant knowingly and wilfully committed the violation of the statutory safety rule.[109]

ZONING. *Estoppel: Rescission.* The Board of County Commissioners rezoned[110] certain land from an agricultural classification to one wherein

---

102. Narranja Rock Co. v. Dawal Farms Inc., 74 So.2d 282 (Fla. 1954).
103. Persico v. Samac Corporation, 74 So.2d 683 (Fla. 1954).
104. FLA. STAT. §§ 440.01, 440.02(2) (1951).
105. Stuyvesant Corp. v. Waterhouse, 74 So.2d 554 (Fla. 1954).
106. FLA. STAT. §§ 440.01 *et. seq.* (1951).
107. Holmes v. Carroll, 75 So.2d 203 (Fla. 1954).
108. FLA. STAT. § 317.22 (1951).
109. White v. C. H. Lyne Foundry & Machine Co., 74 So.2d 538 (Fla. 1954).
110. FLA. SP. ACTS 1947, c. 24592.

construction of a drive-in theatre was specifically authorized. In reliance thereon, the owner of the land made large expenditures for sound equipment and for preparation of the land for such use. The commissioners then rescinded their classification. The court held that such rescission was illegal and void under the principles of equitable estoppel.[111]

111. Bregar v. Britton, 75 So.2d 753 (Fla. 1954).