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Quarterly Synopsis of Florida Cases

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QUARTERLY SYNOPSIS OF FLORIDA CASES*

This issue of the *Quarterly Synopsis* consists of about sixty Florida cases, excluding memorandum decisions and a few others not of sufficient importance to be noted here, as found in Volume 54 of the Southern Reporter, Second Series, Pages 1 through 672 (advance sheets from October 4, 1951 through November 29, 1951). In addition to these are included two federal cases interpretative of Florida law. These are found in 72 Sup. Ct. 1 through 117 (advance sheets from November 15, 1951 through December 1, 1951), 191 F.2d 1 through 928 (advance sheets from October 8, 1951 through December 3, 1951), all of Volume 99 of the Federal Supplement and 100 F. Supp. 1 through 456 (advance sheets from October 1, 1951 through November 26, 1951).

ADMINISTRATIVE LAW. *Arbitrary action by administrative board.* A court of equity will not ordinarily enjoin the acts of an administrative board which is acting within its discretionary powers. However, the chancellor will not be deemed to have abused his power by granting an injunction where it appears that the board contemplates taking actions which will cause serious injury to nearby land, and which will cause unsanitary conditions in a nearby city.¹

Judicial review. Findings of fact of the Railroad and Public Utilities Commission when supported by evidence will not be disturbed on appeal to the courts.²

Premature court action. A state administrative board which must rule on a special point but which has not as yet issued its ruling is not required to defend against a bill for a declaratory decree on such matter, as the question is premature.³

ARREST. *Search and seizure.* A defendant must claim and prove himself to be the owner, occupant or lessee of property searched before he will be afforded protection from unreasonable search and seizure.⁴

Seizures incident to a lawful arrest are also lawful and information obtained as a result of such seizures may be used as evidence.⁵

*This issue of the *Quarterly Synopsis* was prepared for publication by Donald C. McCormick and edited by Allan S. Kushen.

1. *State Road Dept. v. Newhall Drainage District*, 54 So.2d 48 (Fla. 1951).

2. FLA. STAT. § 323.03(3) (1949), *Great Southern Trucking Co. v. Mack*, 54 So.2d 153 (Fla. 1951).

3. *Hollywood v. Broward County*, 54 So.2d 205 (Fla. 1951).

4. FLA. CONST. *Declaration of Rights*, §§ 12, 22, *Mixon v. State*, 54 So.2d 190 (Fla. 1951).

5. *Ibid.*

ATTORNEYS. Admission to practice. The State Board of Law Examiners has authority to issue certificates of admission to practice law without further examination to Negroes who were compelled to secure their education outside of the state and who have received an LL.B. degree from an accredited school or who have enrolled in an accredited law school outside the state on or before July 25, 1951.⁶

Fees. A Florida statute⁷ providing for the allowance of attorney's fees in judgments in favor of the beneficiary of any policy or contract of insurance does not apply to fidelity bonds which insure an employer against his employees' dishonesty, in the absence of specific provision for such fees in the contract.⁸

BROKERS. Suspension. The Florida Real Estate Commission has the burden of proving the allegations in an information filed by it against a registered real estate broker charging him with employing an unregistered real estate salesman.⁹

CONSTITUTIONAL LAW. Segregation. Petitioner, a Negro, brought an action for mandamus to compel the manager of a city-owned golf course to permit him to play golf at any time the course was open. The manager had previously promulgated a rule allotting one day in each week for the exclusive use of the club by Negroes. The court held that so long as segregation is not unlawful in Florida a writ of mandamus will not issue to prohibit the manager from making rules concerning segregation. However, the court refused to rule on the legality of the present regulation, pointing out that the petitioner may test it specifically by petition for declaratory decree or mandamus.¹⁰

CONTRACTS. Consideration: Second contract. A vendor and vendee contracted for the sale of the controlling interest in a corporation. Subsequently a second contract was substituted which cancelled the first and provided for the purchase of a smaller amount of stock, carrying with it the condition that the stock would be voted by a voting trust in accordance with an agreement to be entered into which would be acceptable to both parties. The vendor later refused to enter into any voting trust arrangement. The court held that since the second contract was void for failure of consideration (the consideration being the subsequent voting trust agreement), the cancellation of the first contract was ineffective and the vendee was entitled to specific performance of the first contract or of the second contract without the trust.¹¹

Deposit refund. A vendor and vendee entered into a contract for the sale of a piece of property. It developed that there was a cloud on the title,

6. *In re Watts*, 54 So.2d 151 (Fla. 1951).

7. FLA. STAT. § 625.08 (1949).

8. *Phoenix Indemnity Co. v. Union Finance Co.*, 54 So.2d 188 (Fla. 1951).

9. *Ringo v. Owens*, 54 So.2d 366 (Fla. 1951).

10. *Rice v. Arnold*, 54 So.2d 114 (Fla. 1951).

11. *Streit v. King*, 54 So.2d 522 (Fla. 1951).

since the government held a tax lien on the property. The vendor notified the vendee that a compromise with the government was pending and authorized the vendee to withhold the amount of the lien from the purchase money still owing until the lien was satisfied. The court held that these acts were not sufficient to remove the cloud and make the title merchantable and that therefore the vendee was entitled to a refund of his deposit.¹²

Estoppel to rescind. A purchaser who, subsequent to his discovery of the alleged fraud of the vendor, pays sums due on the purchase money mortgage cannot then obtain rescission of the contract on the ground of fraud.¹³

Rescission. Where a purchaser of land takes a warranty deed, pays the purchase price, enjoys possession and there is no fraud, he cannot, prior to any threat of eviction, obtain the aid of a court of chancery to rescind the contract when it appears that the building on the land encroaches on another lot. The only remedy, if one exists at all, is a suit at law on the covenants in the deed.¹⁴

COUNTIES. Approval of bonds by freeholders. The Florida Constitution¹⁵ requires that a majority of the freeholders must vote on a given bond issue in order for it to be valid. It makes no difference that the bond issue is approved by a majority of the freeholders actually voting.¹⁶

Certificates of indebtedness. Payment of certificates of indebtedness issued by the County Commission of Monroe County for the construction of a jail cannot be insured by the irrevocable pledge of the "full faith and credit" of the county without the approval of a majority of the freeholders.¹⁷

The Board of County Commissioners of Broward County, pursuant to statutory authority,¹⁸ purchased a number of voting machines and issued certificates of indebtedness, to be discharged by an ad valorem tax on all taxable property in the county. The court held that, since the voting machines were not a governmental necessity, the certificates must be approved by a vote of a majority of the freeholders.¹⁹ The dissent contended that voting machines are a "current governmental need" and that therefore a vote of the freeholders was not necessary.²⁰

COURTS. Judicial notice. Since the court does not take judicial notice of municipal ordinances, it will not look to an ordinance to see if a party has exhausted his administrative remedies.²¹

12. *McClosky v. Johnston*, 54 So.2d 517 (Fla. 1951).

13. *Johnson v. Green*, 54 So.2d 44 (Fla. 1951).

14. *Ibid.*

15. FLA. CONST. Art. IX, § 6.

16. *State v. Dade County*, 54 So.2d 57 (Fla. 1951).

17. FLA. CONST. Art. IX, § 6, *Sunshine Construction of Key West v. Board of Comm'rs, Monroe County*, 54 So.2d 524 (Fla. 1951).

18. Fla. LAWS 1949, c. 25181.

19. FLA. CONST. Art. IX, § 6, FLA. STAT. § 135.01 (1949), *State v. Broward County*, 54 So.2d 512 (Fla. 1951).

20. *State v. Broward County*, *supra* note 19 at 513 (Fla. 1951).

21. *Miami Shores Village v. Bessemer Properties, Inc.*, 54 So.2d 108 (Fla. 1951).

Rules. A judicial circuit may not by a general order contravene the rules of procedure set down by the Supreme Court.²²

CRIMINAL LAW. Confessions. The question of whether a confession was voluntary must be raised by evidence or testimony on the part of the defendant at the time of the hearing to determine the admissibility of the confession in evidence. Otherwise, a presumption arises that it was voluntarily given.²³

Larceny. The evidence in a prosecution for grand larceny must establish not only that the property was stolen but also that it was worth more than fifty dollars.²⁴ It is not sufficient that the evidence merely shows that property similar to that stolen was ordinarily worth more than fifty dollars.²⁵

Lotteries. A defendant indicted for selling lottery tickets in one count and possessing lottery tickets in a second count can only be convicted and sentenced for one offense. The court considered it illogical for one set of facts to establish that a man is both operator and patron of a lottery.²⁶

Manslaughter. Evidence which merely shows that a truck was driven at an excessive rate of speed on an open road, that it got out of control and caused an accident, is insufficient to show negligence of such a gross and flagrant character as will support a verdict of manslaughter.²⁷

Mistrial for tampering with jury. Where it appears that persons attempted unlawfully to communicate and tamper with the jury, the trial judge is justified in declaring a mistrial. In a subsequent prosecution such a mistrial will not support a plea of double jeopardy.²⁸

Offense committed by a corporation. Except where an offense is punishable by death or imprisonment only, a corporation may be held criminally liable even though the act constituting the offense be *ultra vires* or one for which a specific intent is essential. It makes no difference that the offense is punishable by either fine or imprisonment or both.²⁹

Procedure: Bail in capital offenses. Defendant was convicted of rape. The jury recommended mercy and the trial judge reduced the sentence to fifteen years. Defendant then applied to the trial court for a supersedeas bond pending his appeal. From a denial of this application he appealed. The Supreme Court held that the trial judge's reduction of the sentence coupled with the jury's recommendation of mercy indicated extenuating circumstances sufficient to warrant the granting of bail pending appeal.³⁰ The dissent agreed that bail could legally be granted but argued that it was within the trial judge's discretion to decide whether extenuating cir-

22. *Strong v. Clay*, 54 So.2d 193 (Fla. 1951).

23. *Hearn v. State*, 54 So.2d 651 (Fla. 1951).

24. FLA. STAT. § 811.01 (1949).

25. *Bornstein v. State*, 54 So.2d 519 (Fla. 1951).

26. *Mixon v. State*, *supra* note 4.

27. *Williams v. State*, 54 So.2d 66 (Fla. 1951).

28. *State ex rel. Larkins v. Lewis*, 54 So.2d 199 (Fla. 1951).

29. *State ex rel. Losey v. Willard*, 54 So.2d 183 (Fla. 1951).

30. FLA. CONST. *Declaration of Rights*, § 9, *Gray v. State*, 54 So.2d 436 (Fla. 1951).

cumstances sufficient to warrant the granting of bail were present and that his decision should not be disturbed on appeal.³¹

Procedure: Burden of proof. When a wound has been inflicted from which death might occur and death does in fact occur, the burden of proof is upon the defendant to make it appear that some other agency could have caused the death.³²

Procedure: Committing of insane defendant. The Florida statute³³ which provides that no defendant committed to an institution by a court for reasons of insanity shall be released therefrom without the consent of the court committing him does not apply where the committing court on motion of the Attorney General has granted an unconditional nolle prosequere of the indictment.³⁴

Procedure: Mistrial. A mistrial is a "trial" as contemplated by the statute³⁵ which provides for the release of an accused whose request for a trial is not granted within three terms after he has been first committed, and operates to start the statute running anew.³⁶

Procedure: Request for speedy trial. A defendant who wishes a speedy trial must ask for it. It will not be afforded him as a matter of course.³⁷

Procedure: Reversible error. It is not reversible error for the assistant prosecuting attorney to remark in the presence of the jury that the court would have directed a verdict in favor of the defendant if the material allegations of the indictment had not been proved, since it appeared that the portion of the indictment alluded to had been substantially admitted by the defendant.³⁸

Self-incrimination. A party who voluntarily discloses information concerning lotteries is not entitled to the statutory immunity³⁹ which is given to witnesses who are required to give such information, even though the information tends to convict him of a crime.⁴⁰

Self-incrimination by a corporation. A corporation is not entitled to protection under Florida statutes⁴¹ designed to protect private persons from self-incrimination.⁴²

DECLARATORY JUDGMENTS. *Power to entertain.* Since the State Road Department is the sole judge as to the manner in which 80 per cent of surplus gas tax funds shall be applied to state roads, the Supreme Court will not, prior to the exercise of discretion by the board, entertain a bill

31. Gray v. State, *supra* note 30 at 437.

32. Hopper v. State, 54 So.2d 165 (Fla. 1951).

33. FLA. STAT. § 917.01 (1949).

34. Trippodo v. Rogers, 54 So.2d 64 (Fla. 1951).

35. FLA. STAT., § 915.01(1) (1949).

36. Kelly v. State, *ex rel.* Morgan, 54 So.2d 431 (Fla. 1951).

37. FLA. CONST. *Declaration of Rights*, §§ 4, 11, FLA. STAT. 915.01(1), Kelly v. State *ex rel.* Morgan, *supra* note 36.

38. Hopper v. State, *supra* note 32.

39. FLA. STAT. § 932.29 (1949).

40. McKown v. State, 54 So.2d 54 (Fla. 1951).

41. FLA. STAT. § 932.29 (1949).

42. State *ex rel.* Losey v. Willard, *supra* note 29.

for a declaratory judgment questioning its right to act as to that surplus in a certain manner.⁴³

DIVORCE: Alimony. Misfortune or sharp decline in income is the proper test by which alimony payments may be reduced. The mere fact that a husband and his second wife are living extravagantly above the husband's income is not sufficient to allow a reduction in alimony.⁴⁴

Alimony and attorney's fees. An order awarding temporary alimony and attorney's fees to an alleged wife in a divorce case merely determines that her allegations as to the existence of a common-law marriage are prima facie established for the purposes of the order. It is not res judicata as to the contested existence of the marriage, even though the Supreme Court denies a writ of interlocutory certiorari to review.⁴⁵

EQUITY. Injunction against execution sale. An equity court does not have jurisdiction to issue an injunction without notice to restrain an execution sale unless fraud is clearly, positively and unequivocally asserted as a basis for such relief.⁴⁶

EVIDENCE. Dead man statute. A widow is not prevented by Florida's "dead man" statute⁴⁷ from testifying that the interlineation of her name in a deed to the decedent was made prior to its delivery when other heirs have previously testified that the decedent had claimed the property as his own exclusively.⁴⁸

Private papers. There is no material difference between obtaining books and papers in an illegal search and seizure and obtaining them by forcing their owner to produce them. If either method is used Florida statutes⁴⁹ will not permit such books and papers to be used in evidence against their owner.⁵⁰

Unsigned letters. A typewritten letter from a decedent to his attorney which bears the deceased's typed nickname and is enclosed in an envelope addressed in his own handwriting and bearing his return address is properly admitted as evidence even though it was not signed personally in the decedent's own handwriting.⁵¹

Admissibility: Other crimes. Admission of evidence tending to prove other crimes separate and wholly independent from the crime alleged in the indictment is prejudicial error.⁵²

FAMILY LAW. Husband and wife: Partition of property. A wife brought an action against her husband for separate maintenance and for an equitable

43. *Hollywood v. Broward County*, 54 So.2d 205 (Fla. 1951).

44. *Schiff v. Schiff*, 54 So.2d 36 (Fla. 1951).

45. *Fernandez v. Fernandez*, 54 So.2d 238 (Fla. 1951).

46. *Parrish v. Joyner*, 54 So.2d 50 (Fla. 1951).

47. FLA. STAT. § 90.05 (1949).

48. *Mayer v. Mayer*, 54 So.2d 105 (Fla. 1951).

49. FLA. STAT. § 932.29 (1949).

50. FLA. CONST. *Declaration of Rights*, § 12, *State ex rel. Byer v. Willard*, 54 So.2d 179 (Fla. 1951).

51. *Silva v. Exchange Nat. Bank of Tampa*, 54 So.2d 370 (Fla. 1951).

52. *Smith v. State*, 54 So.2d 37 (Fla. 1951).

division of their common property. The chancellor found that the wife was not entitled to separate maintenance but that since the property was jointly owned an equitable division of the property should be decreed. He then appointed a receiver to manage the property until a divorce was granted or until the parties agreed to a division. The Supreme Court held that as long as the parties remained husband and wife no division of the property should be ordered and that the appointment of the receiver was in error. The dissent agreed that a receiver should not have been appointed but argued that equity has the power to order a partition of the property.⁵⁴

Marriage: Common-law. All other requirements being present, the fact that a common-law marriage had its inception in a state which did not recognize such marriages will not defeat the marriage in this state after the parties have come to Florida and have continued to live openly as man and wife.⁵⁵

GAMING. Confiscation. Appeal is not the proper manner in which to challenge an order confiscating and declaring forfeit money taken from a defendant at the time of his arrest for operating a gambling house.⁵⁶

INDICTMENT AND INFORMATION. Unauthorized persons in grand jury room. Although the presence of unauthorized persons in the grand jury room is highly irregular and not to be condoned, the mere presence of such persons does not render an indictment ipso facto void. The only proper remedy in such case is a motion to quash, not a writ of prohibition.⁵⁷

INSURANCE. As security for liabilities. Decedent assigned the proceeds from certain insurance policies to a bank as security for any and all of his liabilities arising in the ordinary course of his business. He became liable to the bank on his own personal notes, as surety on other notes and on checks upon which his name did not appear individually but the proceeds of which he received directly from the bank. The court held that the bank was entitled to deduct the amounts of all of the notes and checks before paying the balance to the decedent's widow.⁵⁸

Indemnity bond. Knowledge of an employee's dishonesty communicated to an agent of his employer is not such knowledge of the employer as will discharge the survey on a fidelity or surety bond which provides for termination of the bond when the insured employer learns of any dishonest or fraudulent acts of the insured employee.⁵⁹

LANDLORD AND TENANT. Failure to give written notice of option to extend. Consequences of failure to give written notice by the lessee of his option to extend the lease, as required by the rental contract, will be relieved by a court of equity where it appears that the lessor had actual notice

53. *Clawson v. Clawson*, 54 So.2d 161 (Fla. 1951).

54. *Id.* at 163.

55. *Navarro, Inc. v. Baker*, 54 So.2d 59 (Fla. 1951).

56. *O'Brien v. State*, 54 So.2d 40 (Fla. 1951).

57. *State ex. rel. Losey v. Willard*, *supra* note 29.

58. *Silva v. Exchange Nat. Bank of Tampa*, *supra* note 51.

59. *Phoenix Indemnity Co. v. Union Finance Co.*, *supra* note 8.

of the lessee's intention to extend and that the lessor was not injured by the failure to give proper notice.⁶⁰

LIENS. *Mechanic's liens.* Not attachable to lands held for public use. A mechanic's lien will not attach to real property donated to a municipal corporation in trust for the use of the general public in perpetuity.⁶¹

MUNICIPAL CORPORATIONS. *Charter powers.* The North Bay Village charter provided for the village to be governed by a council of five and that a majority of the council constituted a quorum. Two vacancies on the council occurred which were never filled. The court held that although only three members remained on the council, a majority of two would not be sufficient to transact business.⁶²

Civil service. If a police sergeant on probation fails to pass the tests and requirements of civil service rules,⁶³ the police chief, with the approval of the civil service board, may order his return to his previous rank.⁶⁴

Elections. The City of Miami is authorized to hold a special bond election on the same day on which a regular municipal city commission election is being held.⁶⁵

Employees. An act⁶⁶ which authorizes the re-employment of retired city employees but which does not fix the compensation to be paid to such employees impliedly authorizes the employing authorities to fix their compensation at the time of rehiring.⁶⁷

Roads and bridges. Relying on a Florida statute⁶⁸ which provides funds for the improvement of roads and bridges in an incorporated city, the court held that the city commission of Fort Lauderdale could not pledge such funds to aid construction of bridges and tunnels throughout the county.⁶⁹

PARTNERSHIP. *Dissolution.* A partnership owned and operated two corporations. Dissension arose between the partners and some of them requested dissolution of the partnership and appointment of a receiver. The court held (1) that dissolution of the partnership and appointment of a receiver does not require dissolution of the corporations and (2) that where confidence, good faith, square dealings and honesty disappear among the members of a partnership, it ought to be dissolved.⁷⁰

PROCEDURE. *Appeal and error: Time.* If the last day of a period allowed for appeal falls on Sunday, its filing on the following Monday is too late to give the Supreme Court jurisdiction. This is true with respect to criminal as well as civil appeals.⁷¹

60. *Dugan v. Haige*, 54 So.2d 201 (Fla. 1951).

61. *St. Augustine v. Brooks*, 54 So.2d 196 (Fla. 1951).

62. *Clark v. North Bay Village*, 54 So.2d 240 (Fla. 1951).

63. FLA. STAT. § 87.01 *et seq.* (1949).

64. *St. Petersburg v. Bolender*, 54 So.2d 31 (Fla. 1951).

65. *State v. Miami*, 54 So.2d 250 (Fla. 1951).

66. Fla. Spec. Acts 1947, c. 24619, § 1.

67. *State ex rel. Poston v. Kennedy*, 54 So.2d 369 (Fla. 1951).

68. FLA. STAT. § 343.17 (1949).

69. *Nelson v. Fort Lauderdale*, 54 So.2d 207 (Fla. 1951).

70. *Lieberbaum v. Levine*, 54 So.2d 159 (Fla. 1951).

71. *Newsom v. State*, 54 So. 2d 58 (Fla. 1951).

Findings of master. Where the master finds that a contract concerning real property exists and was partially performed and the chancellor accepted these findings it is error to refuse specific performance.⁷²

Notice: By publication. A statute⁷³ which requires published notice for a period of thirty days does not require publication in every issue of a daily paper, since notice in a weekly would be sufficient.⁷⁴

Parties: Intervenors. A purchaser of land brought suit against his vendor to rescind their contract. The trial court permitted the broker to intervene for the purpose of asserting a legal claim for his commission against the vendor. Upon dismissing the complaint without prejudice the chancellor ordered the purchaser to answer the intervenor's claim. The supreme court held that the purchaser was improperly retained in the cause and should not have been required to answer the broker's claim.⁷⁵

Pleading: Variance. Where an indictment charges the defendant with embezzlement of certain jewelry and it is proved that he had authority to convert the jewelry into cash which he subsequently converted to his own use, there is a variance between the proof and the crime charged, which will entitle the defendant to a new trial.⁷⁶

Summary procedure. A motion to strike a portion of the defendant's answer coupled with a motion for summary judgment is tantamount to a waiver of the movant's request for a jury trial in the initial pleadings.⁷⁷

Venue. An application for a change of venue is addressed to the sound discretion of the trial judge.⁷⁸

PROPERTY. *Deathbed gift.* A decedent who, at the time of his death, owns only a portion of a fruit farm may not make a deathbed gift to his wife of the entire proceeds from the sale of the produce from such farm.⁷⁹

Homestead exemption. A divorced man who is paying support money for a child in the custody of his ex-wife is still considered "the head of the family" for personal homestead exemption of \$1000.⁸⁰

Real: Adverse possession. One who has been in open, hostile, continuous, undisputed possession of a piece of property for a period of time in excess of seven years obtains title thereto by adverse possession.⁸¹

Real: Restrictions. Restrictive covenants in a conveyance which curtail the free and untrammelled use of real property are not favored by the law and are strictly construed. However, where the intent is clear and the restrictions are not unreasonable, the courts will enforce them.⁸²

72. Sager v. Roberts, 54 So.2d 157 (Fla. 1951).

73. FLA. STAT., § 135.01 (1949).

74. FLA. STAT., § 49.01 (1949), Sunshine Construction of Key West, Inc. v. Board of Comm'rs, Monroe County, *supra* note 17.

75. Jermak v. Fisher, 54 So.2d 243 (Fla. 1951).

76. Fastow v. State, 54 So.2d 110 (Fla. 1951).

77. Silva v. Exchange Nat. Bank of Tampa, *supra* note 51.

78. Gardner v. State, 54 So.2d 31 (Fla. 1951).

79. Whidden v. Johnson, 54 So. 2d 40 (Fla. 1951).

80. FLA. CONST. Art. X, § 1, Larsen v. Austin, 54 So.2d 63 (Fla. 1951).

81. Johnson v. Green, *supra* note 13.

82. Ballinger v. Smith, 54 So.2d 433 (Fla. 1951).

SALES. *Fair trade agreements.* A retail liquor store which did not execute a fair trade contract or agreement with distilling companies is not bound by fair trade agreements made by the distillers with other liquor dealers throughout the city and state and may, if it so desires, sell beverages below the prices fixed by said agreements.⁸³

STATUTES. *Title.* The title of an act should fairly apprise a person reading it of its contents. Hence, an act⁸⁴ which merely purports to recreate the City of Sarasota, but contains therein provisions granting sovereign lands of the state of Florida to the incorporated area, will not operate as a transfer of such lands.⁸⁵

TAXATION. *Advertising purposes.* The Florida legislature passed an act⁸⁶ authorizing the Board of County Commissioners of Volusia County to levy a tax for the purpose of advertising the advantages, facilities and products of various taxing districts set up by the board. Pursuant to such act the Board of County Commissioners set up separate taxing districts, held referendum elections and imposed taxes on property owners in the district approving the tax. The court held that (1) a tax for the purpose of advertising is constitutional, (2) the spending of the tax money by the Chamber of Commerce under the supervision of the Board of County Commissioners is not unconstitutional on the ground that governmental power is delegated to persons not appointed by the Governor or elected by the people and (3) that since the tax only applies to those districts which approve it, it cannot be said to be unreasonable and arbitrary.⁸⁷

TORTS. *Survival of actions.* No right of action exists under the Florida survival statute⁸⁸ in favor of a decedent's estate if the death is instantaneous and unaccompanied by pain and suffering.⁸⁹

TRADE-MARKS. *Unfair competition.* In the absence of a showing of intentional appropriation or misrepresentation, equity will not enjoin under either state or federal law, on the theory of unfair competition, the use of the trade-mark "Creamette" where it appears that the plaintiff sold only macaroni products under that name and the defendant used the name to identify his frozen sweet or dessert products.⁹⁰

TRUSTS. *Constructive.* A constructive trust may be proved by parol testimony, but the evidence necessary to establish such a trust must be sufficiently clear, strong and unequivocal as to remove any reasonable doubt as to the trust's existence⁹¹ from the chancellor's mind.

WILLS. *Dower: Election of.* A widow is entitled to her dower rights in certain stocks notwithstanding the fact that there was a specific bequest of

83. Seagram-Distillers Corp. v. Ben Greene, Inc., 54 So.2d 239 (Fla. 1951).

84. Fla. Spec. Acts 1945, c. 23529 § 6.

85. Bird Key Corp. v. Sarasota, 54 So.2d 245 (Fla. 1951).

86. Fla. Laws 1949, c. 26294.

87. Miller v. Ryan, 54 So.2d 60 (Fla. 1951).

88. FLA. STAT. § 45.11 (1949).

89. Beaven v. Seaboard Air Line R.R., 100 F. Supp. 336 (N.D. Fla. 1951).

90. Creamette Co. v. Conlin, 191 F.2d 108 (5th Cir. 1951).

91. Lightfoot v. Rogers, 54 So.2d 237 (Fla. 1951).

the stocks to a named beneficiary and that the residuary estate contained a sufficient amount of money to pay the widow the market value of said stock.⁹²

Implied revocation. The mere fact that there is a divorce and a property settlement does not impliedly revoke a prior will or bequest by a divorced wife in favor of her ex-husband.⁹³

Probate. Since no property passes until a purported will is probated,⁹⁴ a party need not file a renunciation and disclaimer as a condition precedent to objection to its admission to probate.⁹⁵

ZONING. Constitutionality. A municipal ordinance which zones certain pieces of property for residential purposes is unconstitutional and void as being arbitrary, unreasonable, confiscatory and unrelated to the public welfare when it appears that the property in question is surrounded by other business properties and is unsuited for residential purposes.⁹⁶

Liquor licenses. A town will not be deemed to have acted in an arbitrary manner simply because it refused to allow the operation of two liquor businesses within 75 feet of each other.⁹⁷

92. *In re Malone's Estate*, 54 So.2d 248 (Fla. 1951).

93. *Ireland v. Terwilliger*, 54 So.2d 52 (Fla. 1951).

94. FLA. STAT. § 732.26 (1949).

95. *In re Purdy's Estate*, 54 So.2d 112 (Fla. 1951).

96. *Miami Shores Village v. Bessemer Properties, Inc.*, *supra* note 21.

97. *Ragozzino v. Town of Maitland*. 54 So.2d 364 (Fla. 1951).