Quarterly Synopsis of Florida Cases

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The Florida Supreme Court decided about two hundred and fifty cases during the period reported from March 10, 1953, through January 5, 1954. Those opinions (excluding memorandum decisions and a few others not considered of sufficient importance to be noted here) found in 67 So.2d 185 to 69 So.2d 884 are herewith reported. In addition, five cases interpretative of Florida law are included. These were found from 206 F.2d 518 to 208 F.2d 461 (advanced sheets from August 6, 1953 through December 9, 1953); and 115 F. Supp. 209 (advanced sheet of October 22, 1953).

Administrative Law. County Board of Public Instruction: Appointive authority. The County Board of Public Instruction has authority to appoint high school supervising principals in the absence of an affirmative recommendation by the County Superintendent. His negative recommendation has no effect.

Florida State Turnpike Authority: Jurisdiction. The act which created the Florida State Turnpike Authority refers exclusively to the proposed Sunshine State Parkway that will span the length of Florida. The authority cannot regulate causeways in Miami.

Internal Improvement Fund: Venue. The Trustees of the Internal Improvement Fund may invoke their right to be sued in Leon County, the county of their residence, in an action to restrain their sale of lands in Dade County.

Admiralty. Courts: Indefinite Orders. An order dismissing seaman's intervention in ship mortgage foreclosure proceedings does not constitute a bar to subsequent libel in rem for wages, when order does not disclose on which of several grounds the court had based the order.

Agency. Master and servant: Negligence. A complaint of tenant, shot by apartment owner's caretaker, alleging owner's negligence in know-

*This issue of the Quarterly Synopsis was written by George R. Georgieff and edited by Lawrence J. Meyer.

2. Jones v. State ex rel Board of Public Instruction, 67 So.2d 320 (Fla. 1953).
4. Florida State Turnpike Authority v. MacVicar, 67 So.2d 210 (Fla. 1953).
5. McCarty v. Lichtenberg, 67 So.2d 655 (Fla. 1953).
6. Scrofani v. Miami Rare Bird Farm, Inc., 208 F.2d 461 (5th Cir. 1953).
ingly keeping a dangerous servant on his premises, stated a good cause of action.  

Bailment. Liability: Implied. Where contract was silent on use of automobile by anyone other than driver, there was implied consent for bailee's wife to use the vehicle. The "U-Drive-It" owner should assume the responsibility for liabilities resulting from use of the car by the bailee's family when the members obtain his consent. 

Constitutional Law. Due process. Trial court failed to properly record defendant's actual valid waiver of a jury trial and aid of counsel. While error constituted cause for complaint if raised at the proper time, it did not necessarily amount to a failure to observe the constitutional requirements of due process.

Equity Decree. Res Judicata. Although a prior equity action, involving the same issues, decided additional improvements were not acceptable as defendant's contractual obligation and that contractor could not recover their reasonable value as a set-off against a special fund, the doctrine of "res judicata" would not, in the interest of justice, preclude contractor's recovery against city upon quantum meruit for the reasonable value of the aforementioned improvements.

Foreign insurers: Service of process. Florida statute, which provides that any unauthorized foreign insurer doing business with Florida residents by mail thereby appoints Insurance Commissioner of Florida as its agent for service of process, is not an unconstitutional denial of due process.

Full faith and credit: Foreign decrees, not final in nature. The order of a Pennsylvania court directing former executrix to pay sums which were decreed by such court, is not, according to Pennsylvania law, a final decree. Therefore, a proper basis for bringing suit in Florida under the full faith and credit clause of the Federal Constitution is lacking.

Full faith and credit: Foreign judgments. A resident of California was appointed guardian of both person and estate of ward and was designated proxy to vote ward's stock in two Florida corporations. His subsequent proxy vote to sell corporation's interest in realty within boundaries of Florida, having been approved by the California court, must be afforded full faith and credit by the Florida court.
Statutory immunity: Compelled testimony before a grand jury. A defendant, compelled to testify before a grand jury concerning certain gambling activities, cannot seek complete immunity from all prosecution for gambling because the statute\(^{18}\) protects him only against prosecutions connected with the matter to which he was compelled to testify.\(^{10}\)

Unfounded re-zoning ordinance. A city ordinance which re-zones residential property for hotel and apartment use, when sufficient other property in the neighborhood is set aside exclusively for business use, is unconstitutional.\(^{20}\)

Contracts. Arbitration: Validity. A provision in a partnership agreement to submit all functions and acts of the partnership to arbitration, which decision is to have the same effect and force as if it were rendered by the highest court having jurisdiction over the subject matter, is invalid as attempting to deprive the courts of their jurisdiction.\(^{21}\)

Consideration. Daughter's continuous care of mother for ten years constituted sufficient consideration for transfer to her, of deed to homestead property.\(^{22}\)

Evidence: Failure to prove general custom. Where landlord neglected to install storm shutters in accordance with oral contract, tenant's failure to show this was general practice, precluded recovery on the theory of general custom.\(^{23}\)

Option agreements: Rescission. Purchaser's lack of information, resulting from a careless indifference to ordinary manner of obtaining information rather than from a misrepresentation of vendor, cannot serve as a basis for rescission of an option agreement.\(^{24}\)

Corporations. Defense of usury available. In an action to foreclose a chattel mortgage given as security by defendant corporation for an obligation incurred on October 1, 1953, the corporation could plead usury as an affirmative defense.\(^{25}\)

Dissolution. The mere allegation of the existence of strained relations between the two stockholders of a corporation is not sufficient to justify dissolution.\(^{26}\)

Distribution. Where the testatrix bequeathed "my 500 shares of stock" to certain specified legatees and a subsequent stock split netted her 2,000 shares, the named legatees received all 2,000 shares. There was no

\(^{18}\) Fla. Stat. § 932.29 (1951).
\(^{19}\) State ex rel. Marcus v. Pearson, 68 So.2d 400 (Fla. 1953).
\(^{20}\) Lippow v. Miami Beach, 68 So.2d 827 (Fla. 1953).
\(^{21}\) Fenster v. Makovsky, 67 So.2d 427 (Fla. 1953).
\(^{22}\) Regero v. Daugherty, 69 So.2d 178 (Fla. 1954).
\(^{23}\) El Encanto, Inc., v. Boca Raton Club, Inc., 68 So.2d 819 (Fla. 1953).
\(^{24}\) Brown v. Coward, 69 So.2d 174 (Fla. 1954).
\(^{25}\) Fla. Stat. § 608.01 (1953); Sodi, Inc. v. Salitan, 68 So.2d 882 (Fla. 1953).
\(^{26}\) Freedman v. Fox, 67 So.2d 692 (Fla. 1953).
increase in the equity of the corporation represented by the additional shares.27

**Educational: Tax exemption.** Where corporation leased property to non-profit military academy, said lease containing stipulations for nominal rental and for educational use exclusively, such property came within constitutional provision28 excepting corporate property held and used exclusively for educational purposes from payment of taxes.29

**Service of process: Improper agent.** A person who merely takes mail orders through a catalogue for a foreign corporation is not considered its business agent for the purpose of service of process.30

**Courts. Appeals: Right of refusal.** A party to a proceeding for a declaratory judgment who has received a completely favorable decision cannot appeal.31

**Authority to order conveyance.** The circuit court, pursuant to statute,32 is empowered to order husband to convey to divorced wife his undivided interest in property formerly held by the entireties. A divorce decree which converted the estate to a tenancy in common cannot wrest this authority from the court.33

**Evidence: Admission.** In civil cases involving the disappearance of a person, death may be established by purely circumstantial evidence, the same as any other fact.34

**Excessive sentences.** A sentence of five years for escape from the county jail is totally void since there is no applicable statute and under the common law the maximum penalty for such an offense was 12 months imprisonment and a $500 fine.35

**Judges: Unwarranted inducement.** Notwithstanding jury's stated inability to agree on verdict, judge's remarks resulted in a conviction. Remarks, made by court under such circumstances constitute prejudicial error.36

**Jurisdiction: Workmen's Compensation Law.** The requirement under Workmen's Compensation Law that the notice shall fix a return day to confer jurisdiction on the court is necessary. A failure to do so may not be remedied after the expiration of the time of appeal.37

**Motions: Discretionary powers.** An extraordinary motion for new

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27. *In re Vail's Estate*, 67 So.2d 665 (Fla. 1953).
28. FLA. CONST. Art. XVI, § 16.
31. Credit Industrial Co., Ltd., v. Re-Mark Chemical Co., 67 So.2d 540 (Fla. 1953).
32. FLA. STAT. § 689.15 (1951).
33. Reid v. Reid, 68 So.2d 821 (Fla. 1953).
34. Johns v. Burns, 67 So.2d 765 (Fla. 1953).
36. Demetree v. United States, 207 F.2d 892 (5th Cir. 1953).
37. Lipkin v. Roxy Cleaners & Laundry Inc., 67 So.2d 660 (Fla. 1953).
trial, which states a new ground independent of those already enumerated, may be stricken at the court's discretion.\textsuperscript{38}

\textbf{Reinstatement of actions: Refusal to grant.} Where an action is dismissed under the statute\textsuperscript{39} for a failure to prosecute, the grounds shown for reinstatement of the action must be of such character as would have justified a refusal to dismiss.\textsuperscript{40}

\textbf{Voluntary dismissal: Non payment of corporate taxes.} A corporation which is unable to maintain a suit for failure to pay its taxes\textsuperscript{41} cannot have its suit voluntarily dismissed because of that reason, when it has paid the corporate taxes after the suit had been instituted but prior to time final decision is rendered.\textsuperscript{42}

\textbf{Criminal Law. Appeal from judgment.} Where the county solicitor elected to try defendant on misdemeanor charge, notwithstanding the fact he was arraigned on a charge of grand larceny, defendant's appeal from judgment of criminal court of record was properly carried to the circuit court\textsuperscript{43} and not to the Supreme Court.\textsuperscript{44}

\textbf{Entrapment.} In a situation wherein the operator of a house of ill repute already possesses the requisite criminal intent, the defense of entrapment is not available to her for purpose of suppressing the testimony of two detective "customers."\textsuperscript{45}

\textbf{Excessive sentences.} Conviction under the lottery laws\textsuperscript{46} on several counts, where actually such offenses were merely variations of one offense, requires that the three one year sentences imposed on defendant be set aside and that one sentence for one year be imposed for the highest offense.\textsuperscript{47}

\textbf{Habeas corpus: Materiality of factors.} In a habeas corpus proceeding to determine if defendant confined on charge of first degree murder, is entitled to bail, circuit court should have admitted evidence of defendant's state of passion and intoxication at the time the crime was committed; these factors are of material substance in a first degree murder charge.\textsuperscript{48}

\textbf{Parole: Time.} Time gained by virtue of good behavior while incarcerated cannot be applied to reduce the time which prisoner must remain on parole.\textsuperscript{49} Parole commission's jurisdiction to revoke paroles is measured by the original sentence only.\textsuperscript{50}

\begin{thebibliography}{50}
\bibitem{38} Townsend v. Gibson, 67 So.2d 225 (Fla. 1953).
\bibitem{39} \textsc{Fla. Stat.} § 45.19 (1951).
\bibitem{40} Early v. Sarasota-Fruitville Drainage Dist., 67 So.2d 441 (Fla. 1953).
\bibitem{41} \textsc{Fla. Stat.} § 610.11 (1951).
\bibitem{42} 1825 Collins Ave. Corp. v. Rudnick, 67 So.2d 424 (1953).
\bibitem{43} \textsc{Fla. Const.} Art. 5, § 11.
\bibitem{44} Pleger v. State, 68 So.2d 371 (Fla. 1953).
\bibitem{45} Lashly v. State, 67 So.2d 648 (Fla. 1953).
\bibitem{46} \textsc{Fla. Stat.} § 849.09 (1951).
\bibitem{47} Williams v. State, 69 So.2d 767 (Fla. 1954).
\bibitem{48} State ex rel. Goepel v. Kelly, 68 So.2d 351 (Fla. 1953).
\bibitem{49} \textsc{Fla. Stat.} § 947.24 (1951).
\bibitem{50} Easterlin v. Mayo, 69 So.2d 181 (1954).
\end{thebibliography}
Procedure: Prejudicial error. It was prejudicial error for state's attorney, during closing argument to jury, to state that finding defendant not guilty because of insanity would only result in defendant's confinement in an asylum for a period, only to be released to commit another homicide.51

Damages. Alteration of amount. In a personal injury action wherein the jury received the issue of damages, accompanied by proper instructions and evidence supporting the reasonableness of the award, the Supreme Court could not alter the amount of the award.52

Evidence. In an action for damages resulting from intersectional collision between train and auto, the negative testimony of motorist's witnesses, who were neither looking at nor listening to train's warning signals, was not sufficient to overcome testimony of defendant's employees that proper warnings were given.53

Divorce. Alimony: Refusal to grant. It is within the chancellor's discretion to determine whether or not an award of alimony should be granted to a wife against whom a divorce is obtained for extreme mental cruelty and a violent and un ungovernable temper. He may refuse to award any alimony whatsoever if the circumstances so direct.54

Bill of review: Refusal to grant. A wife, who failed to substantiate her claim of fraud in her answer to a divorce complaint, could not, by a bill of review, attack the final divorce decree by alleging substantially the same charges of fraud.55

Defense of recrimination: Refusal to allow. The doctrine of recrimination has no application in a case where the husband was justified in leaving his wife prior to his divorce action because of her misconduct amounting to "extreme cruelty" and the misconduct complained of by the wife occurred subsequent to their separation.56

Erroneous decree. Where the final decree denied divorce, circuit court's separate order directing the wife to join him in the conveyance of realty held by the husband was clearly erroneous.57

Validity of proceedings. Antecedent divorce proceedings, prima facie valid, cannot later be attacked by a motion to quash the decree on the grounds of fraud.58

Elections. Complaint: Prescribed period for filing. The statute provides that in order to contest the results of an election, the complaint

51. Williams v. State, 68 So.2d 582 (Fla. 1953).
52.供热 v. Clevenger, 68 So.2d 396 (Fla. 1953).
53. Loftin v. Kubica, 68 So.2d 390 (Fla. 1953).
54. Longino v. Longino, 67 So.2d 203 (Fla. 1953).
55. Fuller v. Fuller, 68 So.2d 177 (Fla. 1953).
56. Busch v. Busch, 68 So.2d 350 (Fla. 1953).
57. Field v. Field, 68 So.2d 376 (Fla. 1953).
must be filed within ten days after the canvassing board returns its canvass of the election. A complaint filed nearly two months after the election comes too late.60

Equity. Class suits. An action to establish an equitable lien on unincorporated religious association’s real property can be maintained if the named defendants are fairly representative of the class61 sought to be reached by the suit. Three governing officers were sufficient representation where congregation consisted of 900 people.62

Clean hands doctrine. Where a building contractor and the person for whom he is building a house, exaggerated the contract price in order to secure a loan, a court of equity should refuse aid to the contractor (with unclean hands) in a proceeding to enforce the contract.63

Cloud on Title. Even though the merits of the case were not decided, the assertion of an adverse claim to realty in a judicial proceeding constitutes a cloud on title. A party may invoke equity's jurisdiction to quiet title.64

Evidence: Exclusion. Equity will not take jurisdiction of a suit to enjoin institution of an action at law when the matter relied upon in seeking the injunction can be presented as a defense in the action at law.65

Nuisance. Right of Action. In an action to enjoin defendant insecticide manufacturer from discharging harmful fumes and gases over employer’s property, plaintiffs, railroad employees, must show such an interest as would entitle them to enjoin a private nuisance.66

Parol evidence. Where a written instrument has accomplished a result which neither party had intended, parol evidence will be admitted to reform the contract in accordance with the true intent of the parties.67

Parol evidence. Where, in an action at law, the parol evidence rule would exclude proof of an extrinsic oral agreement which varied specific terms of a written instrument, a court of equity will not ignore the rule in order to arrive at a desirable result.68

Unfair competition: Authority to enjoin. Where defendant manufactured and merchandised an insecticide vaporizer which was in every way excepting its name, an exact duplicate of plaintiff’s, such acts constituted unfair competition and would be enjoined.69

60. Griffin v. Knoth, 67 So.2d 431 (Fla. 1953).
61. FLA. STAT. Equity Rules, rule 28 (1951).
63. Hauer v. Thum, 67 So.2d 643 (Fla. 1953).
64. Stark v. Frayer, 67 So.2d 237 (Fla. 1953).
65. Carvell v. Vigilianco, 67 So.2d 240 (Fla. 1953).
66. Page v. Niagara Chemical Division of Food Machinery & Chemical Corp., 68 So.2d 382 (Fla. 1953).
67. Spear v. MacDonald, 67 So.2d 630 (Fla. 1953).
68. Schwartz v. Zaconick, 67 So.2d 200 (Fla. 1953).
69. Senteco, Inc. v. McCulloch, 68 So.2d 577 (Fla. 1953).
Use of similar name: Unfair competition. Since the term "Ventilated Awnings" has acquired a special meaning in the south Florida area, an attempt by awning manufacturers to use the name will be enjoined as unfair competition and a violation of franchise rights.\textsuperscript{70}

ERROR. Statutory violation. The harmless error statute\textsuperscript{71} has no application where the state's prosecutor has violated a statute\textsuperscript{72} by his comment on a defendant's failure to testify.\textsuperscript{73}

ESTOPPEL. Erroneous tax sale of realty. Where lands conveyed to the state were erroneously placed on the tax rolls and sold for delinquent taxes, the state is estopped from questioning the title eleven years after the sale.\textsuperscript{74}

Laches. The purchaser of a business will be estopped from claiming misrepresentation in the financial statements where he had knowledge of the inaccuracies and failed to assert his claim until eighteen months after the purchase.\textsuperscript{75}

EVIDENCE. Burden of proof. In order to prove contempt for violating a restraining order of the court, it must be shown that defendant's violation was intentional.\textsuperscript{76}

FLORIDA. County Bonds: Cure of defects. An act of the legislature specifically ratifying a county hospital bond issue cures any defects contained therein.\textsuperscript{77}

GAMING. Unlicensed wagering. An information\textsuperscript{78} is the proper method of initiating prosecution against one who accepted wagers without paying the special tax required by federal statute.\textsuperscript{79}

INSURANCE. Beneficiaries. Stipulation by insured and his first wife that the proceeds of his life insurance were to go to their children, ratified by final divorce decree, did not preclude insured from making his second wife the beneficiary, particularly when she had possession of the policy and had paid the last few premiums.\textsuperscript{80}

Death caused by physical infirmity. An insurance policy provided for double indemnity in case of accidental death, but not if death occurred directly or indirectly from a physical infirmity. Proof of death by a

\textsuperscript{70} Florida Ventilated Awnings Co. v. Dickson, 67 So.2d 215 (Fla. 1953).
\textsuperscript{71} FLA. STAT. § 54.23 (1951).
\textsuperscript{72} FLA. STAT. § 918.09 (1951).
\textsuperscript{73} Way v. State, 67 So.2d 321 (Fla. 1953).
\textsuperscript{74} Trustees of Internal Improvement Fund v. Bass, 67 So.2d 433 (Fla. 1953).
\textsuperscript{75} Street v. Bartow Growers Processing Corp., 67 So.2d 228 (Fla. 1953).
\textsuperscript{76} Florida Ventilated Awning Co. v. Dickson 67 So.2d 218 (Fla. 1953).
\textsuperscript{77} State v. Seminole County 67 So.2d 244 (Fla. 1953).
\textsuperscript{78} 26 U.S.C. § 2707 (b) (1913).
\textsuperscript{79} Mosely v. United States 207 F.2d 908 (5th Cir. 1953).
\textsuperscript{80} Cadore v. Cadore 67 So.2d 633 (Fla. 1953).
ruptured aneurysm (weak spot in a blood vessel) of the brain due to a strain was sufficient to show that death was not accidental.84

JUDGE. Statements: Disqualification. The mere statement, outside of court, that recent search and seizure laws will impair the enforcement of lottery laws is not sufficient to disqualify a judge from hearing lottery cases.82

Judgments. Attorney's fee. An award of $5,000 for attorney's fee in a divorce action was not excessive where some 700 pages of testimony were compiled in 10 separate hearings. However, this award was sufficient to cover services of wife's attorney on the husband's appeal.83

Excessive damages. An award of $200,000 for pain and suffering occasioned by physical injury is excessive; it indicates that the jury was influenced by emotional or sentimental considerations, and a new trial will be ordered on the issue of damages.84

Travel expenses. Attorney's fees. Grandmother who was granted custody of two children could, in an action for support of the children against the father, in accordance with statute,85 recover expenses incurred in traveling 150 miles to testify, attorney's fees, and $20 weekly as support for the children.86

Landlord and Tenant. Surrendered premises. The fact that a landlord accepts his tenant's surrendered premises, makes certain necessary repairs, and operates the hotel as his own for three months, cannot serve to preclude landlord's recovery of future loss of rents as agreed to in the lease. Nor can this conclusively show that such acts ended the landlord tenant relationship thereby relieving tenant of future liabilities.87

Limitation of Actions. Information: Prescribed period. When the state's information is quashed after the statute of limitations has run, the state has three months under the statute88 in which to file another information. If the second information is quashed, a third information will be barred by the statute of limitations.89

Municipal Corporations. General credit: Assessments. Street improvement certificates, which are to be paid solely from special assessments, do not pledge the municipalities' general credit and are not bonds requiring a vote of the freeholders.90

81. The Maccabees v. Terry 67 So.2d 193 (Fla. 1953).
82. State ex rel Sagonias v. Bird, 67 So.2d 678 (Fla. 1953).
83. Touby v. Touby, 68 So.2d 365 (Fla. 1953).
84. Loftin v. Wilson, 67 So.2d 185 (Fla. 1953).
86. Evans v. Cone, 68 So.2d 886 (Fla. 1953).
87. Kanter v. Safran, 68 So.2d 553 (Fla. 1953).
88. Fla. Stat. § 932.05 (1951).
89. State v. McCloud, 67 So.2d 242 (Fla. 1953).
90. City of Orlando v. State, 67 So.2d 673 (Fla. 1953).
NEGLIGENCE. Dangerous condition: Notice. Before defendant supermarket could be held liable for injuries occasioned by a fall due to a slippery substance, charge to the jury must aver that defendant had actual or constructive notice of the slippery condition.\footnote{91}

Degree of care: Utility companies. The very highest degree of care, short of being an insurer, is required of companies engaged in repairing electrical power lines.\footnote{92}

Injuries: Foreseeability. Department store is not liable for unforeseeable injuries to plaintiff on escalator when occasioned by the negligence of a fellow passenger.\footnote{93}

POLITICS. Party Executive Committee: Justiciability of Disputes. The primary law,\footnote{94} under which political party was created, permits officers of Republican Executive Committee to avail themselves of any of the processes of court.\footnote{95}

Political parties: Oaths. Under statute\footnote{96} which requires members of particular political party, who aspire to party candidacy, to swear support of party's nominees appearing on ballot of next general election, one who so swore in March, 1950 committed himself only insofar as the election of 1950. A subsequent declaration of his intention to support the opposition's candidates in the 1952 general election did not violate his oath to his party.\footnote{97}

PROCEDURE. Affidavits. When a question is raised regarding matters which may have occurred in the jury room but which did not inhere in the verdict itself, and the trial judge conducted a proper inquiry and determination of such matters, these matters cannot thereafter be raised by affidavit or otherwise.\footnote{98}

Complaints: Statutory non conformance. Where a contractor seeks to enforce a lien for labor performed and materials furnished, his complaint, in order to conform to the statute,\footnote{99} must show that statement as to full payment of lienors was given within time provided therein.\footnote{100}

Habeas corpus: Raising new issues. Petitioner sentenced to death for first degree murder having failed during course of trial to raise contention that such sentence was excessive and discriminatory with reference to his age, in that death sentence was meted out only to those of his racial identity in such age group, has waived or forfeited his right to raise the
issue. He cannot now raise it for the first time on petition for habeas corpus.  

Information: Allegation of guilty knowledge unnecessary. In an information which merely sets forth the transmission of racing news for gambling purposes,\textsuperscript{102} it is not necessary to allege and prove guilty knowledge on part of defendant that the information transmitted is intended to be used for unlawful purposes.\textsuperscript{103}

Information: Specific pleadings. An information charging the transmission of racing news for gambling purposes,\textsuperscript{104} which fails to state time and particular race of the day involved in the alleged violation, is insufficient to so charge the defendant.\textsuperscript{105}

Motion for new trial: Unsound jury verdict. Trial judge, satisfied that defendant's testimony failed to establish a defense and that plaintiff was not guilty of contributory negligence, should grant plaintiff's motion for new trial when jury returns verdict for defendant.\textsuperscript{106}

Pleadings: Allegations. Under the statute\textsuperscript{107} granting architect's liens, plaintiff must allege that the lien is to run against the property improved and that the property has, in fact, been improved.\textsuperscript{108}

Pleadings in negligence action: Necessary allegations. In an action for personal injuries the failure to allege the degree of host's illness or that he had a premonition of the stroke which caused the accident, prohibits charging gross negligence or wanton or wilful misconduct as contemplated by the automobile guest statute.\textsuperscript{109}

Service of process: Non-resident doing business. The purchase and subsequent listing for sale of an orange grove in Florida constitutes engaging in a "business venture" under the statute\textsuperscript{110} authorizing service of process on the Secretary of State in behalf of non-residents.\textsuperscript{111}

Real Property. Dedication: Title to lands. Where there is an offer by a landowner to dedicate a road and the county enters upon the property, fills in ruts, clears up brush, and makes the road usable, there is a "construction" within the meaning of the statute,\textsuperscript{112} if kept in repair for four years, the public gains title by dedication.\textsuperscript{113}

Easements. An oral agreement permitting former title holders to

\textsuperscript{101} State v. Mayo, 69 So.2d 307 (Fla. 1954).
\textsuperscript{102} FLA. STAT. § 550.35 (2) (1951).
\textsuperscript{103} State v. Hillel, 68 So.2d 897 (Fla. 1953).
\textsuperscript{104} FLA. STAT. § 550.35 (1951).
\textsuperscript{105} State v. Alred, 68 So.2d 894 (Fla. 1953).
\textsuperscript{106} Schumacher v. Passow 68 So.2d 899 (Fla. 1953).
\textsuperscript{107} FLA. STAT. § 84.02 (1951).
\textsuperscript{108} Peterson v. Peterson, 67 So.2d 682 (Fla. 1953).
\textsuperscript{109} Baker v. Hausman, 68 So.2d 572 (Fla. 1953).
\textsuperscript{110} FLA. STAT. § 47.16 (1951).
\textsuperscript{111} State ex rel. Neber v. Register, 67 So.2d 619 (Fla. 1953).
\textsuperscript{112} FLA. STAT. §§ 341.59, 341.66 (1951).
\textsuperscript{113} Pasco County v. Johnson, 67 So.2d 639 (Fla. 1953).
take water in barrel-lots from privately owned small lake, could not be altered to allow present title holders to engage in large scale pumping of lake waters for irrigation purposes.\textsuperscript{114}

\textbf{Encroachments.} Where party attempts to cancel a contract for sale and purchase of a tourist camp, encroachments which are inconsequential in nature and which would not be likely to subject purchaser to litigation concerning them, will not render title unmarketable. This is especially true when custom permitted such inconsequential encroachments.\textsuperscript{115}

\textbf{Ejectment.} Ejectment is the proper remedy in a boundary line dispute and an action to determine a boundary line cannot be brought\textsuperscript{116} under the declaratory judgments statute.\textsuperscript{117}

\textbf{Limitation of actions. Slander of title.} In an action for wrongful disparagement and impairment of the vendibility of title to real property, the two year statute of limitations\textsuperscript{118} applicable to actions for libel and slander equally governs actions for slander of title.\textsuperscript{119}

\textbf{Option agreement: Repudiation.} Repudiation of an option agreement to sell certain lands and equipment will not be permitted merely because vendor does not want her divorced husband to receive the property.\textsuperscript{120}

\textbf{Quiet title suit: Procedure.} In a proceeding to quiet title, the alleged cloud upon title must be set forth specifically.\textsuperscript{121}

\textbf{Tax assessments.} Board of county commissioners cannot make a blanket reduction on each piece of property assessed in the county when there has been no complaint as to inequality or over-assessment of any particular piece of property in relation to other property in the county,\textsuperscript{122} but simply a complaint of a general nature stating that all property appearing on the assessment roll is over-assessed.\textsuperscript{123}

\textbf{Tax deed: Procedure.} A notice of application for a tax deed to property held as an estate by the entireties, as required by statute,\textsuperscript{124} is not sufficient if properly mailed only to one of the spouses, and tax deed based thereon is void.\textsuperscript{125}

\textbf{Schools and Education. School teachers: Probable disloyalty to new superintendent.} Where school teacher activity campaigned against the successful candidate for the office of superintendent of schools, her recommendation for a principalship by the defeated superintendent would

\textsuperscript{114} Crutchfield v. F. A. Sebring Realty Co., 69 So.2d 328 (Fla. 1954).

\textsuperscript{115} Loeffler v. Roe, 69 So.2d 331 (Fla. 1954).

\textsuperscript{116} FLA. STAT. § 87.01 (1951).

\textsuperscript{117} Stark v. Marshall, 67 So.2d 235 (Fla. 1953).

\textsuperscript{118} FLA. STAT. § 95.11 (6) (1951).

\textsuperscript{119} Old Plantation Corp. v. Manic Industries, Inc., 68 So.2d 180 (Fla. 1953).

\textsuperscript{120} Adams v. Stoffer, 69 So.2d 885 (Fla. 1953).

\textsuperscript{121} Stark v. Frayer, 67 So.2d 237 (Fla. 1953).

\textsuperscript{122} FLA. STAT. §§ 193.01 et seq., 193.25 (1953).

\textsuperscript{123} Armstrong v. State, 69 So.2d 319 (Fla. 1954).

\textsuperscript{124} FLA. STAT. §§ 194.16, 194.18 (1941).

\textsuperscript{125} Montgomery v. Gipson, 69 So.2d 305 (Fla. 1954).
not, in the absence of statutory violation, be refused merely because she would probably be disloyal to the new superintendent.

Taxation. Municipal tax: Telephone installations. Installation charges by telephone company for switchboard individual stations, and connecting wiring in defendant's hotel are subject to city tax on charges made for telephone service. This is notwithstanding classification of such charges as rent by telephone company.

Torts. Negligence: Emergency doctrine. Bus driver was free of negligence and thus entitled to benefit of emergency doctrine, when he was forced to stop suddenly upon being confronted by two mules upon the highway.

Negligence: Excessive judgments. An award of $100,000 based upon an impartial rationalization of the evidence, was not so grossly excessive as to infer a verdict founded upon passion, prejudice, sympathy or any other factors when such award was result of intersectional collision with defendant's ambulance.

Res ipsa loquitur: Evidence necessary to preponderate. To invoke the doctrine of res ipsa loquitur in an action for damages caused by exploding beverage bottle, plaintiff must show that the explosion could not have reasonably occurred by improper handling after bottle had left the custody of the bottling works.

Slander. A charge at a public gathering that one is a communist is slanderous per se.

Zoning. Validity: Evidence. An evidentiary showing that property was usable for residential purposes and that there was only nominal industrial development in the immediate vicinity, furnished sufficient basis for city ordinance rezoning area from industrial to residential.

129. Alabama Operating Co. v. Winter Park, 68 So.2d 601 (Fla. 1953).
132. Miami Coca-Cola Bottling Co. v. Reisinger, 68 So.2d 589 (Fla. 1953).
133. Joopanenko v. Cavagan, 67 So.2d 434 (Fla. 1953).