

been discharged improperly, such error does not affect the quality of Julio Capillo's testimony. The correctness and propriety of the discharge does not determine the admissibility and relevancy of the testimony of a defendant who had been discharged, for it is the rules on evidence which determine whether or not such declarations are admissible and relevant. *PEOPLE v. ARARIA*, (CA) G.R. No. 16313-R, July 10, 1957.

REMEDIAL LAW — EVIDENCE — THE SETTLED RULE IS THAT ON QUESTIONS OF FACT THE FINDINGS OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT AND SHOULD NOT BE DISTURBED EXCEPT FOR SERIOUS REASONS, SUCH AS FAILURE TO CONSIDER IMPORTANT CIRCUMSTANCES OR MISINTERPRETATION OF THEIR SIGNIFICANCE. — Angel de la Cruz appealed from the judgment of the CFI finding him guilty of robbery by the use of force and violence committed against Pepito Montezan. The lower court found that appellant with two others accosted Pepito Montezan, demanded for money for drinks; that appellant gave Montezan several blows with his fist; that appellant had opened a knife and acted as if to strike Montezan who was able to escape from the hands of appellant's two companions. The amount of ₱2.30 was taken from Pepito Montezan. The trial court relied on the testimony of Pepito Montezan, the complainant, and Amado Relador, an eye-witness. The facts found by the court were taken from the testimony of these two witnesses as adduced by the trial court. The defense presented witnesses. Appellant himself had an alibi. But the lower court gave credence to the testimony of the witnesses for the prosecution. Appealing, Angel de la Cruz questioned the findings of fact of the trial court. *Held*, the settled rule is that on questions of fact the findings of the trial court are entitled to great weight and should not be disturbed except for serious reasons, such as failure to consider important circumstances or misinterpretation of their significance. *PEOPLE v. DE LA CRUZ*, (CA) G.R. No. 16483, July 11, 1957.

REMEDIAL LAW — EVIDENCE — A CONFESSION OBTAINED THROUGH MALTREATMENT IS ADMISSIBLE IN EVIDENCE WHEN ITS CONTENTS ARE TRUE. — In the evening of Jan. 26, 1952, Cortez, a farmer and resident of Subol, Guimba, Nueva Ecija, tied his carabao at his shed 10 meters away from his house. On the morning of the following day the carabao was no longer there. A thorough search in the vicinity on that day failed to yield his carabao. Then at barrio San Antonio they were found in the possession of defendant. Samonte was investigated and he executed an affidavit, Exh. A, wherein he admitted that the carabaos were not his own, but that they were stolen by him. Romulo Samonte stated that his confession was obtained by force and maltreatment. *Held*, there are sufficient circumstance in the case to prove that his confession was executed voluntarily. Granting that the confession was involuntary, yet it is proven that the facts contained therein are true. A confession obtained through maltreatment is admissible in evidence when its contents are true. What the law abhors is false confession obtained by force. *PEOPLE v. SAMONTE*, (CA) G.R. No. 16579-R, April 23, 1957.

BOOK NOTE

WE THE JUDGES. By William O. Douglas.* Publisher: Doubleday and Co., Inc., Garden City, N.Y. 1956.

First Note. Take note of the title of the book. Do not have a misconception of it. *WE THE JUDGES* is not a biography or life story of any judge or justice. It is a book on constitutional law. The subject matter of this book was originally delivered as the Tagore Lectures at the University of Calcutta in July 1955. Broadly speaking, it deals with the fundamental law of a state. Specifically, it concerns itself with a comparative study of the constitutional law of India and that of the United States of America.

Second Note. It should be noted also that the comparison is quite unique. Unique in the sense that it compares two countries with different historical, cultural and social background. At first blush we may be led to conclude that because of these differences, they naturally lead to entirely different problems. Therefore there will be no common ground for comparison. But oddly enough, this is not so. As the author himself has pointed out, the problems that confronted India yesterday and the difficulties she is facing today are the very same problems that once confronted the United States yesterday and the same hardships she is facing today. The conclusion, therefore, is more apparent than real.

Subject extent. The Lectures cover a period starting from Marshall (who started his service in 1801) to Warren (who took his seat in 1953) with respect to that of the United States, and from the Independence of India to the day late in 1954 when Bijan Kumar Mukherjea became India's fourth Chief Justice with respect to that of India. The decisions cited in the Work are therefore some of the latest both in the United States and that of India.

Subject Treatment. The author in the first chapter points out the similarities of the problems and fundamental concepts of the two just above mentioned countries. Concepts on *Ultimo Ratio*. Truth, Government of the People, Human Rights, Checks and Balances, Independence of the Judiciary, are (although in some instances different in form and manifestation) the same. The problems, such as those of the multi-racial community and on Federalism are also scrutinized and found to be practically the same.

With this premise therefore, the author starts with the exposition of the subject in subsequent chapters.

The following chapters are principally comparisons of the Indian and American Constitutions. The author discusses first the American Concept or aspect or provisions and then proceeds with the dissertations of the Indian law. In making such exposition, he oftentimes cites cases, both American and Indian decisions. Among the subjects treated are: the Judicial Powers, Legislative Prerogatives, Administrative agencies, Dual Systems of Courts, the Reach of Due Process, Fundamental Rights (specifically of Speech, Press and Religion), Right to a Fair Trial, Equal Protection, Commerce Clause and other matters. All these are treated in a comparative manner.

Critical Observation. After going through the whole Lectures, we realize that the Indian Constitution and laws favorably compare with that of the American. In fact, in some aspects the Indian law surpasses that of the American because at the time of the adoption of the Indian Constitution, the framers were fully cognizant of the past, present and even future conditions. The American Constitution, on the other hand, was passed a long time ago and although it had been authored by some of the greatest legal minds of that day and had already undergone several amendments, yet in some aspect at least it is already outmoded both in theory and application.

The book is comprehensive in scope, objective in observation, flawless in style, clear in exposition and authoritative in statements. The author has made an excellent exposition. Physically, the book is well bound, the printing is clear, the cover simple and subdued and black in color background.

Practical Importance. Right now we have a dire need for more constitutional law books. It seems that local authors have not had much interest in writing on constitutional law subjects. There are very few books on this matter, fewer still with respect to good ones. We can only count by our fingers those good ones — such as those of Tañada, Fernando and Carreon. For lack of good materials therefore, we could make some extra reading outside of our local books. One of them could be this book, **WE THE JUDGES.**

ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1957

COMMERCIAL LAW

Answered by the Editorial Board in consultation with Acting Government Corporate Counsel, Simeon Gopengco, Professor and Reviewer at the Ateneo College of Law.

I.

- (a) Distinguish between the following: "dividends" and "profits"; "capital" and "capital stock"; "Cash dividend" and "stock dividend".
- (b) What determines the nationality of a corporation? For what matters are foreign corporations doing business in the Philippines subject to the laws, rules and regulations of the country of their creation?

(a) As a general rule the net profit of the corporation is the excess of the total present value of its assets, over the losses, liabilities and its capital stock. If the law or the board of directors requires a certain per cent of the net profits to be set aside as trust fund or reserve fund, the surplus profits shall be the excess of the net profits over the amount required to be set aside. Dividends are portions of the surplus profits arising from the business of the corporation that have been declared and set aside for proportionate distribution among the stockholders.

Capital is the actual property or estate of the corporation; while the capital stock is the amount determined in the articles of incorporation to be submitted and paid in or secured to be paid in upon which the corporation is to do business.

Cash dividend is a disbursement in cash to the stockholder of part of the profits. In the absence of fraud, it becomes the property of the stockholder. Stock dividend is a dividend in the form of stocks and the stockholder is deemed to have invested cash in the purchase of additional shares of stock of the corporation. Inasmuch as the property represented by the stock dividend still belongs to the corporation, the same may be levied upon by its creditors.

(b) As a rule, the nationality of a corporation is determined by the laws of the country under which it was incorporated. Under the modern trend, for special reasons, such as national security in time of war, a domestic corporation controlled by enemy aliens may be considered a foreign corporation under the control test. (*Filipinas Cia de Seguros v. Huenefeld & Co.*, G.R. No. L-2294, May 25, 1951; *Winship v. Phil. Trust Co.*, G.R. No. L-3869, January 31, 1952; *Ingenohl v. Olsen*, 273 U.S. 541.)

Any foreign corporation doing business in the Philippines shall be bound by the laws, rules and regulations of their own country, with reference to the creation, the relations, liabilities, responsibilities, or duties of members, stockholders or officers to each other or to the corporation. (Sec. 73, Corporation Law.)