1973

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EVIDENCE
January 6, 1973
Mr. Phelps

I.
D, defendant in a criminal case, testified on direct examination that he had been interviewed by the police and asked to sign a waiver of his rights which he refused to do. On cross-examination of the defendant, the prosecution asked whether he had been advised of his rights by the police and whether he had been questioned concerning his involvement in the case. The court called counsel to the side bar, and, although the prosecution indicated it was laying the groundwork for rebuttal testimony because D had denied in his direct testimony making any statement, refused to permit further development of this line of questioning of D. On appeal D contends the line of questioning by the prosecution improperly raised the inference D had made an incriminating statement which was inadmissible for technical reasons. Discuss the problem and indicate how you think it should be resolved.

II.
A company exploring for crude oil set off explosions which the plaintiff claims damaged his building in the amount of $4,000. Plaintiff testified to cracks in the walls and damage to the well and drainage lines of the septic tank. On direct examination plaintiff's wife testified over defendant's hearsay objection, that it was her estimate that it would cost between $4,000 and $5,000 to repair the damages to the building. On cross-examination she stated she got these estimates from conversations her husband had had with various individuals. Defendant moved to strike her testimony as to her estimate of the cost of repairs but was overruled. On appeal it was argued a witness can give an opinion as to value even though it is based on hearsay. Discuss the problem and state how you think the appeal should be decided.

III.
The plaintiff was injured while using a crane to load defendant's ship. The crane had a safe working load of 27,300 pounds and was being used to put on board a truck weighing 31,560 pounds. According to plaintiff's testimony the truck was lifted to a proper height and the brake activated but it didn't hold and the truck fell on an ammonia pipe on the dock rupturing it. The line on the truck remained taut and someone other than the plaintiff used the crane to lift the truck so that firemen could repair the pipes. An officer on the ship testified the brakes were tested after the accident and found functional. The court commented to the jury that plaintiff's assertion of negligence was mere hypothesis and "in order to separate the hypothesis urged by the plaintiff it seems to me you have to come to the conclusion that the ship's officer lied to you." Testimony was offered by other longshoremen that earlier in the day a load fell from the crane and the crane operator (unidentified but not the plaintiff) left the controls and shouted the brakes had failed. The testimony was excluded. Plaintiff made an offer of proof showing there was testimony available from the longshoremen to the above effect. There was a verdict and judgment for the defendant. How should the case be decided on appeal? Explain.

IV.
Defendant was charged with attempting to evade payment of estate taxes. Defendant and his wife had found a large sum of money at her mother's home in old newspapers but she listed no cash in the estate. Defendant according to the evidence had placed a large sum of old currency, wrapped in newspapers in a motel safe in Las Vegas. Suspecting the money came from a recent robbery the F. B. I. interviewed the defendant obtaining a signed waiver of rights from him. Defendant told the agent that he and his wife went to the mother's home shortly after her death and removed a large sum of money and they told no one for fear they would lose it to taxes. The F. B. I then interviewed the wife.
who, on being told that the agents knew her husband had put the money in the
safe in Las Vegas, brought out four metal boxes containing old currency which
totalled $50,000.00. The defendant interviewed in the F. B. I. office signed
a waiver form, again, and made an affidavit which recited how the money had
been taken by him and his wife from the mother's home and placed in metal boxes,
and that they did not tell their attorney because they did not want to pay the
taxes due on it. The estate tax return filed by the wife was admitted in evi-
dence along with testimony of the agent that he observed the wife bring out
the metal boxes containing the money in his interview with her. Defendant argues
the admission of the return violates the hearsay rule and the privileged comnuini-
cations rule extends to all incriminating communications, and the wife made one
by bringing out the boxes of money. He further argues the statements by the
defendant are not corroborated. Discuss the problems raised and state how you
think they should be resolved.

V.

Plaintiff was injured in an accident and there offered his only eyewitness
thereof. On cross-examination to impeach the witness he was asked if he had
been convicted of two. It was made clear to the judge that the defendant was
a classic con-man, but the judge refused to permit counsel to show instances of
false swearing, fraud and swindling, however, the court did admit evidence of
an indictment of the witness for mail fraud. Discuss the rulings of the court
and indicate how you would have made them.