was superseded by another assessment made on April 18, 1952. After several other negotiations, the assessment was reduced to P24,438.96. Within the reglementary period, the company filed this petition for review of the assessment made on July 26, 1955, alleging that the right of the government to collect the tax had already prescribed. **Held,** the Collector of Internal Revenue refrained from collecting the tax because of the several requests of the taxpayer for extension to give the mining company every opportunity to prove its claim regarding the correctness of the assessment. While a mere request for re-examination may not have the effect of suspending the running of the period of limitation, nevertheless there are cases in which the taxpayer may be prevented from setting up the defense of prescription, even if he has not previously waived it in writing as when by his repeated requests, the Government for good reasons has been persuaded to postpone collection. He who prevents a thing from being done may not avail himself of the benefits of the non-performance which he has himself occasioned. COLLECTOR OF INTERNAL REVENUE *v.* SUYOC CONSOLIDATED MINING CO., G. R. No. L-11527, Nov. 25, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — IN JUSTICE OF THE PEACE AND MUNICIPAL COURTS, THE FAILURE TO APPEAR IN CIVIL CASES IS THE ONLY GROUND WHERE A DEFENDANT MAY BE DECLARED IN DEFAULT, AND NOT THE FAILURE TO ANSWER THE COMPLAINT. — In a case before the Justice of the Peace of Guiuan, Samar, the petitioner Manuel Gancayco received the summons issued by said court to appear before it to answer the complaint. Petitioner Manuel Gancayco personally appeared, in his own behalf and in behalf of his father, answered the complaint, and joined counsel for the respondents in asking for the postponement of the hearing which was granted. Another postponement was asked and granted. One more postponement was asked by the petitioners but on the opposition of the respondents, it was denied. The judge proceeded to hear the evidence and decided for the responents. The petitioners appealed to the Court of First Instance but the appeal was denied on the ground that having defaulted in the Justice of the Peace they lost their right to appeal. Hence this petition for certiorari and mandamus. **Held,** in the justice of the peace and municipal courts, the failure to appear in civil cases is the only ground when a defendant may be declared in default, and not the failure to answer the complaint. GANCAYCO *v.* BENITEZ, G. R. No. L-11335, October 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — REBELLION CANNOT BE COMPLEXED WITH OTHER COMMON CRIMES, SUCH AS MURDER, ROBBERY, ETC. — Defendants were charged in the Court of First Instance of Pangasinan with complex crime of rebellion with murders, robberies, etc. On October 1954, Santos filed a motion to quash the information on the ground that it accused him of a multiplicity of offenses, simple rebellion and other common crimes, in violation of Section 12, Rule 106 of the Rules of Court. Motion was overruled. In the course of the trial, Santos offered to plead guilty to the crime of simple rebellion, which was refused. He was found guilty of the offense charged. He appealed. **Held,** even if the other crimes said to have been committed in the course of the rebellion could be considered as independent common crimes committed within the territorial jurisdiction of the court **a quo,** appellant could not be convicted thereof because he has objected to the information on the ground of multiplicity of offenses charged therein. PEOPLE *v.* SANTOS, G. R. No. L-11813, Sept. 17, 1958.

REMEDIAL LAW — EVIDENCE — ALTHOUGH AN ATTEMPT TO SETTLE A CRIMINAL CASE IS CIRCUMSTANTIAL EVIDENCE OF GUILT, THE REFUSAL OF THE ACCUSED TO MEET THE DEMANDS OF THE VICTIM'S HEIRS AND HIS STUBBORN INSISTENCE TO PAY NOT MORE THAN A SMALL AMOUNT OF MONEY, DESPITE THE GRAVITY OF THE CHARGES, POINT MORE TO A CONSCIOUSNESS OF INNOCENCE AND A DESIRE TO AVOID HARASSMENT THAN TO AN ADMISSION OF CULPABILITY. — The spouses Rufino de Vera and Cristina Doctolero and their children were awakened from their sleep by the sudden barking of dogs. De Vera rose from his bed and walked towards the main door apparently to investigate. Just then, someone outside slid the door and shot him 3 times causing his death the following morning. The unknown assailant also shot the deceased's wife inflicting wounds on different parts of her body. But she survived. The accused was charged with murder and frustrated murder. He made an attempt to settle the criminal case but did not give in to the heavy demands of the victims' heirs. Found guilty in the lower court, he appealed. **Held,** although an attempt to settle a criminal case is circumstantial evidence of guilt, the refusal of the accused to meet the demands of the victim's heirs and his stubborn insistence to pay not more than a small amount of money despite the gravity of the charges point more to a consciousness of innocence and a desire to avoid harassment than to an admission of culpability. PEOPLE *v.* FRIGILLANA, G. R. No. L-10050, October 22, 1958.

COURT OF APPEALS

CIVIL LAW — PROPERTY — A REVOCABLE PERMIT TO OCCUPY PUBLIC LANDS DOES NOT MAKE THE OCCUPANT THE OWNER OF THE LAND. — Valeriano Esparas and his daughter Conchita Esparas entered into a contract of barter or exchange of real properties with Numeriano Almojuela, whereby the former exchanged a piece of land which was planted with coconut trees and bananas belonging to them, for a piece of land with a house standing thereon allegedly belonging to the latter. In pursuance with the agreement, the Esparas took possession of that parcel of land with a house erected thereon that was ceded by Almojuela, and the latter, on his part, also took possession of that parcel of land planted with coconut trees and bananas. Subsequently the Esparas learned that the land given by Almojuela belonged to the government, and the latter only had a revocable permit of occupancy. Hence an action was filed to recover the land conveyed by the Esparas to Almojuela. Judgment was rendered in favor of the defendant. Hence this appeal. **Held,** a revocable permit to occupy public lands does not make the occupant the owner of the land. The contract of

barter was tainted with a material misrepresentation on the part of the defendant as to his right of ownership of the land which vitiated the contract because of lack of one of the essential elements of a valid contract — the subject-matter. ESPARAS *v.* ALMOJUELA, G.R. No. 18408-R. March 6, 1958.

CIVIL LAW — PROPERTY — CO-OWNERSHIP BETWEEN A MAN AND A WOMAN LIVING TOGETHER AS HUSBAND AND WIFE WITHOUT THE BENEFIT OF MARRIAGE WILL ONLY OBTAIN IF THE PROPERTY IS ACQUIRED THROUGH THE JOINT EFFORTS OF THE TWO AND IF THERE IS NO IMPEDIMENT FOR A LEGAL MARRIAGE BETWEEN THEM. — Catalina Osmeña was married to Dr. Pio Valencia in 1914. The latter had illicit relations with one Emilia Rodriguez, who worked as an attendant at the doctor's clinic. However, Catalina and Pio lived together until the outbreak of the war. During the Japanese occupation the two lived separately. Since then, Pio Valencia lived with Emilia Rodriguez. An action was brought by Catalina Osmeña in 1946 to declare two parcels of land, purchased by Emilia Rodriguez out of her own funds, as belonging to the conjugal partnership between the former and Pio Valencia. Judgment was rendered declaring the two parcels of land as not belonging to the conjugal partnership. Osmeña appealed arguing that, although the two lots were acquired by Rodriguez out of her own funds, still under the provisions of Article 144 of the Civil Code, one-half of the value thereof should belong to the heirs of the late Pio Valencia. **Held,** co-ownership between a man and a woman living together as husband and wife without the benefit of marriage will only obtain if the property is acquired through the joint efforts of the two and if there is no impediment for a legal marriage between them. VALENCIA *v.* VALENCIA, G.R. No. 17697-R. March 28, 1958.

CIVIL LAW — SALE — CONTRACTS DESCRIBED AS "SALE WITH RESERVATION OF TITLE" ARE CONTRACTS OF SALE. THE WORD "RENTALS" IN SAID CONTRACTS OF SALE IS USED GENERALLY TO DESCRIBE INSTALLMENTS ALREADY PAID, BUT HAD TO BE DEEMED FORFEITED TO THE SELLER UPON DEFAULT OF THE BUYER IN THE PAYMENT OF THE REMAINING INSTALLMENTS. — Canuto Perez purchased a refrigerator from the Erlanger & Galinger for ₱1,355, with ₱435 as down payment and the balance at ₱75 a month. A week after delivery, the refrigerator could not be used satisfactorily. Because of the defective condition of the refrigerator, Perez only paid ₱50 installments instead of ₱75 agreeing to pay the latter amount upon the repair of the refrigerator. Perez has paid a total amount of ₱785 leaving a balance of ₱550. The company repaired the refrigerator but refused to return the same to Perez until the payment of the unpaid balance. Perez brought an action to rescind and cancel the sale with reservation of title, for the return of ₱760 and for damages and attorney's fees. The lower court dismissed the action. Plaintiff appealed, contending among other things, that the contract was one of lease, and not of sale, in which case Article 1654 of the Civil Code should apply. **Held,** contracts described as "sale with reservation of title" are contracts of sale. The word "rentals" in said contracts of sale is used generally to describe installments already paid, but had to be deemed forfeited to the seller upon default of the buyer in the payment of the remaining installments. PEREZ *v.* ERLANGER & GALINGER, INC., G.R. No. 19449-R. March 29, 1958.

CRIMINAL LAW — FORGERY — THE FIRST PARAGRAPH OF ARTICLE 169 OF THE PENAL CODE CONTEMPLATES NOT ONLY SITUATIONS WHERE A SPURIOUS, FALSE OR FAKE DOCUMENT OR INSTRUMENT IS GIVEN THE APPEARANCE OF A TRUE AND GENUINE DOCUMENT, BUT ALSO TO SITUATIONS INVOLVING ORIGINALLY TRUE AND GENUINE DOCUMENTS WHICH HAVE BEEN WITHDRAWN OR DEMONETIZED, OR HAVE OUTLIVED THEIR USEFUNESS. — Benjamin Galano bought four **balut** eggs and paid the vendor with a pre-war peso bill of the Treasury Certificate series, with the word "Victory" at the back thereof being written in ink. Galano admitted having written the word himself. The one-peso paper bill is a genuine pre-war treasury certificate which has been withdrawn from circulation. It is redeemable at its face value if presented to the Central Band, pursuant to R. A. Nos. 17 and 199. Galano was charged and convicted of a violation of Article 169 of the Penal Code and was sentenced accordingly. Hence this appeal. **Held,** the first paragraph of Article 169 of the Penal Code contemplates not only situations where a spurious, false or fake document or instrument is given the appearance of a true and genuine document, but also to situations involving originally true and genuine documents which have been withdrawn or demonetized, or have outlived their usefulness. The forgery consists in the addition of a word in an effort to give to the present document the appearance of the true and genuine certificate that it used to have before it was withdrawn or has outlived its usefulness. PEOPLE *v.* GALANO, G.R. No. 18701-R. December 2, 1958.

CRIMINAL LAW — HOMICIDE THROUGH RECKLESS IMPRUDENCE — CONTRIBUTORY NEGLIGENCE ON THE PART OF THE OFFENDED PARTY DOES NOT EXEMPT THE ACCUSED FROM CRIMINAL RESPONSIBILITY BUT MAY ONLY MITIGATE HIS CIVIL LIABILITY ARISING FROM THE OFFENSE. — Lourdes Valdez, a five year old girl, came from a store accompanied by Teresa Javier, a maidservant at the former's house. Lourdes passed in front of a parked bus to cross to the other side of the street. When she was in the middle of the street another bus driven by Cipriano Dimzon hit and threw her to the ground. Instead of stopping to render aid to the victim, Dimzon increased his speed and proceeded to the provincial jail where he surrendered. The girl died on arrival at the hospital. Negligence on the part of Dimzon was established beyond reasonable doubt. Dimzon was found guilty of the crime of homicide through reckless imprudence. Hence this appeal. **Held,** contributory negligence on the part of the offended party does not exempt the accused from criminal responsibility but may only mitigate his civil liability arising from the offense. PEOPLE *v.* DIMZON, G.R. No. 15674-R. March 28, 1958.

CRIMINAL LAW — LIBEL — THE MERE COINCIDENCE OF NAMES AND PLACES IN A PUBLISHED STORY WITH THOSE APPERTAINING TO THE COMPLAINANT, HIS WIFE, AND AUNT, WITHOUT PROOF THAT THE STORY OF THE LIFE OF THE PRINCIPAL CHARACTER THEREIN IS CONCLUSIVELY AND POSITIVELY IDENTIFIABLE WITH THE LIFE OF THE COMPLAINANT, DOES NOT ELEVATE SAID STORY TO THE CATEGORY OF A LIBELOUS PUBLICATION.—A story entitled "Ahas Bahay" was published under the name of one Aurelio G. Angeles in the issue of the BULAKLAK for May 2, 1952. The leading male character in the story was a poor and

jobless young man, Pastor of Cabanatuan, who secretly fell in love with a beautiful girl named Prima. Pastor gained the friendship and confidence of Prima and her family by doing for the latter odd jobs in the household. He hewed firewood and fetched water for them, helped Prima in her store and sometimes accompanied her in business trips to Manila. On one of such trips, Pastor and Prima agreed to visit a friend named Chaling who lived in Manila. Finding himself alone with her in Chaling's house, Pastor took Prima in his arms, and for the first time, revealed by word of mouth his love for her. The two were subsequently married. The first name of the complainant is Pastor and that of his wife is Prima. He has an aunt nicknamed Goyang, which name is carried by one of the minor characters in the story. The accused, alleged author of the story, was charged and convicted of the crime of libel. Hence this appeal. **Held,** the mere coincidence of names and places in a published story with those appertaining to the complainant, his wife and aunt, without proof that the story of the life of the principal character therein is conclusively and positively identifiable with the life of the complainant, does not elevate said story to the category of a libelous publication. **People** *v.* SANTOS, G.R. No. 19291-R. April 11, 1958.

CRIMINAL LAW — LIGHT THREATS — A THREAT TO REPORT SOMEBODY TO THE BUREAU OF INTERNAL REVENUE FOR TAX EVASION DOES NOT CONSTITUTE THE CRIME OF GRAVE THREATS, BUT ONLY THAT OF LIGHT THREATS, AS THE ACT THREATENED TO BE COMMITTED DOES NOT AMOUNT TO A CRIME. — Hao Chao and Sia Sy Ho dropped at the store of Salustiana Dee three to four times in December, 1953. They accused her of tax evasion and threatened to report the matter to the Bureau of Internal Revenue and to the NBI for which she would be prosecuted and deported like Co Pak and others unless she come across with ₱1,000. Under the circumstances she handed ₱1,000 to Hao Chao, who subsequently turned over the same to Sia Sy Ho. The duo were caught red-handed by Detective Jueco. The accused were found guilty of grave threats and were sentenced accordingly by the lower court. Hence this appeal. **Held,** a threat to report somebody to the Bureau of Internal Revenue for tax evasion does not constitute the crime of grave threats, but only that of light threats, as the act threatened to be committed does not amount to a crime. PEOPLE *v.* SIA SY HO, G.R. No. 14547-R. February 1, 1958.

CRIMINAL LAW — PENALTY — THE LAW DOES NOT PERMIT ANY COURT TO IMPOSE A SENTENCE IN THE ALTERNATIVE, ITS DUTY BEING TO INDICATE THE PENALTY IMPOSED DEFINITELY AND POSITIVELY. — Modesta Aqueba is the widow of the late Bernardo Tina, a US Army soldier who died in Bataan. As such widow, she had been the beneficiary of backpay, pension and insurance benefits from the US government. She had received from the government several checks. It was established that for the assistance given by Alejandro Mercadejas to Modesta Aqueba in connection with her claim, the former received certain fees amounting to more than ₱4,000. Mercadejas was charged and found guilty of a violation of R.A. No. 145 and sentenced "to pay a fine of ₱1,000, or to suffer an imprisonment of [illegible] years. and to pay the costs". The accused appealed, contending among other things, that the lower court erred in rendering a judgment in the alternative. **Held,** the law does not permit any court to impose a sentence in the alternative, its duty being to indicate the penalty imposed definitely and positively. PEOPLE *v.* MERCADEJAS, G.R. No. 18176-R. April 17, 1958.

CRIMINAL LAW — VAGRANCY — SECTION 822 OF THE REVISED ORDINANCES OF THE CITY OF MANILA SPECIFICALLY ENUMERATES HOTELS, CAFES, DRINKING SALOONS, HOUSES OF ILL-REPUTE, GAMBLING HOUSES, RAILROAD DEPOTS, WHARVES, PUBLIC WAITING ROOMS, OR PARKS AS THE PLACES WHERE ONE SHOULD HABITUALLY LOITER ABOUT OR WANDER IN ORDER TO BE THUS CONVICTED OF VAGRANCY. — Tan Cun Kong, a deaf-mute, was convicted by the Court of First Instance of vagrancy under the provisions of Section 822 of the Revised Ordinances of the City of Manila. The judgment of conviction was based upon the evidence for the prosecution to the effect that the accused was on February 27, 1954 found loitering in the Finance Building. On March 27, 1954, he was found mingling with the crowd on the occasion of the graduation exercises held at the campus of the University of the East. On April 4, 1954, he was again found among the crowd at the graduation exercises at the University of Santo Tomas. In all these instances, he failed to account for his presence in these places. **Held,** section 822 of the Revised Ordinances of the City of Manila specifically enumerates hotels, cafes, drinking saloons, houses of ill-repute, gambling houses, railroad depots, wharves, public waiting rooms, or parks as the places where one should habitually loiter about or wander in order to be thus convicted of vagrancy. Mere idle and aimless loitering of the accused around the UST gymn, the UE campus and the premises of the Finance Building and his failure to account for his presence in said places do not warrant his conviction for the crime of vagrancy. PEOPLE *v.* TAN CUN KONG, G.R. No. 18358-18360-R. March 29, 1958.

LABOR LAW — EMPLOYER AND EMPLOYEE RELATIONSHIP — ONCE THE RELATION OF LABOR AND CAPITAL IS ESTABLISHED, THE EMPLOYER HAS SOME RIGHTS TO PROTECT UNDER THAT RELATIONSHIP WHICH BECOMES NOT MERELY CONTRACTUAL BUT ONE IMPOSED WITH PUBLIC INTEREST.—Petitioner Purita Ochao Bautista was employed as gate usher at the Azcarraga Theater by the respondent Perfecto Ong. Twice she went on leave, because she became pregnant. She reported back to work after giving birth, and claimed maternity leave benefits under R.A. No. 674. Her claims were denied. She filed charges against the respondent with the Enforcement Coordinator and the PCAC, and then with the WAS. After due investigation, the Bureau of Labor recommended reinstatement with maternity leave pay or payment of separation pay, in lieu of reinstatement, and upon failure of the respondent to do so, the forwarding of the case to the Fiscal's Office for criminal prosecution of the latter. The petitioner was refused reinstatement on the ground that she had filed charges with the Bureau of Labor. Judgment was rendered ordering the reinstatement of the petitioner with backpay. Hence this appeal. **Held,** once the relation of labor and capital is established, the employer has some rights to protect under that relationship which becomes not merely contractual but one imposed with public interest. An action for reinstatement of an employee who is entitled to continue in the service of his employer because his act is expressedly pro-

vided to be no ground or reason for his dismissal is an action which seeks the performance of a legal duty and may be enforced by **mandamus**. BAUTISTA *v.* ONG, G.R. No. 19310-R. February 13, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — A JUDGMENT BY CONFESSION IS UNAPPEALABLE AND IMMEDIATELY EXECUTORY, EXCEPT IN CASES OF FRAUD, MISTAKE OR DURESS. — A complaint was filed in the Manila Municipal Court seeking the recovery of the sum of ₱1,527.00 as the supposed outstanding indebtedness of defendant Manuel Viernes to the plaintiff Marciano Lubis for bananas and other fruits which the former had received from the latter on credit previous to November 24, 1952. A judgment of confession was entered by the Municipal Court. Viernes appealed to the Court of First Instance where he filed an answer to the complaint. Plaintiff Lubis moved to dismiss the appeal on the ground that the judgment of confession appealed from was unappealable and immediately executory. The motion was denied and judgment was subsequently rendered dismissing the complaint. Hence this appeal. **Held**, a judgment by confession is unappealable and immediately executory, except in cases of fraud, mistake or duress. The facts showed that fraud or mistake already surrounded the rendition of judgment in the court of origin. LUBIS *v.* VIERNES, G.R. No. L-21094. April 14, 1958.

REMEDIAL LAW — SPECIAL PROCEEDINGS — SECTION 1 OF RULE 74 OF THE RULES OF COURT AUTHORIZES ONLY HEIRS OR LEGATEES OF THE DECEDENT TO ASK FOR THE EXTRAJUDICIAL SETTLEMENT OF THE ESTATE. — Laureana Tinatan and Constantino Serilla were legally married on March 14, 1925. Macario Serilla was their only legitimate child. Arcadio Serilla was the natural son of Constantino with Emilia Servano. Arcadio was never acknowledged. Laureana Tinatan, as the surviving spouse of Constantino, claimed a piece of land by inheritance from their only legitimate child, Macario. The land was also claimed by the defendant Joaquin Santa Cruz, who possessed and had title over the property, through a series of conveyances among the defendants touched off by Arcadio Serilla's pretense that he was the sole heir of the deceased Constantino Serilla. Arcadio had executed an extrajudicial declaration of heirship which he filed with the Register of Deeds, as a result of which he was able to secure a Torrens title in his own name in lieu of the original title in the name of Constantino Serilla. Judgment was rendered in favor of the plaintiff. Hence this appeal. **Held**, section 1 of Rule 74 of the Rules of Court authorizes only heirs or legatees of the decedent to ask for the extrajudicial settlement of the estate. Since Arcadio Serilla is neither an heir nor a legatee of the late Constantino Serilla, he cannot avail himself of the provisions of sections 1 and 41 of Rule 74 and the inscription of his extrajudicial declaration of heirship certainly did not make his case any better. TINATAN *v.* SERILLA, G.R. No. 18242-R. March 26, 1958.

BOOK NOTES

PHILIPPINE LAW ON NATURAL RESOURCES. By Antonio H. Noblejas. Manila: Central Book Supply Inc., 1957. Pp. xvii, 368. ₱———.

Law as a profession requires continuous study. Most helpful to students and members of the bench and bar for such study are lawbooks, lawbooks which are up to date with the most recent cases and established jurisprudence on the principles involved. This is such a book; it objectifies the "natural abhorence to lag behind and proclivity to keep pace with the swift passing time" on the part of the author who is indisputably the leading authority in the field which it encompasses. Since its debut in 1955, its author has made it a point to revise the book for three times. This, its latest edition like its forerunners, contains and discusses the treaties and agreements relating to the law on natural resources, the latest decisions of the Supreme Court, pertinent rulings of the Secretary of Agriculture and Natural Resources, and opinions of the Secretary of Justice. Likewise, the author has embodied in it resolutions to consultas laid down by him and prescribes, furthermore, solutions to problems prevalent in this field of law as he has gathered them from queries submitted to him in his official capacity as the Commissioner of Land Registration.

The book is divided into eight chapters, the topics discussed in the style which is all the author's own. The first chapter carries a preliminary statement to the vast laws of natural resources together with the Constitutional provisions about natural resources and the corresponding national policy. The second chapter deals with the Public Land Law which begins with a discussion of its historical background; it also discusses the "Land for the Landless" policy of the government and like any of the chapters contains decisional rules, latest doctrines of the Appellate Courts and in addition the Department of Agriculture and Natural Resources decisions, opinions of the Secretary of Justice, consultas decided by the Land Registration Commission and answers to questions submitted to him in his official capacity. The third chapter covers the Mining Act; the historical background of our Mining Laws and the cases decided under each law. The fourth chapter is about the Petroleum Law or Petroleum Act of 1949. Here the author takes occasion to say that upon the basis of information gathered from reliable authorities in the United States "putting up of an oil refinery in the Philippines with