affidavit of the investigating officer who expressed his opinion of the innocence of the appellants; the joint affidavit of Lucas Tolentino and Honorata Barquilla who made statements contrary to their testimony in court; and the affidavit of the of the Chief of Police who took the dying declaration of the deceased. *Held*, movants are not entitled to a new trail. It is clear that the affidavits of the investigating officer, the joint affidavit of Lucas and Honorata, and the affidavit of the Chief of Police cannot prevail over the findings of the trial court as to the guilt of these appellants, based on the evidence adduced at the trial. However, appellants are guilty of only one crime, namely, attempted robbery with homicide and slight physical injuries. PEOPLE *v.* CASALME, G.R. No. L-11057, June 29, 1957.

REMEDIAL LAW — EVIDENCE — CONVICTION OF A CRIME AFFECTS THE CREDIBILITY OF A WITNESS, NOT MERELY A CHARGE OR INFORMATION ACCUSING HIM THEREOF. — Arculano Cabrito was accused of murder with the aggravating circumstance of treachery. The offense consisted in his killing of one Lope Cartago who had been living with his half-sister, Herminia, in a husband and wife relation without benefit of marriage. Accused made two statements to investigating officers admitting the killing, alleging, however, self-defense. One witness for the prosecution, however, testified that he saw accused hit deceased Cartago with a pick while deceased, with hands bound behind him, was held by two companions of accused before a ditch which became deceased's grave. This eye-witness testified that accused and his companions threatened him if he should reveal that he had seen them. Defense sought to impeach this witness' credibility on the ground that he had been accused of robbery; that almost ten years had passed before he disclosed the commission of the crime. *Held*, conviction of a crime affects the credibility of a witness, not merely a charge or information accussing him thereof. The long silence is well explained by the threat made against witness that he did not find it safe to disclose till after accused was arrested. PEOPLE *v.* CABRITO, G.R. No. L-10404, July 25, 1957.

REMEDIAL LAW — EVIDENCE — THE THEORY THAT ERNESTO DEFENSOR ATTACKED LEONRICO MALFORI WITHOUT MUCH ADO CANNOT BE BELIEVED FOR THE REASON THAT THE DEFENSE HAS NOT PRESENTED ANY PROOF SHOWING THE MOTIVE FOR THE AGGRESSION. — On Nov. 28, 1954, Nilo Defensor died as a result of bolo wounds. His sister, Regina Pareja, bore slight injuries on her lip and a finger. The night before, Nilo had an altercation with Dominador Pasederio over some ladies. The prosecution showed that Nilo was attacked by Cirilo and Diminador Pasederio, Bernabe Gancia and Leonrico Malfori and Rafael Pasederio and another son, Andres. Nilo was then combing his hair in his sister's house. The time was about 6:00 a.m. Nilo's sister, Regina, shouted for her husband and another brother, Ernesto Defensor, who were about 50 meter away under a santol tree. The attackers turned on her and gave her the injury on her lip and finger. Defendant's theory was: On the morning of the killing Leonrico Malfori passed by the house of the offended parties. Ernesto Defensor suddenly attacked him. Regina's husband added to the aggression. Nilo was then in the house. But he too came down with a spear and attacked him. Cirilo Pasederio came to Malfori's aid. Whereupon, Nilo attacked him with the spear. But Cirilo succeeded in wounding Nilo without himself receiving any wound. Nilo died from these wounds. Regina got her injuries when she tried to grab Cirilo's bolo from him. *Held*, the theory that Ernesto Defensor attacked Leonrico Malfori without much ado cannot be believed for the reason that the defense has not presented any proof showing the motive for the aggression. PEOPLE *v.* PASADERIO, G.R. No. L-9427, July 31, 1957.

REMEDIAL LAW — EVIDENCE — THE THEORY OF DEFENSE AS TO THE KILLING CANNOT BE BELIEVED BECAUSE OF ITS IMPROBABILITY. — Candido Catapang died as a result of a gunshot wound and bolo wounds. There were two versions of the killing. The prosecution showed that deceased Candido Catapang had an altercation with his brother-in-law, Juanito Palo. Deceased's daughter, overhearing the argument, became alarmed and called three men. Deceased did not like his daughter's interference and chased her with a piece of wood. Suddenly a shot rang. The second shot hit Catapang. Idelfonso Palo emerged with a pistol in hand. He was followed by his brother, Pedro Palo, who had a bolo. The latter gave Catapang the bolo wounds. Witnesses for the defense showed that Catapang was chastising his daughter, niece of defendants. When defendants intervened, deceased brandished his bolo, chased them. In self-defense, defendants shot him, and finally felled him with bolo wounds. Which of the two theories should be believed? *Held*, the trial judge who saw the witnesses testify refused to believe the defendant's version, for seven reasons. Most important is the improbability of such version. PEOPLE *v.* PALO, G.R. No. L-9593 and 9594, July 31, 1957.

COURT OF APPEALS

CIVIL LAW — PERSONS — THE PROPERTY EARNED DURING THE COHABITATION IN A VOID MARRIAGE SHALL BE CONSIDERED THE COMMON PROPERTY OF THE COHABITATING PARTIES AND SHALL BE DIVIDED BETWEEN THEM SHARE AND SHARE ALIKE. — Macario del Castillo was married to Fausta Ricafrente. Subsequently, and during the existence of this marriage, Macario married Engracia Ventura with whom he stayed up to his death. Macario became a member of the Philippine Army during this latter relationship. Macario died, leaving backpay salaries, allowances and gratuity which were received by Engracia and her daughter with Macario. Now Fausta Ricafrente wanted to recover the amount of money received as administratrix of the intestate estate of Macario del Castillo and his legitimate wife. The lower court found that both Macario and Engracia were in bad faith in contracting the second marriage. The question to be resolved by the Court of Appeals referred to the character of the money earned during the existence of the void marriage and as to who was entitled thereto. *Held*, the provisions of the present Civil Code do not take into consideration the good or bad faith of the parties to the void marriage in determining the property relations of the spouses, the effects thereon being the same whether the marriage is in good faith or bad faith on the part of both or one of them. According to this, the money involved in this case having been earned during the cohabitation of Macario del Castillo and Engracia Ven-

tura, the same should be considered their common property to be divided between them share and share alike. RICAFRENTE *v.* VENTURA (CA) G.R. No. 13263-R, May 23, 1957.

CIVIL LAW — PROPERTY — WHEN A CO-OWNER SELLS A PORTION OF THE LAND UNDER CO-OWNERSHIP, HE IS UNDER OBLIGATION TO TURN OVER TO HIS CO-OWNERS THEIR PROPORTIONATE SHARE OF THE SALE PRICE. — Parang Docayag, Lamsis Cambutel and Dangpang Sibal were registered owners of a whole lot, Docayag owning an undivided 1/2 of the total whole and the other 1/2 to the latter two in undivided equal shares. Parang Docayag sold a portion of this whole lot to Elva Vanderbout. His co-owners demanded a share in the proceeds of the sale. Docayag refused to let his co-owners have a share in the sale price. He contended that the portion he sold to Elva Vanderbout was part of his one-half share of the lot under co-ownership. *Held*, every co-owner is the owner of the whole, and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract, because until division is effected, such a portion is not concretely determined. For this reason, a co-owner cannot point to a specific portion of the land held in common, and claim that such portion is a tangible part of his share. And it follows that when a co-owner sells a portion of the land, he is under obligation to turn over to his co-owners their proportionate share of the sale price. DOCAYAG *v.* SIBAL, (CA) G.R. No. 15006-R, 13, 1957.

CIVIL LAW — SALE — IN CASE OF DOUBLE SALE OF MOVABLES THE QUESTION OF OWNERSHIP SHALL BE RESOLVED IN FAVOR OF THE ONE WHO FIRST TOOK POSSESSION IN GOOD FAITH. — Conchita Revilla sold a Cadillac car to Marc Donnelly through the intervention of Frank Starr. Subsequently, Frank Starr chattel mortgaged the same car in favor of Rodolfo Villavicencio to secure an obligation due Villavicencio by Frank Starr. Due to the failure of Frank Starr to pay the obligation secured, Villavicencio filed an action for foreclosure of the mortgage and a writ of replevin was issued to recover possession of the car mortgaged. The car was in the possession of Marc Donnelly who, for this reason, was included as co-defendant of Frank Starr. Defendant Frank Starr tried to prove that the same Cadillac sedan was sold to him by Conchita Revilla. Therefore, he had a right to mortgage it in favor of Villavicencio. *Held*, assuming that the sale to Frank Starr was genuine and that, therefore, the car was sold twice — to Marc Donnelly and Frank Starr — the question of ownership shall be resolved in favor of the one who first took possession of the car in good faith. That person is Marc Donnelly. His good faith cannot be questioned. He was the first one to receive the car together with the certificate of registration, and he had been using the car for several months before it was taken from his possession. VILLAVICENCIO *v.* FRANK STARR, (CA) G.R. No. 17354-R, July 15, 1957.

CIVIL LAW — POSSESSION IN GOOD FAITH — THE PRINCIPLE OF POSSESSION IN GOOD FAITH DOES NOT APPLY TO A CONTRACT OF LEASE AND, CONSEQUENTLY, THE LESSEE CANNOT RECOVER FOR THE IMPROVEMENTS HE INTRODUCED ON THE LAND LEASED. — Appellees and appellant Joseph Arcache were

co-owners of a parcel of land. Appellees owned one-nineth of the property while appellant owned the other one-tenths. The co-owners entered into a contract of lease, whereby appellant would occupy the entire property upon payment of periodic rentals. As such lessee, appellant introduced certain improvements on the land. The land co-owned was sold to Dr. Luther B. Bewley, after previous offers and acceptance thereof regarding the sale of the land between appellees and appellant. These negotiations were all written. Appellant claimed that appellees and he entered into an oral agreement whereby he was to be reimbursed for improvements he might introduce on the land. His oral testimony however, was uncorroborated. Appellant claimed reimbursement also by virtue of his possesion in good faith. *Held*, in the absence of a written agreement entitling appellant to reimbursement of the expenses for the improvements he introduced on the land he occupied as lessee, appellant cannot recover. Neither is he entitled to reimbursement as a possessor in good faith. The principle of possession in good faith does not apply to possession of land by virtue of a contract of lease. CORPUS *v.* ARCACHE, (CA) G.R. No. 17146-R, June 14, 1957.

CIVIL LAW — LEGAL REDEMPTION — THE ADJOINING OWNER OF A RURAL LAND HAS THE RIGHT TO EXERCISE LEGAL REDEMPTION AGAINST THE ORIGINAL OWNER OF THE RURAL LAND SOLD IN A RESALE OF THE SAME LAND TO HIM, THE ORIGINAL LAND OWNER NOT HAVING ANY OTHER PIECE OF RURAL LAND IN THE NEIGHBORHOOD. — Florencia Agdeppa was the owner of a parcel of rural land. Adjoining her land was another rural land belonging to Mariano Caindig and his wife. Florencia sold her land to Maria Ilaban who owned a residential land adjoining here. Mariano Caindig and his wife wanted to exercise their right of legal redemption against the vendee, Maria Ilaban. This latter resold the same land she bought to the original owner, Florencia Agdeppa. Mariano Caindig and his wife sought to redeem the land from this original land owner. Brought to court, the lower court ruled that plaintiffs, Mariano Caindig and his wife, could not exercise their right of legal redemption as against the original owner of the rural land sold. *Held*, by the sale of the rural land by Florencia Agdeppa she thereby became a complete stranger to the property subject matter thereof. The evidence does not show that she had any other property adjoining the one sold to Ilaban. Therefore, the sale made to her of the rural land she had previously sold must necessarily be considered as one made to a stranger, in other words, to someone who does not own any real property adjoining or adjacent to the one sold. Consequently, anyone of the adjoining owners should be entitled to exercise the right of redemption. CAINDIG *v.* PAREL, (CA) G.R. No. 17183, May 24, 1957.

COMMERCIAL LAW — CORPORATION LAW — A FOREIGN CORPORATION WITHOUT A LICENSE TO DO BUSINESS IN THE PHILIPPINES MAY SUE IN THIS JURISDICTION TO PROTECT ITS RIGHTS AND INTERESTS, IF IT APPEARS THAT THE TRANSACTION INVOLVED THEREIN IS AN ISOLATED ONE. — The Meyer and Brown Corporation and the El Dorado Trading Company, Inc. entered into a contract whereby the latter would sell to the former 3,412 long tons of Philippine copra. Pursuant to this agreement, the boat M/S Lidvard came to tthe Philippines and loaded copra which its master certified to be equivalent to 3,412 long tons. This load

of copra was consigned to Banco Agricola y Pecuario at Caracas, Venezuela. This latter party was to buy the same from the Meyer Brown Corporation. The copra was paid for. When the copra reached its destination, it was found out, upon its unloading, that the same was short of 93,786.539 kilograms. So both Meyer and Brown and the Banco Agricola sued the El Dorado Trading Co. for the shortage. One defense advanced by defendant was that the Banco Agricola was not licensed to do business in the Philippines and, therefore, it did not have any capacity to sue in this jurisdiction. However, the lower court found out that the copra transaction was the only transaction ever entered by the Banco Agricola in the Philippines. *Held*, the mere fact that a foreign corporation has no license to do business in the Philippines does not preclude said entity from suing in this jurisdiction to protect its interests and rights, if it appears that the transaction involved therein is an isolated one. BANCO AGRICOLA Y PECUARIO *v.* EL DORADO TRADING COMPANY, INC., (CA) G.R. No. 16281-R, June 25, 1957.

COMMERCIAL LAW — COMMERCIAL DOCUMENTS — IN THE AESENCE OF ALLEGATIONS THAT R & D BONDS ARE REGISTERED BONDS OR BEARER BONDS, THE SAME CANNOT BE DEPOSITED WITH THE COURT TO STAY THE EXECUTION OF A DECISION, IN LIEU OF CASH. — In an ejectment case, the plaintiff, Shurdut Investment Corporation, obtained a favorable judgment against the Kok (PHIL.) Corporation. The latter party appealed to the Court of First Instance of Manila, deposited R & D bonds, instead of cash, to stay execution of the decision of the inferior court. On motion of Shurdut Investment, the lower court, through Judge Narvasa, issued a writ for the execution of the judgment of the inferior court. Hence the Kok brought an original action for certiorari in the Court of Appeals. *Held*, R & D bonds are classified as "Registered Bonds" and "Bearer Bonds" also known as "Coupon Bonds". The first can be exchanged for cash in the Central Bank or in any bank if presented by the registered owner. The second are payable to the bearer in the Central Bank or any bank. But it does not appear in the petition that the bonds petitioner deposited with the respondent court were either "Registered Bonds" or "Bearer Bonds", nor that they had been endorsed Shurdut Investment or to the clerk of court where they were deposited with. In the absence of this allegation, the R & D bonds could not be deposited with the court in lieu of cash. KOK (PHIL.) CORPORATION *v.* NARVASA, (CA) G.R. No. 19923-R, May 29, 1957.

CRIMINAL LAW — ESTAFA — A PERSON WHO RECEIVED CERTAIN JEWELRY TO BE SOLD ON COMMISSION OR TO BE RETURNED IN CASE OF FAILURE TO SELL THE SAME COMMITS ESTAFA BY REFUSING TO RETURN SAID JEWELRY OR TO MAKE AN ACCOUNTING THEREOF. — Trinidad P. Amarante received certain pieces of jewelry from Benigna Panganiban to be sold on commission or to be returned in case of failure to sell them to the owner. Trinidad never returned the proceeds from the sale of said jewelry nor the pieces of jewelry themselves. Demands was made on her. But Trinidad never complied with said demands, neither did she make any accounting thereof. The prosecution, when Trinidad was brought to the court on a charge of estafa, however, failed to establish positively that accused Trinidad sold the jewelry and misappropriated the proceeds thereof. The prosecution, however, established the facts above stated.

The lower court convicted Trinidad P. Amarante of estafa. Defense appealed. One of its reasons for appealing was the lack of positive proof of actual conversion or misappropriation by accused, that is, the prosecution did not present proof positively showing that the jewelry had been actually sold by the accused and that she had used the proceeds therefrom for her benefit, or that, not having sold the jewelry, the accused did in fact misappropriate the same for herself. *Held*, evidence of actual conversion or misappropriation need not be positive. It has been conclusively established that accused received the jewelry involved to be sold on commission or to be returned in case of failure to sell the same. Accused, despite demands, refused to return the proceeds of the sale of the jewelry or to return said jewelry or to account therefor. She has committed estafa, thereby. PEOPLE *v.* AMARANTE, (CA) G.R. No. 12955-R, July 12, 1957.

CRIMINAL LAW — FALSIFICATION OF PUBLIC DOCUMENT — IT IS ESSENTIAL TO THE COMMISSION OF THE CRIME OF FALSIFICATION OF PUBLIC DOCUMENT THAT THERE MUST BE LEGAL OBLIGATION TO DISCLOSE THE TRUTH ON THE PART OF NARRATOR. — Defendant was appointed patrolman of the Manila Police Department. Two months after his appointment, in compliance with one of the requirements of the MPD, he filled an information sheet called "Personal Data". Question No. 10 in the information sheet asked if applicant had been previously convicted of a criminal offense. Defendant answered the question "None". In truth, and defendant was aware of the fact, he had been previously convicted of theft. The prosecution, however, failed to show that there was a legal obligation on defendant's part to disclose the truth. *Held*, defendant's perversion of the truth amounted to an act of falsification of a public document. But it must be shown that defendant was under a legal obligation to disclose the truth in his narration of facts. The prosecution having failed to show this, defendant cannot be convicted of the crime of falsification of public document. PEOPLE *v.* POSERIO, (CA) G.R. N. 17054-R, June 29, 1957.

CRIMINAL LAW — PENALTY — IN THE IMPOSITION OF FINES, THE FINANCIAL STATUS OF THE OFFENDER SHOULD "MORE PARTICULARLY" BE TAKEN INTO ACCOUNT BY THE COURT. BUT THIS DOES NOT PRECLUDE CONSIDERATION BY IT OF OTHER CIRCUMSTANCES ATTENDING THE COMMISSION OF THE CRIME. — Four persons were accused of the complex crime of estafa through falsification of 14 United States treasury warrants. One accused remained at large. The three others were found guilty. Two appealed, but only one, Valeriano Ramos, prosecuted his appeal. Appellant Ramos raised a point of law. He questioned the propriety of the amount of the fine imposed by the lower court on him. In the imposition of the fine, the lower court considered, besides the financial condition of the appellant, other circumstances, the gravity of the crime committed, the heinousness of its perpetration and the magnitude of its effects on the offenders' victims. Appellant contended that only his financial condition should have been considered by the lower court in imposing the fine. *Held*, in the imposition of fines, the financial status of the offender should "more particularly" be taken into account by the courts. But this does not preclude consideration by the courts of other circumstances attending the commission

of the crime, such as the gravity or seriousness of the crime committed, the heinousness of its perpetration, and the magnitude of its effects on the offender's victims. PEOPLE *v.* MANUEL, (CA) G.R. No. 1464-R, July 6, 1957.

LAND REGISTRATION LAW — CADASTRAL PROCEEDINGS — CADASTRAL PROCEEDINGS ARE *IN REM* AND ALL THOSE WHO MIGHT HAVE HAD ANY POSSIBLE INTEREST, OF WHATEVER KIND, OVER THE LAND ARE BOUND BY THE JUDGMENT THEREIN. — The controverted lot appeared registered in the name of Maria Angeles Magallanes, Successor in interest of the defendants herein. Maria was married to Alfonso Velete. Plaintiffs herein were Velete's relatives. Ownership of this lot was controverted. According to defendants this piece of land belonged in exclusive ownership to Maria Angeles Magallanes. She inherited it from her mother some thirty years before she registered the same in a cadastral proceeding. According to plaintiffs the lot was conjugal property belonging to the spouses Maria Angeles Magallanes and Alfonso Velete. Plaintiffs introduced a purpurted will of Velete which alleged conjugal character of the lot in question. This alleged will bore the signature of Maria Angeles Magallanes in the form of a cross. However, the document failed to comply with the formalities of law for a valid will. What then is the character of this lot? *Held*, cadastral proceedings are *in rem*, so that personal notice to possible oppositors is not required inasmuch as they are all included in the description in the notice of hearing "to whom it may concern". In view of this, all those who might have had any possible interest, of whatever kind, over the land, are bound by the judgment therein. Plaintiffs herein failed to assert their right or interest to the land in question in said cadastral proceedings, therefore, they are bound by the judgment rendered therein. Land belongs to defendants. ACEÑA *v.* SILVERIO, (CA) G.R. No. 14070-R, May 31, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — IN ANY ADMINISTRATIVE PROCEEDINGS WHICH DEPRIVES A CITIZEN OF HIS PROPERTY DUE PROCESS OF LAW MUST BE SHOWN, AND THE BURDEN OF PROVING THE REGULARITY OF ALL PROCEEDINGS LEADING UP TO A TAX SALE IS UPON THE PURCHASER AT THE SALE. — Andres Dionis, through his tenants, was in possession of a parcel of abaca land. Marcelina Romero and Potenciano Prestora, plaintiffs herein, claimed ownership over the land. They claimed that Andres Dionis entered possession of the land illegally. Plaintiffs claimed title over the land by virtue of a tax sale. The property, they claimed, and been administratively distrained for delinquency in tax payment. Co Pe Soy intervened in the action, claiming ownership of the controverted piece of property. He claimed that he and his predecessor in interest had been in possession of the land when plaintiffs illegally took possession of the same. Both plaintiffs and defendant Andres Dionis answered the complaint in intervention of Co Pe Soy that, granting that he had had ownership of the land, the same was lost by him by virtue of the tax sale. However, no evidence was introduced by the parties regarding the regularity of the administrative proceedings which dispossessed Co Pe Soy of his land. *Held*, there is no presumption of the legality of any administrative proceeding which results in depriving a citizen or a taxpayer of his property. Due process of law must be shown, and the burden of proving the regularity of all proceedings leading up to a tax sale is upon the purchaser at the sale. ROMERO *v.* PILAPIL, (CA) G.R. No. 13353-R, May 31, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A COURT HAS DISCRETION TO APPROVE OR DISAPPROVE A MOTION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL, DEPENDING ON THE REASONS FOR REQUESTING THE EXTENSION, IF FILED WITHIN THE PERIOD FOR PERFECTING APPEAL. — Petitioner Justo Balbecino was a defendant in a civil case with respondent Paulino Acosta as plaintiff. On two occasions the respondent judge postponed the trial of the case, first upon telegraphic petition of petitioner's counsel and the second upon agreement of the parties in open court. On the hearing agreed upon, petitioner's counsel failed to appear. Instead, he sent a telegram from Naga City, asking for postponement of the trial. This request was denied. Hence, plaintiff in the case proceeded with his evidence *ex parte*. The court rendered its decision. On the 30th day after notice of appeal was received by petitioner's counsel, the latter moved for the reconsideration of the decision. Said motion was denied. Petitioner's counsel filed a notice of appeal two days after the lapse of the thirty days, counting from receipt of the copy of the decision. A the same time, he asked for extension of time within which to file the record on appeal and the appeal bond. At first, the court granted the request. But subsequently the court set aside its order upon objection of the adverse party. Petitioner maintained that this act was an abuse of discretion. *Held*, it is true that a court may extend the time within which an appeal should be perfected, but only upon a satisfactory showing that there is a justifiable reason for doing so, such as fraud, accident, mistake or excusable negligence, or similar supervening casualty and that the petition be filed before the expiration of the period desired to be extended. In the instant case, these requisites do not obtain. No abuse of discretion then. BALBECINO *v.* FLORES, (CA) G.R. No. 20121-R, June 14, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE NOTICE OF APPEAL, APPEAL BOND AND THE RECORD ON APPEAL MUST ALL BE FILED WITHIN THE THIRTY DAYS FROM NOTICE OF JUDGMENT. — Domingo Abcede was a plaintiff in a civil case. Judgment was rendered by the court. A copy of said judgment was sent by registered mail to counsel of defendant in said civil case. Said counsel received the copy of the judgment and filed the notice on appeal and record on appeal within the thirty day period for appeal, counted them from the end of the five days from receipt of the first registry notice. But the appeal bond was filed only at the 4th day after the expiration of the period of appeal. The court approved the same, but on motion by Domingo Abcede, the court subsequently set aside its order. Refusing to reconsider its order of disapproval, the court was challenged by defendant, now petitioner, Glicerio Joco. *Held*, the notice of appeal, appeal bond and the record on appeal must all be filed within thirty days from notice of judgment. Failure to file the appeal bond within said period is fatal, although the notice of appeal and the record on appeal may have been filed within such period. JOCO *v.* SURTIDO, (CA) G.R. No. 19623-R, June 10, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — A MOTION FOR POSTPONEMENT FOR FAILURE OF WITNESSES TO APPEAR AND WITHOUT NEGLIGENCE ON THE PART OF THE DEFENDANT IS PART OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED. — Leopoldo Pondan was charged with the crime of frustrated homicide. When the case was called for trial on the Merits on Sept. 29, 1955 at 9:00 o'clock a.m., Asst. Prov. Fiscal Norberto Zulueta and Atty. Augurio Abeto appeared for the prosecution. Attys. Acuña and Montalvo appeared for the accused. Atty. Abeto, as private prosecutor, manifested to the court that inasmuch as the hearing of his case in Iloilo was postponed, he prayed that his motion for postponement filed with the court *a quo* in the instant case be considered withdrawn. His petition was granted. On the other hand, Atty. Acuña of the defense manifested to the court that as there was a motion for postponement filed by the private prosecutor, they were under the impression that the hearing of the case would be transferred but inasmuch as the prosecution was withdrawing its motion for postponement of Sept. 27, 1955, they would like to ask for the postponement of the hearing to some other date, which petition was forthwith denied and the arraignment of the accused was ordered. The accused entered a plea of not guilty. Atty. Acuña manifested to the court that only one of his witnesses was present. Answering Atty. Acuña's reiteration for postponement, His Honor stated: "I will not wait for the other witnesses to be here if your turn comes. I have warned you before that the court will not suspend the hearing of this case if your witnesses are not here." The prosecution presented its witnesses. The defense presented only the accused and one named Geresola. After the latter had testified, Atty. Acuña manifested to the court that he had requested the subpoena of the other witnesses but as they failed to appear, he prayed that the continuation be postponed to another date. In the exchange of words between court and counsel, His Honor, among others stated: "The Court cannot waste time waiting for those witnesses." *Held*, the court erred in not conceding to the accused a fair trial in violation of Art. III, Sec. 1, Clause, and 17 of the Phil. Constitution relative to due process and compulsory attendance of witnesses in his behalf. PEOPLE *v.* PONDAN, G.R. No. 16296-R, Feb. 28, 1957.

REMEDIAL LAW — EVIDENCE — IN AN ACTION FOR THE RECOVERY OF OWNERSHIP OF LAND THE COMPLAINT, ANSWER AND THE JUDGMENT OF THE JP COURT IN A PREVIOUS EJECTMENT CASE OVER THE SAME LAND MAY BE INTRODUCED IN THE PROPER COURT AS EVIDENTIARY FACTS TENDING TO PROVE THE CLAIM OF OWNERSHIP AND POSSESSION OVER THE DISPUTED LAND. — A parcel of land is involved in this litigation. Prior to the institution of the action for delivery of possession and ownership of the disputed land in the Court of First Instance, an action for ejectment had been filed in the Justice of the Peace Court of the place where the land was located. The action was between the predecessors in interest of the instant plaintiff and the defendants herein who were also the defendants in the ejectment case. The JP court where the ejectment case was litigated rendered a decision for the plaintiffs there. In the subsequent action in the CFI of the province for delivery of possession and ownership of the land subject of dispute, copies of the complaint, the answer and the decision of the JP court in the ejectment case were introduced and admitted by the trial court. The complaint for the instant action, however, did not allege the fact of the ejectment case, the complaint, answer and the decision thereof. Now, on appeal, the appellant, one of the defendants in the instant case, assigned the admission of the documents connected with the ejectment case as error for the reason that they had not been alleged in the complaint in the instant case. *Held*, the proposition is untenable. The documents in question are evidentiary facts tending to prove the claim of ownership and possession over the disputed land. And the rule is that only ultimate facts need be alleged in the complaint. MONTEMAYOR *v.* RABORAR, (CA), G.R. No. 12551-R, July 15, 1957.

REMEDIAL LAW — EVIDENCE — EVIDENCE SUBMITTED DURING THE PRELIMINARY INVESTIGATION MAY BE CONSIDERED BY THE COURT IN THE TRIAL WHEN THE ACCUSED HAD OPPORTUNITY TO CROSS-EXAMINE THE PROSECUTION WITNESS PRESENTED THEREIN AND ACCUSED HIMSELF HAD PRESENTED WITNESSES IN THE SAME AND, DURING THE TRIAL, DEFENSE AND PROSECUTION EXPRESSLY AGREED THAT THE EVIDENCE PRESENTED DURING THE SAID PRELIMINARY INVESTIGATION MAY BE CONSIDERED DURING THE TRIAL. — Three persons were accused for the violation of the Revised Election Code for having taken liquor during registration day, one of the accused having sold the liquor taken. During the preliminary investigation of the case both prosecution and defense presented witnesses. There was opportunity for cross-examination by the accused, he being present with his counsel. During the trial the prosecution and the counsel for the defense expressly stipulated that the evidence presented by both parties during the preliminary investigation should be considered by the court during the trial of the case on the merits. The accused were convicted. One source of evidence relied upon by the court was the testimony of a witness presented by the prosecution during the preliminary investigation. Defense cited this as an error. *Held*, where in a preliminary investigation the accused had the opportunity to cross-examine the prosecution witness and he had presented witnesses in his defense, and during the trial on the merits the prosecution and the defense expressly stipulated that the evidence they had presented during the preliminary investigation should be considered as having been presented during the trial, then the court can take into consideration the declarations of a prosecution witness given during the preliminary investigation, in determining the guilt of the accused. PEOPLE *v.* GUIRIGAY, (CA) G.R. No. 14867-R, June 29, 1957.

REMEDIAL LAW — EVIDENCE — THE IMPROPER DISCHARGE OF AN ACCUSED TO BE USED AS GOVERNMENT WITNESS DOES NOT AFFECT THE QUALITY OF HIS TESTIMONY. — Four persons were accused of the crime of robbery. The property involved were certain rails belonging to the Central Santos Lopez. One of the accused was discharged so as to be utilized as a government witness. The case against another accused was dismissed for lack of evidence. The remaining two accused were convicted. The two appealed, questioning, among others, the validity of the discharge of their co-accused who was used as state witness and the admissibility of his testimony. Appellants maintained that their co-accused had been improperly discharge and, therefore, his testimony should not have been given any weight in court or should not have been admitted. *Held*, there is no showing that the lower court had improperly discharged Julio Capillo, co-accused of appellants, and even if Julio Capillo had

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.* ARABIA, (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.