SUPREME COURT CASE DIGEST

CIVIL LAW — AGENCY — THE COMMISSION OF BROKERS EMPLOYED BY THE SELLER RATHER THAN THE BUYER IS PAYABLE BY THE SELLER. — A rice exporter of Thailand came to Manila to negotiate the sale of rice in the Philippines. She found plaintiffs ready and willing to look for buyers. Through the intervention of plaintiffs, the Thailand exporter and defendant executed a contract of sale for 10,000 tons of rice, of which only 1,850 tons were however shipped and broker's commission paid thereon. Later on, the seller and defendant-buyer executed a contract rescinding the sale as to the rice still unshipped together with another contract of sale of a different kind of rice. Plaintiffs thus filed an action to recover their alleged broker's commission for the whole amount of 10,000 tons on the theory that as brokers, they had brought the seller and the buyer together resulting in the execution of the contract of sale for 10,000 tons. The action was however directed not against the seller but against the buyer. **Held**, where a broker is employed by the owner of property to sell the same, the purchaser is not liable for the broker's commission, unless he agreed to pay them, or is liable therefor by way of damages for failing or refusing to carry out his contract, or for some other wrongful act or omission which interferes with the broker's right to recover commissions from his principal. **Ignacio v. Cheng Ban Yek & Co.**, G. R. Nos. L-11190 & L-13375, July 29, 1959.

CIVIL LAW — COMMON CARRIERS — THE OWNER OF A MOTOR VEHICLE WHO SELLS THE SAME, REPORTING THE SALE TO THE MOTOR VEHICLE OFFICE, CEASES TO BE THE OWNER THEREOF, AND THEREFORE NOT LIABLE FOR INJURIES RESULTING FROM VENDEE'S OPERATION OF THE VEHICLE ALTHOUGH UNDER VENDOR'S PLATE NUMBER. — While on board deefndant de la Serna's parked truck, plaintiff sustained physical injuries when the vehicle was hit by another displaying a license plate registered in the name of the other defendant, Southern Motors, Inc. Upon proof by the Southern Motors, Inc. that the truck which caused the collision was already sold to one Roberto Bolneo, in fact the operator of the vehicle, and that the other defendant, de la Serna, could not be held liable because his vehicle was parked when the accident occurred, the lower court dismissed plaintiff's action for damages. Relying on the sole basis that since the truck still displayed the dealer's plate number Southern Motors, Inc. was still the legal owner of the vehicle, plaintiff appealed. **Held,** we find no merit in this contention, The truck in question has been sold by the Southern Motors, Inc., and the sale reported to the Motor Vehicles Office. It is true that we have held in several cases that the registered owner of a certificate of public convenience is liable for injuries suffered by passengers even though the same has been transferred to third persons. The said decisions, however, are not

applicable here, because Southern Motors, Inc. was not the owner, although the plate belonged to it. Under the provisions of the Revised Motor Vehicle Law (Act No. 3992), the vendee is required to register the motor vehicle purchased by him and is prohibited from displaying the dealer's plate number on said truck. The failure of Bolneo to comply with these provisions is imputable to him alone, and cannot be a legal ground for holding the vendor liable. **Francisco v. de la Serna**, G. R. No. L-12245, Aug. 21, 1959.

CIVIL LAW — CONTRACTS — A PERSON WHO EXECUTES AND SIGNS A CONTRACT IN HIS PERSONAL CAPACITY, ALTHOUGH DESCRIBING HIMSELF THEREIN AS PRESIDENT AND GENERAL MANAGER OF THE CORPORATION, WITHOUT STATING THAT HE IS ACTING IN BEHALF OF THE CORPORATION IS PERSONALLY LIABLE ON THE CONTRACT. — Umali and Miclat entered into a contract whereby the latter was to prepare a float, posters and displays and other forms of advertisement for the showing of the film "Lagrimas". When sued for the amount agreed upon, Miclat set up the defense that the real party to the contract was the Maharlika Pictures, Inc. of which he is the president and general manager. Miclat signed the contract in his personal capacity and while it is mentioned therein that he is the president and general manager of Maharlika Pictures, Inc., it is not stated that as such, he was duly authorized to enter into the contract for and in behalf of the corporation. Neither did Umali present in evidence any resolution or minutes of meeting of the corporation or of its Board of Directors ratifying his action and confirming the contract as an act of the corporation. **Held,** Umali is personally liable. **Umali v. Miclat**, G. R. No. L-9262, July 10, 1959.

CIVIL LAW — CONTRACTS — THE SO-CALLED "10 PER CENT" CONTRACTS FOR THE FOLLOW-UP OF FOREIGN EXCHANGE APPLICATIONS ARE NULL AND VOID BEING CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY. — Sy Suan, as president and general manager of Price Inc., authorized respondent to prosecute the former's applications for import licenses with the defunct Import Control Office. At the time of the execution of the power of attorney, the firm had pending before the ICO several import license applications for industrial starch. Sy Suan and the respondent agreed verbally that for the services of the latter, the former will pay him 10% of the amounts approved. Thereafter, as a result of the efforts of the respondent, the firm was granted import licenses in the total sum of $11,838.50. Contrary to their parole agreement, Sy Suan gave respondent only P3,000 upon the release of the licenses. Hence, the action to recover the balance of the commission. **Held,** a contract to work for the approval of foreign exchange applications for a commission is null and void, the same being contrary to law, morals, good customs, public order or public policy. **Sy Suan v. Regala**, G. R. No. L-9506, June 30, 1959.

CIVIL LAW — DONATIONS — A DONATION PROPTER NUPTIAS TO BE VALID MUST BE MADE AND EXECUTED BEFORE THE MARRIAGE. IN CONSIDERATION THEREOF AND IN FAVOR OF ONE OR BOTH OF

THE CONTRACTING PARTIES. — Defendant married one Alejandria Feliciano. Before the marriage, he executed a deed purporting to be a donation **propter nuptias.** In the instrument, he provided among others that "if God will not bless our union with any child one half of all my properties including the properties acquired during our conjugal union will be given to my brothers or sisters or their heirs if I, the husband will die before my wife, and if my beloved wife will die before me, one half of all my properties and those acquired by us will be given to those who have reared my wife in token of my love to her. x x x" It appears that Alejandria, whose father went to Hawaii, was left to plaintiff who took care of and raised her from childhood. Alejandria died, hence the action to enforce the terms of the purported donation. **Held,** the instrument could not be considered as a donation **propter nuptias** for the reason that though it was executed before the marriage, it was not made in consideration thereof and in favor of one or both of the contracting parties but to a third person. Not in consideration of the marriage because the marriage would have to be childless and one of the spouses would have to die before the other before the donation would operate. May it be considered a donation **inter vivos?** Hardly, because it was never accepted by the donee either in the same instrument of donation or in a separate document. Again, may it be regarded as a donation **mortis causa?** No, because it was not executed in accordance with the formalities governing the execution of wills. **Serrano v. Solomon,** G. R. No. L-120393, June 29, 1959.

CIVIL LAW — LEASE — DISTURBANCE IN LESSEE'S POSSESSION BY MERE INTRUDERS, WHO ACT WITHOUT ANY COLOR OF TITLE OR RIGHT, IS A "MERE ACT OF TRESPASS" FOR WHICH THE LESSOR IS NOT ANSWERABLE. — Petitioner-appellant was granted by the Government a lease contract on an agricultural public land. Delinquent in the payment of the stipulated rentals, respondent Secretary of Agriculture and Natural Resources cancelled said lease. Petitioner admitted non-payment of the stipulated rentals, but contended the cancellation unjustified claiming his omission was due to usurpation of the lease property by the other respondents-appellees, which disturbance the government failed to remove, despite repeated demands, and therefore breached its obligation to maintain him in peaceful possession. **Held,** the disturbance in petitioner's possession was admittedly caused by mere intruders, who acted without any color of title or right. It is the product of an "act of mere trespass" or perturbacion de mero hecho" for which "the lessor shall not be liable" or "shall not be obliged to answer", in the language of the Civil Codes of Spain (Art. 1560) and the Philippines (Art. 1664), respectively. **Madamba v. Araneta,** G. R. No. L-12017, August 28, 1959.

CIVIL LAW — PROPERTY — A POSSESSOR IN GOOD FAITH OF A PIECE OF LAND UNDER CLAIM OF OWNERSHIP, THE POSSESSION BEING ACTUAL, OPEN, PUBLIC, PEACEFUL AND CONTINUOUS FOR A PERIOD OF MORE THAN TEN YEARS, ACQUIRES TITLE THERETO BY PRESCRIPTION. — On March 26, 1940, defendant bought from Fernanda Manzanilla a parcel of sugar cane land containing an approximate area of 27,930 sq. m. The land was Manzanilla's share in the project of

partition involving the intestate estate of her deceased husband. It appears that the deceased husband was first married to the late Librada Albines, out of which relations were born Jose and Jesus. Of Manzanilla, two children were likewise born, Pablo and Maria. All four are the plaintiffs here in. Manzanilla died in 1945. Plaintiffs brought this action to recover possession and ownership of the land in question on the ground that the vendor, being a mere usufructuary thereof, the vendee's right thereto terminated upon the vendor's death in 1945. Defendant interposed the defense that he acquired the parcel by way of absolute sale and for a valuable consideration, and that since then he had been in actual, open, public, peaceful, continuous and adverse possession under claim of ownership, and for that reason he has acquired title thereto by prescription. **Held,** there is abundant evidence that since the property was sold by the late Manzanilla to the defendant, the latter has possessed it in concept of an owner. The Code of Civil Procedure which was the law in force at the time of the sale makes no distinction as to the manner the possession has commenced. A person who possessed a land for ten years continuously, publicly and in the concept of an owner acquired it by prescription, even though he had no title to the same. **De la Cruz v. De la Cruz,** G. R. No. L-11105, June 30, 1959.

CIVIL LAW — SALES — RENTALS RECEIVED ON PROPERTY ACQUIRED IN AUCTION SALES, WHERE THE SALE IS NOT RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS, MAY BE CONSIDERED MONEY RECEIVED ON ACCOUNT OF THE REDEMPTION PRICE. — Plaintiff acquired the property in question in an auction sale. Since the sale she has been collecting rents thereon. Subsequently, defendants entered the land and without her permission excuted a contract of lease over it representing themselves as owners. Hence, the action. During the trial, the court found that the sale was never registered in the Office of the Register of Deeds as required by article 465 of Act 190. Consequently, the complaint was dismissed. **Held,** inasmuch as the sale to the plaintiff and the final deed of sale were never recorded in the Office of the Register of Deeds, it was all contrary to the provisions of law about judicial sales. Furthermore, since in auction sales, the period of redemption begins only on the date of registration of the sale, plaintiff could not yet be considered the absolute owner of the property. In the present case the period of redemption has not yet commenced to run. Since she has already received rental money which was more than the original amount of indebtedness, such rental may be considered as money received by her on account of the redemption price. **Garcia v. Ocampo,** G. R. No. L-13029, June 30, 1959.

CIVIL LAW — SALES — THE REGISTRATION IN THE OFFICE OF THE REGISTER OF DEEDS OF THE AUCTION SALE UPON LEVY ON EXECUTION IS AN ESSENTIAL ELEMENT FOR THE VALIDITY OF SAID SALE. — Plaintiff filed a complaint to prohibit defendants from entering her property which he acquired in an auction sale. Since the sale she has been collecting rents on the property. Subsequently, defendants entered the land and without her permission executed a contract of lease over it representing themselves as owners. Hence, the action. During the trial, the court found that the sale was never registered in the Office of

the Registered of Deeds as required by article 465 of Act 190. Consequently, the complaint was dismissed. **Held,** inasmuch as the sale to the plaintiff and the final deed of sale were never recorded in the Office of the Register of Deeds, it was all contrary to the provisions of law about judicial sales. Furthermore, since in auction sales, the period of redemption begins only on the date of registration of the sale, plaintiff could not yet be considered the absolute owner of the property. **Garcia v. Ocampo,** G. R. No. L-13029, June 30, 1959.

CIVIL LAW — SALES — WHERE THE PERIOD OF REDEMPTION IN A PACTO DE RETRO SALE, SO DECLARED IN AN ACTION TO DECLARE THE CONTRACT ONE OF SIMPLE MORTGAGE, COINCIDES WITH THE EFFECTIVITY OF THE NEW CIVIL CODE, ARTICLE 1606, PARAGRAPH 3, THEREOF APPLIES, HENCE, VENDORS—A RETRO MAY EXERCISE THEIR OPTION WITHIN 30 DAYS FROM FINALITY OF JUDGMENT. — Plaintiffs here entered into a contract with the defendant of the following tenor: In consideration of the sum of ₱2,200.00, we "do by these presence, sell, cede and convey by way of Sale with Right of Repurchase x x x that we reserve the right to repurchase x x x within a period of TEN (10) YEARS from the date hereof x x x." Years later, plaintiffs instituted action to declare the deed of sale as a simple mortgage, to which defendant answered that the contract was one of sale with right to repurchase. **Held,** these terms can only indicate right to repurchase and not an equitable mortgage. The vendors were given the right to repurchase the property within ten years from February 22, 1944 (date of execution of contract), which expired on Feb. 22, 1954, or years after the new Civil Code took effect (Aug. 30, 1950). Since the purpose of the present action is to obtain a judicial declaration that the agreement entered into is a simple mortgage and not a sale with pacto de retro, which question was decided in favor of the latter, we are of the opinion that Art. 1606, par. 3, of the new Civil Code applies, and therefore appellants may exercise the right of redemption within 30 days from the time the judgment may become final. **Cynas v. Ulanday,** G. R. No. L-12700, June 29, 1959.

CIVIL LAW — SURETYSHIP — THE APPLICATION FOR DAMAGES AND NOTICE AGAINST THE SURETY MUST BE MADE BEFORE THE JUDGMENT AGAINST THE PRINCIPAL BECOMES FINAL AND EXECUTORY, OTHERWISE THE SURETY WILL BE RELIEVED FROM LIABILITY. — In an action to recover possession and damages, a writ of preliminary injunction was issued so that plaintiff may take possession of the property in controversy **pendente lite.** To lift the injunction, defendant filed a counterbond subscribed by the petitioner. Judgment was rendered in plaintiff's favor and defendants were ordered to deliver the property and to pay damages. The decision having become final and executory, plaintiff moved for execution of the judgment, which was granted, but the writ was returned unsatisfied defendants having no property to execute upon. Whereupon, on plaintiff's motion, an alias writ of execution was issued against petitioner surety company. Petitioner contended that it was not given notice of the hearing relative to the damages, and since the decision has become final and executory, the claim or damages can no longer be

enforced against it. **Held,** the contention is well-taken. Under section 20 of Rule 59 of the Rules of Court the application for damages must be filed before the trial or before entry of final judgment with due notice to the other party and his surety. While defendants were represented by counsel, the surety company was not notified of the case relative to the award of damages. The remedy sought is exclusive and by failing to file a motion for the determination of damages on time and while the judgment was still under the control of the court, plaintiff lost his right against the surety. **Alliance Ins. & Surety Co. v. Hon. Judge Piccio,** G. R. No. L-9950, July 31, 1959.

COMMERCIAL LAW — IMPORTATION — THAT A QUESTIONED IMPORTATION DOES NOT INVOLVE THE SALE OF FOREIGN EXCHANGE MUST BE SHOWN, OTHERWISE IT WILL BE PRESUMED THAT IT INVOLVES SUCH SALE FOR WHICH A FOREIGN EXCHANGE LICENSE MUST BE OBTAINED. — The acting Collector of Customs seized two shipments of several packages of foreign made candies, consigned to the petitioner, for violation of Central Bank Circulars 44 and 45 in relation to section 1363 of the Revised Administrative Code. After due hearing, the acting Collector decreed forfeiture. On appeal to the Commissioner of Customs, the decision was upheld. The Court of Tax Appeals also affirmed the same. It appears that petitioner imported the aforesaid candies from Hongkong without the corresponding consular invoices required by Circular No. 44, from the Philippine Consulate in Hongkong, and the release certificates required by Circular No. 45 from the Central Bank on its authorized agent. **Held,** since the importation in question was made without the necessary import license and the release certificates, the merchandise fall within the prohibited importation and therefore forfeiture is proper. It is a recognized general mercantile practice that importation involves the sale of foreign exchange. This being so, importations that do not involve the sale of foreign exchange must be shown or proved, otherwise it will be presumed that it involves such sale for which a foreign exchange license must be obtained. **Pascual v. Commissioner,** G. R. No. L-10979, June 30, 1959.

COMMERCIAL LAW — PUBLIC SERVICE COMMISSION — A CERTIFICATE OF PUBLIC CONVENIENCE AUTHORIZING SERVICE ON A LINE WHERE THE EVIDENCE IS AS REGARDS THE NEED OF ANOTHER LINE IS ILLEGAL. — Petitioner here and others filed separate applications before the Public Service Commission to operate a transportation service. In the hearing, one of the applicants presented evidence of the necessity of sevice in the line applied for. His application was denied. But upon reconsideration he was granted a certificate of public convenience to operate a line other than that applied for and for which evidence was presented. Whereupon, petitioner, whose application has been denied all along, petitioned for certiorari contending that in granting the certificate in question, the Commission acted in excess of jurisdiction. **Held,** a certificate of public convenience authorizing service on a line where the evidence is as regards the need of another line is illegal. **De la Paz v. Public Service Commission,** G. R. No. L-13836, August 13, 1959.

CRIMINAL LAW — MITIGATING CIRCUMSTANCE — OUR PENAL LAWS ENUMERATE THE CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY AND THE CONDITION OF RUNNING AMUCK IS NOT ONE OF THEM. — Accused, a Moro native of Zamboanga, run amuck, killing sixteen victims. In an effort to mitigate his liability, he argued that running amuck or becoming a "juramentado" is a cult among the Moros that forms part of their religion, it being age-old and deeply rooted in their psychology, and that the Moros do not discourage its observance nor do they view it as a heinous crime. **Held,** the claim that running amuck is a cult among the Moros that is age-old and deeply rooted and should be distinguished from murders where the murderer is not resigned to expiate his offense by being killed unlike the amuck is unmeritorious. Our penal laws enumerate the circumstances which mitigate criminal liability and the condition of running amuck is not one of them. **People v. Salazar,** G. R. No. L-11601, June 30, 1959.

INTERNATIONAL LAW — PUBLIC INTERNATIONAL LAW — AGREEMENTS ENTERED INTO BY THE PRESIDENT WITH OTHER STATES ARE VALID AND BINDING EVEN WITHOUT THE CONCURRENCE OF THE SENATE. — Plaintiff brought action to stop defendants from remitting to the United States Government the balance of the funds appropriated by the latter just before the outbreak of World War II and thereafter for the expenses incident to the mobilization, operation and maintenance of the Army of the Philippines which was later inducted into the United States Army. The aforesaid balance amounting to 35 million dollars was loaned to the Philippine Government under the Romulo-Snyder Agreement. Among the stipulations in the Agreement is the repayment of the loan in ten annual installments. In compliance therewith, the Philippine Government has appropriated and paid to the United States a total partial payment amounting to ₱33,187.24. However, subsequent budgets failed to make the corresponding appropriations for the rest of the installments. To prevent the repayment of the said loan and to recover what has been paid so far, plaintiff assailed the validity of the Romulo-Snyder Agreement (1950) on the ground, among others, that it was not ratified by the Senate and therefore not binding upon the Government. **Held,** that the Agreement is not a "treaty" as that term is used in the Constitution is conceded. The Agreement was never submitted to the Senate for concurrence. However, it must be noted that a treaty is not the only form that an international agreement may assume. The grant of the treaty-making power to the Executive and the Senate does not exhaust the power of the government over international relations. Consequntly, executive agreements may be entered into with other states and are effective even without the concurrence of the Senate. **USAFFE Veterans Ass'n v. Treasurer,** G. R. No. L-10500, June 30, 1959.

LABOR LAW — WAGE ADMINISTRATION SERVICE — A 'DECISION' OF THE WAGE ADMINISTRATION SERVICE AWARDING MONEY CLAIM CANNOT BE ORDERED EXECUTED BY A COURT OF JUSTICE, WITHOUT AN ORDINARY ACTION THEREIN IN THE ABSENCE OF AN ARBITRATION AGREEMENT BY THE PARTIES BEFORE THE FORMER. — Petitioner was a bus inspector of respondent bus company for several years. He worked from 6:00 a.m. to 6:00 p.m. each day of duty with a lunch-break of 15 minutes. After his separation from the service, he filed with the Wage Administration Service a claim for unpaid overtime compensation. Notice of such claim was sent by that office to the respondent and requested it to appear during the hearing. Respondent never appeared and petitioner was allowed to present his evidence, after which the Wage Administration Service issued the 'decision' sought to be enforced. **Held,** the issue before us is whether a 'decision' of the Wage Administration Service may be ordered executed by a court of justice, without an ordinary action for the recovery of said sum of money therein and without either a decision of such court sentencing the employer to pay the aforementioned amount or an arbitration agreement before the former body. It is obvious that the answer must be in the negative. **Figueroa v. Saulog Transportation,** G. R. No. L-12745, June 29, 1959.

LABOR LAW — TENANCY LAW — WHERE A POSSESSOR OF A PIECE OF LAND AGREES TO CULTIVATE THE SAME AND SHARE THE PRODUCE THEREOF WITH THE LANDOWNER, THERE EXISTS A CONTRACT OF AGRICULTURAL TENANCY; THAT THE TENANT CONSTRUCTED A HOUSE ON A PORTION OF THE LAND DOES NOT CONVERT THE SAME INTO A RESIDENTIAL LAND AND, CONSEQUENTLY, THE CONTRACT, ONE OF LEASE. — Defendant originally agreed with his landowner to share equally the produce of the latter's land, in consideration of his possession. Plaintiff, as agent of the owner, later tried to collect an additional ₱2.00 monthly rental which defendant refused to pay. Wherefore, plaintiff filed a complaint to recover possession which the lower court dismissed on the ground that the Agricultural Tenancy Court has exclusive jurisdiction over the subject. Plaintiff insists that the action is merely ejectment or detainer proceedings as the land is residential since defendant constructed a house thereon. **Held,** the cultivation of the land by the defendant and the sharing of the products thereof with the owner, characterize the relationship between the defendant and plaintiff's principal as one of landlord and tenant. The fact that defendant built a house on a portion of the land is immaterial. **Marcelo v. de Leon,** G.R. No. L-12902, July 29, 1959.

LABOR LAW — WORKMEN'S COMPENSATION ACT — THE TWO-YEAR PERIOD MENTIONED IN SEC. 8 OF THE WORKMEN'S COMPENSATION ACT IS COUNTED FROM THE DATE THE DISEASE OR ILLNESS BECOMES COMPENSABLE, OR FROM THE TIME THE EMPLOYEE'S SICKNESS RENDERS HIM PHYSICALLY DISABLED TO WORK. — While in the performance of his duties, Garin contracted tuberculosis and was retired. He died on Jan. 11, 1953 so that his widow filed a claim for death benefits with the Workmen's Compensation Division of the Bureau of Labor and was later awarded the amount of ₱2,994.25. Petitioner contested the award claiming that Garin died more than two years from date of sickness and that under Sec. 8 of the Workmen's Compensation Act, the disease contracted or injury received must have caused the employee's death within two years from the date of such injury or sick-

ness in order that the death may be compensable. Garin contracted tuberculosis much prior to Sept. 28, 1950 but the same did not prevent him from working until Dec. 5, 1951. **Held,** a reasonable interpretation would be that the two-year period be counted from the date the disease or illness becomes compensable, or from the time the employee's sickness renders him physically disabled to do the work. **Central Azucarrera de Don Pedro v. De Leon,** G. R. No. L-9449, July 24, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — AFTER THE LAPSE OF ONE YEAR FROM ISSUANCE THEREOF, A CERTIFICATE OF TITLE ISSUED PURSUANT TO A HOMESTEAD PATENT IS AS INDEFEASIBLE AS ONE ISSUED PURSUANT TO AN ORDINARY REGISTRATION PROCEEDINGS. — Seven years after the issuance of a certificate of title, corresponding to a homestead patent in favor of respondent, petitioner in passing upon an opposition to said patent, declared the same null and void in so far as it covers a certain portion designated therein and adjudged the same in favor of oppositor. His order having been affirmed by the Department Secretary, the petitioner filed a petition with the lower court praying that the patent be declared null and void and order the respondents to surrender the same and the certificate of title issued pursuant thereto to the proper governmental authorities. Respondents moved to dismiss the petition, claiming that as more than one year from the issuance of the certificate of title had already elapsed, petitioner's cause of action was already barred by prescription, to which the trial court agreed. Petitioner now contends that a homestead patent differs from a decree in a registration proceedings in many fundamental ways, thus depriving the former of that indefeasible nature ordinarily characteristic of the latter. **Held,** what is involved in this case is the indefeasibility of the certificate of title issued after the homestead patent has been duly registered pursuant to Section 122 of the Land Registration Act. As to this, the law is clear: "After due registration and issue of the certificate and owner's duplicate, such land shall be registered land for all purposes under this Act (Section 122)". Consequently, the land automatically comes under the operation of Section 38 of the same Act and subject to all the safeguards therein provided. **Republic v. Heirs of Ciriaco Carle,** G. R. No. L-12485, July 31, 1959.

LAND TITLES AND DEEDS—PUBLIC LAND LAW—ONCE A HOMESTEAD PATENT IS REGISTERED AND THE CORRESPONDING CERTIFICATE OF TITLE IS ISSUED, THE LAND CEASES TO BE PART OF THE PUBLIC DOMAIN AND BECOMES PRIVATE PROPERTY OVER WHICH THE DIRECTOR OF LANDS HAS NEITHER CONTROL NOR JURISDICTION.—Petitioner filed this petition with the lower court praying that the homestead patent issued in favor of respondent be declared null and void and that the certificate of title issued pursuant thereto, be surrendered to the Register of Deeds for cancellation alleging mistake in the patent. Respondent claimed that as more than one year has elapsed from the issuance of the certificate of title, the same is subject to the operations of the Land Registration Act, therefore. already indefeasible. The lower court sustained respondent's contention. Petitioner contends that since he is the official

who exercises the power to dispose public lands, it necessarily follows that the right to review the patent pertains to him. **Held,** this view is correct but only as long as the land remains a part of the public domain and still continues to be under his exclusive and executive control. But once the patent is registered and the corresponding certificate of title is issued, the land becomes private property over which the Director of Lands has neither control nor jurisdiction. **Republic v. Carle,** G. R. No. L-12485, July 31, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — THE PHILIPPINE VETERANS BOARD IS A MERE AGENCY OF THE GOVERNMENT AND A CLAIM AGAINST IT WOULD IN EFFECT BE A SUIT AGAINST THE GOVERNMENT. — Roldan, a clerk in the Phil. Veterans Board, was dismissed from the service on the ground that he was already 57 years old at the time he was appointed, contrary to the provision of Sec. 6, R. A. 728. He instituted quo warranto proceedings against the one appointed in his place. The trial court declared his ouster illegal and ordered his reinstatement. Thereafter, he brought this present action against the PVB for back salaries. **Held,** the Philippine Veterans Board which was created under Sec. 7 of R. A. No. 65 under the Dept. of National Defense, is a mere agency of the Government, is incapable of being sued especially for the recovery of back salaries, which salaries are appropriated only by Congress. So a suit like this one against the Board is in reality an action against the government itself. **Roldan v. Philippine Veterans Board,** G. R. No. L-11973, June 30, 1959.

POLITICAL LAW — CONSTITUTIONAL LAW — THE FILIPINO FLAG IS NOT AN IMAGE THAT REQUIRES RELIGIOUS VENERATION; RATHER IT IS A SYMBOL OF THE REPUBLIC OF THE PHILIPPINES, OF SOVEREIGNTY, AN EMBLEM OF FREEDOM, LIBERTY AND NATIONAL UNITY; THE FLAG SALUTE IS NOT A RELIGIOUS CEREMONY BUT AN ACT AND PROFESSION OF LOVE AND ALLEGIANCE AND PLEDGE OF LOYALTY TO THE FATHERLAND WHICH THE FLAG STANDS FOR; HENCE, THE REQUIREMENT OF OBSERVANCE OF FLAG CEREMONY OR SALUTE DOES NOT VIOLATE THE CONSTITUTIONAL PROVISIONS ABOUT FREEDOM OF RELIGION AND EXERCISE OF RELIGION. — Petitioners are members of JEHOVAH'S WITNESSES, an unincorporated body teaching that the obligation imposed by the law of God is superior to that of laws enacted by the State. Their religious beliefs include a literal version of Exodus, chapter 20, verses 4 and 5, which reads: "Thou shalt not make unto thee any graven image or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them." Respondent Secretary of Education, pursuant to Republic Act 1265 making flag ceremony compulsory in all educational institutions, issued a directive enforcing the provisions of said law. Petitioners admonished their children not to salute the flag. They consider the flag an "image" within the command of the aforecited biblical passage, hence the admonition, in consequence of which their children were expelled from school. In their action, petitioners invoked their Constitutional right to freedom of religion and

the free exercise thereof. **Held,** the Filipino flag is not an image that requires religious veneration; rather it is a symbol of the Republic of the Philippines, of sovereignty, an emblem of freedom, liberty and national unity; the flag salute is not a religious ceremony but an act and profession of love and allegiance and pledge of loyalty to the fatherland which the flag stands for; by authority of the Legislature, the respondent was duly authorized to promulgate the directive in question; the requirement of observance of the flag ceremony or salute provided therein does not violate the Constitutional provisions about freedom of religion and the exercise of religion. **Gerona v. Hon. Sec. of Education,** G. R. No. L-13954, August 12, 1959.

POLITICAL LAW — NATURALIZATION — A PETITION FOR NATURALIZATION CAN NOT BE REFUSED OR DENIED ON MERE SUSPICION OF THE ARMED FORCES OF THE PHILIPPINES THAT PETITIONER IS ENGAGED IN SUBVERSIVE ACTIVITIES. — Qua applied for naturalization alleging all the qualifications and none of the disqualifications enumerated in the law. The evidence presented in his behalf was quite impressive, but his petition was denied by the trial court on the ground that the Armed Forces of the Philippines refused to give him a G-2 clearance, he being suspected of subversive activities. Two army agents testified as to the supposed subversive activities but both refused to specify and reveal what those supposed subversive activities were on the ground that it was confidential and for security reasons. They even refused to name the organization supposedly communistic to which petitioner was said to belong. On the other hand, petitioner furnished clearance certificates from the following: MPD, Office of the City Fiscal of Manila, PC, CAFA, Land Registration Commission, Anti-Dummy Board, Central Bank, Bureau of Prisons and the NICA. **Held,** we can not refuse or deny a petition for naturalization on mere suspicion from the Armed Forces of the Philippines, supposed to investigate alleged subversive activities. If those suspicions are based on facts, they should be placed on the record so that petitioner may have an opportunity to examine them and, if possible, to refute them. **Qua v. Republic,** G. R. No. L-12279, June 30, 1959.

POLITICAL LAW — NATURALIZATION — IN THE ABSENCE OF A CERTIFICATE OF RECORD OF BIRTH, THE BIRTH OF PETITIONER MAY BE ESTABLISHED BY ANY OTHER EVIDENCE. — Qua, in his petition for naturalization, alleged among others that he was born in Manila and has resided continuously in the Philippines since. He has no birth certificate to prove his birth in the Philippines and in lieu thereof he presented a certficate of the Local Civil Registrar stating that the record of births of his office does not contain the name of Qua alleged to have been born on May 28, 1917. He tried to establish his birth in Manila by his own testimony, his Alien Certificate of Registration, his Native Born Certificate of Residence, and the testimony of a witness to his birth. The trial court however cut short the testimony of the witness on the ground that the best evidence is the record of birth. **Held,** the trial court erred in ruling that in the absence of a certificate of record of birth, the birth of petitioner could not be established by any other evidence. **Qua v. Republic,** G. R. No. L-12279, June 30, 1959.

POLITICAL LAW — PUBLIC CORPORATIONS — AN ORDINANCE TO BE EFFECTIVE MUST COMPLY WITH THE LEGAL REQUIREMENT OF PUBLICATION, NAMELY, POSTING OF A COPY THEREOF AT THE MAIN ENTRANCE OF THE MUNICIPAL BUILDING. — Defendant here was prosecuted for violation of a municipal ordinance. The ordinance was duly passed by the municipal council and approved by the mayor. Defendant contended, however, that when he committed the act imputed to him, the ordinance was not yet effective there having been no publication thereof. **Held,** the contention is sound. Section 2230 of the Revised Administrative Code states that every ordinance shall go into effect on the tenth day after its passage, unless an earlier or later date is provided, and that the ordinance on the day of its passage shall be posted by the municipal secretary at the main entrance of the municipal building. The ordinance in question provides for immediate effectivity upon approval, however, such provision is ineffective in the absence of a publication by posting a copy of the ordinance at the main entrance of the municipal building. **People v. De Dios,** G. R. No. L-11003, August 31, 1959.

POLITICAL LAW — PUBLIC CORPORATIONS — THE SCOPE OF THE POWER OF CONTROL LODGED IN THE DAVAO CITY MAYOR BY ITS CHARTER OVER THE DEPARTMENTS OF THE CITY GOVERNMENT AUTHORIZES HIM TO RELIEVE THE POLICE DEPARTMENT'S FINANCE OFFICER AND ASSIGN HIM TO FIELD DUTY. — The mayor of Davao City directed the chief of police to relieve the police department's finance and supply officer and ordered his transfer to the field because newspapers reported that anomalies have been committed by certain officers in the custody of records under his custody. The chief of police refused claiming that it is beyond the scope of the mayor's authority because the organization, government and disposition of police personnel is the sole responsibility of the chief of police and not that of the mayor as provided for in Sec. 21 of the city charter. Sec. 9 of the city charter however provides that the mayor shall have immediate control over the executive and administrative functions of the different departments. **Held,** if the power of control includes the power to nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute his own judgment for that of the subordinate, then it is evident that the mayor has the power to order the transfer of the finance and supply officer and his assignment to the field. **Porras v. Abellana,** G. R. No. L-12366, July 24, 1959.

POLITICAL LAW — TAXATION — BALLET PERFORMANCE IS INCLUDED IN THE TERMS "CONCERT", "OPERA" OR "RECITAL" AND THEREFORE EXEMPT FROM THE PAYMENT OF AMUSEMENT TAX. — Respondent corporation sponsored an international fair and exposition in the City of Manila. Among the attractions was the show in question, an "Aquacade Show" brought from the States, the predominant feature of which was a "water ballet" performance. Petitioner Collector of Internal Revenue demanded payment of amusement tax from the respondent corporation for the exhibition of the show, pursuant to Section 260 of the National Internal Revenue Code. Respondent claimed exemption under Republic Act 772, section 1 of which provides that the "holding of operas, concerts, reci-

tals, dramas, painting and art exhibitions x x x shall be exempt from the payment of any national or municipal tax on the receipts derived therefrom." **Held,** ballet is an art; under the Constitution, arts are under the patronage of the state; Republic Act 772 seeks to implement the constitutional provision. Ballet performance is included in the terms "concert", "opera" or "recital" and therefore exempted from the payment of amusement tax. **Collector v. Phil. International Fair,** G. R. No. L-12024, August 28, 1959.

POLITICAL LAW — TAXATION — BANK PREMIUMS PAID IN THE PURCHASE OF FOREIGN EXCHANGE FALL UNDER THE CATEGORY OF CHARGES ENUMERATED IN ARTICLE 183-(B) OF THE TAX CODE AS INCLUDED IN THE TAXABLE VALUE OF IMPORTED GOODS AND, THESEFORE, MUST BE DECLARED FOR TAX PURPOSES. — Petitioner did not for purposes of computing the advance tax on its importations include as part of the landed cost the difference (₱0.015) between the amount actually paid by it to the bank on said importations computed at ₱2.015 for every U.S. dollar and the value of the imported goods at the legal rate of ₱2.00 for every U.S. dollar. ₱0.015 represents the premium on the dollar charged by the bank and paid by petitioner in the purchase of foreign exchange. Respondent demanded from petitioner deficiency advance sales tax. Is the difference of ₱0.015 part of the landed cost of the imported articles for purposes of computing the advance sales tax? **Held,** an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the invoice value thereof x x x including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, etc., but all other similar charges which would necessarily increase the landed cost of the merchandise imported. In our opinion, the difference of ₱0.015 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation is included in these charges. **Phil-American Drug Co. v. Collector,** G. R. No. L-13032, August 31, 1959.

POLITICAL LAW — TAXATION — FRATERNAL, CIVIC, NON-PROFIT, NON-STOCK ORGANIZATIONS ARE NOT LIABLE FOR THE PRIVILEGE TAXES REQUIRED BY SECTION 193, SUBSECTIONS (1), (k) AND (n), OF THE TAX CODE. — The Collector of Internal Revenue assessed against the Manila Lodge of the Benevolent & Protective Orders of Elks the sums of ₱1,203.50 and ₱332.00, representing fixed taxes on liquor, fermented liquor, and tobacco sold to its members, pursuant to subsections (1), (k) and (n) of section 193 of the Tax Code, in relation to section 178 of the same code. The club, admittedly a fraternal, civic, non-stock, non-profit organization, claiming exemption therefrom requested for a review of the assessment by the Conference Staff of the Bureau of Internal Revenue. The Staff reiterated the assessment. On appeal to the Court of Tax Appeals, however, the assessment was reversed. Whereupon, the Collector appealed maintaining that persons selling articles subject to specific tax, such as cigars, tobacco, liquor and the like, are subject to the fixed taxes imposed by the aforementioned provisions, irrespective of whether or

not they are civic or fraternal clubs selling only to their members and guests. **Held,** it has been established without contradiction that the Manila Elks Club, in pursuance of its purposes as a fraternal social club, sells on retail at its clubhouse liquor, etc., on a very limited scale, only to its members and their guests, providing just enough margin to cover operational expenses without intention to obtain profit. Such being the case, it cannot be considered as engaged in business, and as such it cannot be held liable for the privilege taxes required by section 193. **Collector v. Manila Elks Club,** G. R. No. L-11176, June 29, 1959.

POLITICAL LAW — TAXATION — SEC. 353 OF THE NATIONAL INTERNAL REVENUE CODE AUTHORIZES SUBSIDIARY IMPRISONMENT ONLY FOR NON-PAYMENT OF FINE BUT NOT OF TAXES DUE. — Prosecuted for non-payment of income taxes, defendant at first pleaded not guilty but was later allowed to changed it to that of guilty. Sentenced to pay a fine and the amount of the income taxes due, with subsidiary imprisonment in case of insolvency in either case, he appealed assigning as an error the imposition of subsidiary imprisonment in case of failure to pay the taxes due by reason of insolvency. **Held,** Sec. 353 of the National Internal Revenue Code refers only to non-payment of fine and not of the taxes due. It is well settled that if a special law does not provide for the imposition of subsidiary imprisonment in case of insolvency in the payment of the civil liability, such subsidiary imprisonment cannot be imposed. **People v. Balagtas,** G. R. No. L-1020, July 129, 1959.

REMEDIAL LAW — ADMINISTRATIVE PROCEEDINGS — ACQUITTAL IN A CRIMINAL PROSECUTION FOR ATTEMPTED SMUGGLING OF GOLD DOES NOT BAR FORFEITURE PROCEEDINGS UNDER THE REVISED ADMINISTRATIVE CODE. — Petitioners went aboard the vessel "S.S. President Cleveland" to look for an unoccupied cabin where 138 gold bars, which they intended to smuggle to Japan, could be hidden. Failing to find a place that will satisfactorily serve their purpose, they left the vessel for home, still carrying in their person the gold bars. At the main gate on their way out, they were stopped and apprehended. As a consequence thereof, seizure proceedings were instituted in the Bureau of Customs, simultaneously with the filing of a criminal action for attempted violation of Central Bank Circulars Nos. 21 and 42 which subject the exportation of gold to prior licensing. They were acquitted in the criminal case on the ground that under Circulars Nos. 21 and 42, only consumated offenses are punishable. Petitioners now argue that their acquittal in the criminal case bars the forfeiture of the articles in another proceeding where the issue as a cause for such forfeiture is the same act or fact involved in the criminal case. **Held,** although the act upon which the seizure proceedings were based may be the same as that involved in the criminal action, the provisions of Sec. 136-(f) and (m-1) of the Revised Administrative Code under which the articles are being confiscated specifically include attempts. Consequently, acquittal in the criminal case does not constitute a bar to forfeiture proceedings. **Tong Tek v. The Commissioner of Customs,** G. R. No. L-11947, June 30, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — ALTHOUGH ORDINARILY FOUND IN THE DISPOSITIVE PART, THE JUDGNENT MAY APPEAR IN OTHER PARTS OF THE DECISION.—Petitioner-appellee was a pensioner of the Philippine Veterans Board. Subsequently, payments to her were discontinued upon the Board's discovery that she was receiving a similar pension from the U.S. Government. Thereafter, she petitioned the Board for the restoration of her pension claiming she had ceased receiving any pension from the U.S. Government. The Board's Secretary directed the accounting officer to restore her pension. However, the treasury warrant covering the accumulated pensions was withheld on the ground that the Board "had not yet granted the restoration" and that the action of the Secretary was a mistake. Petitioner therefore petitioned for mandamus to compel the Board officers to release the warrant. The lower court ordered the release. Pending appeal by the Board, an **ex parte** motion for execution, secured by a bond subscribed by a surety company, was granted. A treasury warrant for ₱2,000 was thereupon delivered to petitioner. Disposing of the Board's appeal, the appellate court modified the judgment of the lower court in the sense of merely requiring appellant to act without delay on petitioner's application for restoration of her pension benefits. This decision having become final, the Board moved that petitioner and her surety be ordered to return the sum delivered previously. The surety opposed, claiming relief from liability contending that since the dispositive portion of the appellate ruling merely modified the appealed judgment, no action could be taken against the bond, it being conditioned upon "reversal or reduction" of the judgment. **Held,** while the resolution of a court in a given case is ordinarily embodied in the dispositive part of the decision, it may appear in other parts thereof. As long as the decision satisfies the requirement of the law, we find no compelling reason to adopt a definite and stringent rule underlining how and where the judgment would be framed. **Policarpio v. Phil. Veterans Board,** G. R. No. L-12779, August 28, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — A PARTY HAS NO RIGHT TO FILE A PETITION FOR RELIEF UNDER RULE 38 OF THE RULES OF COURT WHERE THE ORDER COMPLAINED OF WAS ENTERED ON MOTION OF THE SAME PARTY. — Intervenors-appellants, because they were not included as parties appellants in the appeal of the plaintiff, filed a motion to amend the record on appeal so as to be included as party therein, alleging that the omission of their names was due to the mistake of the typist who prepared the record on appeal while the attorney in charge was on vacation. The lower court denied the motion. Counsel filed a petition for relief from this order to which counsel for defendant filed an opposition. The petition was again denied. **Held,** the intervenors have no right or reason to file a petition for relief under Rule 38 of the Rules of Court from the order of the lower court, for the reason that the same was entered upon a motion filed by them. Indeed, they cannot reasonably assert that the order was entered against them through fraud, accident, mistake, or negligence. The fraud mentioned in Rule 38 is the fraud committed by the adverse party and certainly the same cannot be attributed to the Court. **Velayo v. Shell Company of the Philippines,** G.R. No. L-8883, July 14, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — "FROM THE DATE OF FIRST NOTICE OF THE POSTMASTER" IN SECTION 8, RULE 27, OF THE RULES OF COURT, PRESUPPOSES THAT THE ADDRESSEE HAS ACTUALLY RECEIVED THE MAIL ON SAID DATE; WHERE HE FAILS TO CLAIM HIS MAIL WITHIN 5 DAYS FROM THE DATE OF THE FIRST NOTICE, DUE TO SOME JUSTIFIABLE CAUSE, SERVICE TAKES EFFECT AT THE EXPIRATION OF SUCH TIME. — A copy of the decision of the respondent judge in favor of the oppositors in a land registration case was sent by registered mail to petitioners' counsel, the first notice of which was received by a minor daughter on April 1, 1958, who in turn delivered it to her brother, also a minor, for which reason the notice never reached counsel until April 8, 1958, when another son, a helper in the office, went to the post office for an errand and the postmaster delivered the registered mail in question to him and on same date gave it to his father. The record on appeal was filed on May 7, 1958, and the respondent judge, holding it was beyond the reglementary period, denied the same, on the basis of Sec. 8, Rule 27, of the Rules of Court. **Held,** we disagree with the finding. When the law speaks of "from the date of first notice of the postmaster," it presupposes that the addressee has actually received the mail on said date, and where he fails to claim his mail within 5 days from the date of said first notice, due to some justifiable cause, service takes effect upon the expiration of such time. **Cabuang v. Hon. Judge Bello,** G. R. No. L-14781, July 15, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — NOTICE MUST BE GIVEN TO THE SURETY EITHER BEFORE THE TRIAL OR, AT THE LATEST, BEFORE ENTRY OF FINAL JUDGMENT, IN ALL CASES WHERE DAMAGES ARE CLAIMED ARISING FROM THE ISSUANCE OF A BOND, OTHERWISE, THE MOTION FOR THE EXECUTION OF JUDGMENT AGAINST THE SURETY FAILS. — It appears that plaintiff in the principal case failed to have the judgment in his favor satisfied in view of the insolvency of the defendants therein. Wherefore, plaintiff filed another motion, praying that an alias writ of execution be issued against the surety, to which petitioner opposed on the main ground that the principal decision cannot be enforced against it since no notice was given to it of the hearing relative to damages as required by Section 9, Rule 60, in relation to Section 20, Rule 59, of the Rules of Court. And since said decision has already become final and executory, plaintiff's claim for damages can no longer be enforced against the petitioner who is deemed relieved from its liability under the bond. **Held,** in all cases where damages claimed arise from the issuance of a bond, notice must given to the surety before trial, or, at the latest, before entry of final judgment. **Del Rosario v. Nava,** G. R. No. L-9950, July 31, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — SATISFACTION OF A JUDGMENT PENDING APPEAL THRU A WRIT OF EXECUTION DOES NOT CONSTITUTE ABANDONMENT OF APPEAL. — In the main action to recover ownership of a parcel of land, the complaint was dismissed and judgment was rendered against petitioner-plaintiff for ₱1,000 as attorney's fees. His motion for reconsideration having been denied, he tried to appeal

from the dismissal, but the lower court, holding his motion for reconsideration merely **pro forma** and therefore did not suspend the period of appeal and the period to appeal having lapsed, declared the appeal filed out of time. Whereupon, he filed a petition for mandamus with the Court of appeals to compel the lower court to give due course to his appeal. Denied, on the ground, among others, that petitioner-plaintiff had already satisfied the judgment having paid the attorney's fees before filing the petition and, hence, deemd to have abandoned his appeal, **Held,** the main action is recovery of ownership. What was executed over plaintiff's opposition is the award of attorney's fees. Payment, therefore, of said fees cannot be deemed an abandonment of his appeal from the dismissal of his main cause of action. Even then such payment cannot be taken as abandonment because it was forced upon him through a writ of execution. **Elnar v. Santos,** G.R. No. L-13113, August 13, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — SUBSTANTIAL COMPLIANCE WITH THE RULES ON FILING A MOTION FOR RECONSIDERATION OF JUDGMENT IS SUFFICIENT; A MOTION THUS FILED IS NOT MERE **PRO FORMA** BUT SUSPENDS THE PERIOD OF APPEAL. — In the principal case, judgment was rendered in favor of the defendant, notice of which was served on petitioner's counsel. Within the reglementary period, petitioner filed a motion for reconsideration or new trial but was denied by the lower court holding the same merely **pro forma.** In his motion for reconsideration, petitioner attributed two errors to the lower court, on questions of fact and the other on questions of law. As to the first, he pointed out the findings or conclusions of the court which in his opinion are not supported by the evidence, and as to the second, he pointed out specifically the findings or conclusions contrary to law. Furthermore, he expressly reserved his right to submit a written or oral argument to substantiate his motion which was denied outright by the court. **Held,** the above averments when considered in the light of the decision on the merits may be considered substantial compliance with Rule 37 of the Rules of Court. Here is where application of the principle that the rules shall be liberally construed in order to promote the interest of justice is proper and desirable. **Elnar v. Santos,** G. R. No. L-13113, August 13, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — THERE IS NO VALID SUBTITUTED SERVICE WHERE THE SUMMONS IS SERVED UPON DEFENDANT'S DAUGHTER WHO IS ONLY A TWELVE-YEAR OLD, GRADE FOUR PUPIL. — The summons in this case was served upon defendant's daughter who was then twelve years old and a fourth grade pupil. Defendant was declared in default when he failed to file his answer. Plaintiffs presented their evidence **ex parte,** which consisted solely of the testimony of one of them, and on that basis, judgment was rendered awarding ownership of the land to plaintiffs. Defendant moved for new trial, alleging that he did not receive the summons and that he came to know about the case only when he received the decision. He attached to his motion affidavits of merit and a copy of a deed of sale of the land. The motion was denied, hence he appealed. **Held,** even if summons was really served upon defendant's daughter, still there was no valid substituted service because she, being only 12 years of age and a grade four pupil, could not have appreciated the importance of the paper delivered to her. **Sequito v. Letrondo,** G. R. No. L-11588, July 20, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — THE WIDENING OF A NATIONAL ROAD IS A NATIONAL PROJECT AND, WHERE AN INDEMNITY THEREFOR IS ASKED IN A PROPER CASE, THE REAL PARTY IN INTEREST IS THE NATIONAL GOVERNMENT AND NOT THE MUNICIPAL CORPORATION THRU WHICH THE SAME RUNS, ALTHO THE CONSTRUCTION THEREOF IS UNDERTAKEN BY THE LATTER. — Plaintiffs are the registered owner of a lot in Bacolod City suitable for commercial purposes fronting Araneta & Gonzaga streets with an area of 625 sq.m. When the spouses constructed a building thereon, the City Engineer required them to recede their building line 8 meters from the road center line, reducing the area of their lot by 61 meters. Subsequently, the building was destroyed by fire. To reconstruct it, the spouses-plaintiffs applied for a permit from the City Engineer, who granted one conditioned upon the reservation of a portion of the lot and the construction of sidewalks on both sides of Araneta & Gonzaga streets. The requirement further reduced the lot by 137 sq.m. Claiming that the City had taken possession of portions of their lot without the benefit of an expropriation proceeding, plaintiffs brought the present action to recover possession or just compensation. The City filed a motion to dismiss. **Held,** there is no dispute that Gonzaga and Araneta streets are parts of the national road pursuant to Executive Order No. 194 of March 13, 1939. Being parts of the national road, the same belong to the National Government. It is clear that the real party in interest is the National Government, and that the City of Bacolod merely acted as agent or instrument in the improvement and widening of the streets in question. **Miranda v. City,** G. R. No. L-12606, June 29, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — A FISCAL IS JUSTIFIED IN CONDUCTING A REINVESTIGATION OF A MURDER CASE EVEN AFTER TRIAL, CONVICTION AND PENDENCY OF APPEAL IF ONE OF THE DEFENDANTS WAS NOT INCLUDED IN THE TRIAL AND JUDGMENT. — As a result of the killing of Monroy in 1953, Castelo and others were charged with and found guilty of murder. Pending appeal, President Magsaysay ordered a reinvestigation of the case by the PC and investigators of Malacañang who obtained confessions pointing to persons other than Castelo and his co-accused as the real killers. Cruz was pictured as the instigator and mastermind. Having been furnished copies of the confessions, Fiscal Salva proceeded to conduct a reinvestigation and issued a subpoena to Cruz to appear at the preliminary investigation. Cruz filed this petition for certiorari and prohibition contending that Salva had no authority to conduct a preliminary investigation or reinvestigation of the case for that would be obstructing the administration of the main case wherein Castelo and his co-defendants had been found guilty and sentenced. However, Salva pointed out that one of the defendants, named Realista, was not included in the trial and judgment for the reason that he was arrested only

after trial against the other accused had already commenced. Salva further claimed that before he could go to trial in the case of Realista, he had to first assess the new evidence and determine its value by conducting an investigation. **Held,** ordinarily, when a criminal case in which the fiscal intervened is tried and decided and is appealed to a higher court, the functions and actuations of said fiscal are terminated, consequently, there would be no reason for him to conduct a reinvestigation to determine criminal responsibility for the crime involved in the appeal. However, respondent has in the present case established a justification for his reinvestigation. **Cruz v. Salva,** G. R. No. L-12871, July 25, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PLEA OF GUILTY IS AN ADMISSION OF ALL THE MATERIAL FACTS ALLEGED IN THE INFORMATION. — In a fit of anger and jealousy, accused run amuck, leaving 16 dead victims behind his bloody trail. The information filed against him for the killings alleged deliberate intent, evident premeditation, treachery and the use of deadly weapon as qualifying circumstances. Two lawyers were appointed counsel **de oficio** to defend him. Upon arraignment, he pleaded guilty, but considering the gravity of the offeness charged, the trial court asked the accused to narrate on the witness stand the circumstances surrounding the killings. The accused refused whereupon the prosecution was asked to present its evidence. On review of the death sentence imposed, it was contended that the accused's plea of guilty did not extend to the admission of the correctness of the qualifications of his acts as alleged in the information, particularly the allegation of evident premeditation and treachery. **Held,** a plea of guilty is an admission of all the material facts alleged in the information. By his plea, the accused is deemed to have admitted not only the commission of the offenses charged but also the circumstances surrounding their commission. **People v. Salazar,** G. R. No. L-11601, June 30, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE DEFENSE OF PRESCRIPTION CAN BE INVOKED FOR THE FIRST TIME ON APPEAL. — Prosecuted for non-payment of income taxes, defendant at first pleaded not guilty but was later allowed to changed it to that of guilty, and accordingly convicted. Despite his plea of guilty and due to a change of attorneys, he appealed alleging that the action had already prescribed. The state contended that if the defendant does not move to quash the charge before he pleads thereto, he shall be taken to have waived all objections which are grounds for a motion to quash, except jurisdictional defects, and therefore, under the circumstances, he has waived his right to invoke the defense of prescription. **Held,** the defense of prescription can be invoked by the accused even if the case had already been decided by the lower court but pending decision on appeal. **People v. Balagtas,** G.R. No. L-10210, July 29, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE DISMISSAL OF A CRIMINAL CASE ON MOTION OF DEFENDANT CONSTITUTES A BAR TO A SUBSEQUENT PROSECUTION FOR THE SAME OFFENSE

AGAINST THE SAME PARTY. — Defendant and others were charged before the Justice of the Peace for violation of Art. 199, pars. (b) & (c), of the Revised Penal Code, as amended. After the preliminary investigation, the case was forwarded to the Court of First Instance, where a formal information was filed. Defendant with some of his co-accused pleaded not guilty. After several postponements, the fiscal moved for provisional dismissal of the case grounded on the absence of his important witnesses. Subsequently, he filed a new information against the same accused which is practically a reproduction of the original charge. Arraigned, defendants pleaded not guilty. The hearing was set but was postponed several times due to the absence of prosecution witnesses. Finally, on motion of the accused the Court dismissed the case on the ground "that the prosecution has had ample time and opportunity to prepare for trial and to prosecute this case, and that it would be unfair and unjust to hold indefinitely the defendants to the offense charged herein until the prosecution is in a position to enter trial." Three years later, the fiscal again filed another information for the same defense, but only against defendant involved in this appeal. Defendant moved to quash on the ground of double jeopardy. **Held,** in the circumstances, we find no alternative than to hold that the dismissal of the second charge is not provisional in character but one which is tantamount to acquittal that would bar further prosecution of the accused for the same offense. In reaching the above conclusion, we have not overlooked our previous rulings to the effect that a dismissal upon defendant's motion will not be a bar to another prosecution for the same offense, but said ruling is not now controlling having been modified or abandoned in subsequent cases where we sustained the theory of double jeopardy despite the fact that the dismissal was secured upon motion of the accused. **People v. Robles,** G. R. No. L-12761, June 29, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE PRESENCE OF A SUSPECT IN A PRELIMINARY INVESTIGATION IS MORE OF A RIGHT RATHER THAN A DUTY OR LEGAL OBLIGATION. — Following the killing of Monroy in 1953, Castelo and others were charged with and found guilty of murder. Pending appeal, President Magsaysay ordered a reinvestigation of the case by the PC and investigators of Malacañang who obtained confessions pointing to persons other than Castelo and his co-accused as the real killers. Cruz was pictured as the instigator and mastermind. Having been furnished copies of the confessions, Fiscal Salva proceeded to conduct a reinvestigation and issued a subpoena to Cruz to appear at the preliminary investigation. Cruz contended that Salva had no authority to cite him to appear and testify at said investigation. **Held,** petitioner has a right to be present at the preliminary investigation because he was deeply involved and implicated in the killing, but he need not be present because his presence there is more of a right rather than a duty or legal obligation. **Cruz v. Salva,** G. R. No. L-12871, July 25, 1959.

REMEDIAL LAW — DISBARMENT — ERROR OF JUDGMENT HONESTLY AND SINCERELY DEPLORED DOES NOT CONSTITUTE A VALID EXCUSE FROM DISBARMENT. — Respondent, a member of the bar, was

convicted of attempted bribery. Under section 1, Rule 128, of the Rules of Court, he was required to show cause why he should not be disbarred from the practice of his profession. Under section 25 of Rule 127, a member of the bar convicted of a crime involving moral turpitude may be removed from his office as attorney. In his explanation, respondent appealed to the sympathy and mercy of the Court capitalizing on the number of his children who needed his support and manifesting that if he ever committed what is attributed to him it was merely due to an error of judgment he honestly and sincerely deplores. **Held,** since bribery is admittedly a felony involving a moral turpitude, this Court, much as it sympathizes with the plight of respondent, is constrained to decree his disbarment, continued possession of a good moral character being a requisite condition for the rightful continuance of his office. **In Re Dalmacio De los Angeles,** Adm. Case No. 350, August 7, 1959.

REMEDIAL LAW — EVIDENCE — WHEN CARBON SHEETS ARE INSERTED BETWEEN TWO OR MORE SHEETS OF WRITING PAPER SO THAT THE WRITING UPON THE OUTSIDE SHEET PRODUCES A FACSIMILE UPON THE SHEETS BENEATH, ALL OF THE SHEETS SO WRITTEN ON ARE REGARDED AS DUPLICATE ORIGINALS AND EITHER OF THEM MAY BE INTRODUCED IN EVIDENCE AS SUCH WITHOUT ACCOUNTING FOR THE NON-PRODUCTION OF THE OTHERS. — Respondents Pacita Madrigal-Gonzalez and others were charged with the crime of falsification of public documents, in their capacities as public officials and employees, in connection with the purchase of certain relief supplies. To prove the charge, a booklet of receipts containing triplicate copies was introduced in evidence. It was shown that in the preparation of said receipts, two carbons were used between the three sheets, the original, the duplicate and the triplicate, so that the duplicates and the triplicates were filled out by the use of the carbons in the preparation and signing of the originals. The lower court interrupted the proceedings holding that the triplicates are not admissible unless it is first shown that the originals were lost and cannot be produced. Hence, this petition for certiorari. **Held,** when carbon sheets are inserted between two or more sheets of writing paper so that the writing upon the outside sheet produces a facsimile upon the sheets beneath, all of the sheets so written on are regarded as duplicate originals and either of them may be introduced in evidence as such without accounting for the non-production of the others. (Citing Moran). **People v. Hon. Judge Tan,** G. R. No. L-14257, July 31, 1959.

REMEDIAL LAW — PROVISIONAL REMEDIES — A BOND OFFERED TO LIFT A PRELIMINARY MANDATORY INJUNCTION CANNOT BE CONSIDERED AS SUBSTITUTE FOR A REAL ESTATE MORTGAGE, THE SAME BEING INTENDED TO ANSWER FOR THE DAMAGES WHICH THE MORTGAGEE MAY SUFFER BY REASON OF THE LIFTING OF THE INJUNCTION. — Petitioner owed the Philippine National Bank a sizeable amount secured by a real estate mortgage. Of this, only a negligible sum had been paid. In the foreclosure suit, respondent applied for preliminary mandatory injunction to obtain immediate possession of the mortgaged property. Granted. To lift the injunction, the lower court, acting

on the motion of the petitioner, ordered the latter to post a cash bond in the amount of eight million pesos. Alleging the amount to be exhorbitant and unconscionable, and that the respondent judge acted with abuse of discretion, petitioner filed this certiorari action to seek modification of said order. Respondent bank opposed contending that the amount of the bond constituted the only security for the payment of petitioner's obligation. **Held,** the bond which petitioner seeks to file to lift the preliminary mandatory injunction cannot be considered as a substitute for the mortgage of the petitioner. It is only to guarantee payment for whatever damages the mortgagee may suffer by reason of the lifting of the injunction and the return of the mortgaged property to the petitioner. **Central Azucarera del Danao v. Hon. Judge Fernandez,** G. R. No. L-14919, Aug. 21, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A PROBATE COURT HAS NO JURISDICTION TO DECLARE NULL AND VOID THE SALE OF A LAND UNDER ADMINISTRATION OVER THE OBJECTION OF A THIRD PARTY ADVERSELY AFFECTED AND OVER WHOM IT HAS NO JURISDICTION. — Maria C. Ignacio died testate leaving among others the property in controversy. She bequeathed the naked ownership of said property to Agustin Ignacio, Sr., the usufruct and administration thereof given to her husband and executor, Tomas Tagle. In the course of the probate, said property was sold to one Pastor Manalo. It appears that the executor and Agustin Ignacio, Sr., filed a joint motion for leave to sell the property, but the sale was disapproved by the probate court on the ground that being the most valuable piece of property forming the estate, the sale thereof would deplete said estate and render impossible compliance with certain onerous conditions imposed thereon by the will. It appars also that before the denial of the motion for leave to sell the property, a petition for the reconstitution of the transfer certificate of title covering the property was filed by the vendee with the proper court, which was approved. Another petition for reconstitution, this time filed by the executor, was also approved. Thereafter, vendee presented to the proper Register of Deeds for registration the deed of absolute sale of the property, in consequence of which a separate title was issued in the name of the vendee. Subsequently, the executor filed a petition in the probate court asking that the sale be declared null and void, and the certificate of title issued to the vendee cancelled, alleging undue influence exerted by Agustin Ignacio, Sr. on him and bad faith on the part of the vendee. **Held,** the declaration of nullity of the deed of sale and the consequent cancellation of the certificate of title issued in favor of the vendee cannot be obtained through a mere motion in the probate proceedings over the objection of a third party adversely affected and over whom the probate court has no jurisdiction. **In the Matter of the Testate Estate of the Deceased, Maria Consuelo Ignacio,** G. R. No. L-12657, July 14, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — WHAT CONFERS JURISDICTION UPON A PROBATE COURT OVER ALL PERSONS INTERESTED IN THE ESTATE IS THE PUBLICATION OF THE PETITION IN THE NEWSPAPERS, SERVICE OF NOTICE ON INDIVIDUAL HEIRS OR LEGATEES OR DEVISEES BEING A MATTER OF PROCEDURAL

CONVENIENCE AND NOT A JURISDICTIONAL REQUISITE. — Oppositors-appellants here questioned the jurisdiction of the probate court, contending that two heirs not having been notified in advance of the hearing for the allowance of the will the court did not acquire jurisdiction. **Held,** such "no notice" argument is without foundation. A court acquires jurisdiction over all persons interested in the estate through the publication of the petition in the newspapers. Service of notice on individual heirs of legatees or devisees is a matter of procedural convenience, not a jurisdictional requisite. **In Re Petition for the Summary Settlement of the Estate of the Deecased, Caridad Perez,** G. R. No. L-12359, July 15, 1959.

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CIVIL LAW — CREDIT TRANSACTIONS — ACTUAL KNOWLEDGE OF A VENDEE THAT THE CHATTEL SOLD TO HIM WAS THE SUBJECT OF A PRIOR UNREGISTERED MORTGAGE IS EQUIVALENT TO REGISTRATION. — Juanito Miranda was the owner of a jitney. To secure payment of a loan, he executed a chattel mortgage over said vehicle in favor of plaintiff. When plaintiff foreclosed, Miranda having defaulted, the vehicle was no longer in latter's possession, but in that of his co-defendant Vargas in favor of whom he executed an absolute deed of sale. Plaintiff's mortgage was unregistered at the time of the sale. It was shown, however, that Vargas had actual knowledge of plaintiff's mortgage. **Held,** the actual knowledge of Vargas of the prior unregistered mortgage in favor of plaintiff was equivalent to registration. In plain, whatever right she acquired by virtue of the sale was subject to plaintiff's superior lien although unrecorded at the time of the sale. **Lim v. Miranda,** CA-GR No. 19818-R, August 14, 1958.

CIVIL LAW — PERSONS — IN DETERMINING PARENTAL RIGHT TO THE CUSTODY OF A CHILD, (1) THE BEST INTEREST OF THE CHILD — WHICH IS PARAMOUNT, AND (2) UNFITNESS OF THE PARENT — WHICH MAY WARRANT THE LOSS OR SUSPENSION OF **PATRIA POTESTAS,** MUST BE CONSIDERED; IF AT WAR WITH THE CHILD'S WELFARE, PARENTAL RIGHT TO CUSTODY MUST YIELD. — Petitioner, in a fit of anger, fatally stabbed his wife. While in jail, respondent, petitioner's father-in-law, took custody of petitioner and deceased's children. Respondent refusing to surrender custody of the children to petitioner, the latter petitioned for **habeas corpus** which the lower court granted, apparently bottomed on the proposition that the mere fact that petitioner was accused of parricide did not deprive him nor suspend his parental authority. **Held,** in determining parental right to the custody of a child, (1) the best interest of the child — which is paramount, and (2) unfitness of the parent — which may warrant the loss or suspension of **patria potestas,** must be considered; if at war with the child's welfare, parental right to custody must yield. Petitioner is quarrelsome. On the other hand, the children are apparently enjoying the blessings of peace and comfort — thanks to their substantial and loving grandfather who had taken them into his fold. Now, petitioner seeks to have them returned. That is for the worse. Petition denied. **In Re Petition for Habeas Corpus of Nadia Ortega,** CA-GR No. 18831-R, June 4, 1958.

CIVIL LAW — SALES — ARTICLE 1544 OF THE NEW CIVIL CODE IMPLIES THAT THE VENDOR MUST NECESSARILY BE THE OWNER OF THE PROPERTY SOLD AS NO ONE COULD TRANSMIT DOMINION ON ANYTHING HE DOES NOT OWN. — On the strength of a power of attorney duly executed in his favor, Dionisio sold his father's property, the land in question, to plaintiff-appellant. Thru a series of falsities and fraudulent misrepresentations, Dionisio once more sold the property to defendants-appellees. Plaintiff did not register his interest while defendants had theirs recorded in the proper Register of Deeds. Discovering the subsequent sale, plaintiff commenced action to annul the title issued in defendants' favor. Applying Article 1544 of the New Civil Code, the lower court dismissed the complaint on the ground that defendants recorded their right of ownership. **Held,** article 1544 does not apply. Although the provision does not specify, it could well be implied that the vendor must necessarily be the owner of the property sold as no one could transmit dominion on anything he does not own. The first sale was by the owner, it being made under the power of attorney, but not the second, as it was effected, altho by the same son, without the knowledge, much less intervention of his father, and through a series of falsities and fraudulent misrepresentations. **Layag v. Barbero,** CA-GR No. 16784-R, July 31, 1958.

CIVIL LAW — SUCCESSION — THE REQUISITES OF **RESERVA TRONCAL** ARE (1) PROPERTY RECEIVED BY A DESCENDANT BY GRATUITOUS TITLE FROM AN ASCENDANT OR FROM A BROTHER OR SISTER, (2) SAID DESCENDANT DIED WITHOUT ISSUE, (3) THE PROPERTY IS INHERITED BY ANOTHER ASCENDANT BY OPERATION OF LAW, (4) EXISTENCE OF RELATIVES WITHIN THE THIRD DEGREE BELONGING TO THE LINE FROM WHICH SAID PROPERTY CAME. — Romualdo Aranda died. Survivors — Juana de Lara, spouse, and Filomena Aranda, only child. Filomena subsequently died survived by Patricio and Juan Aranda, brothers of deceased Romualdo. In the intestate proceedings filed after Filomena's death, a project of partition was submitted to the court. Before its approval, Juan died. Thus, in the order approving the project, which gave to the spouse, in addition to her half share in the conjugal estate, other properties as her inheritance from her daughter, Filomena, who had inherited the same from her deceased father, Romualdo, Patricio, only surviving brother of the intestate, was declared the only reservee to the aforementioned properties. Plaintiff, Juan's son, filed the action to annul the project and the court's order approving it. **Held,** the requisites of **reserva troncal** are (1) property received by a descendant by gratuitous title from an ascendant or from a brother or sister, (2) said descendant died without issue, (3) the property is inherited by another ascendant by operation of law, (4) existence of relatives within the third degree belonging to the line from which said property came. Plaintiff not being a third degree relative counted from Filomena, he could not have been a reservee to the aforementioned properties. His action necessarily fails. **Aranda v. De Lara,** CA-GR No. 15302-R, August 27, 1958.