CASE DIGEST

SUPREME COURT

CIVIL LAW — EFFECT AND APPLICATION OF LAWS — RIGHTS MAY BE WAIVED, UNLESS THE WAIVER IS CONTRARY TO LAW, PUBLIC ORDER, PUBLIC POLICY, MORALS OR GOOD CUSTOMS, OR PREJUDICIAL TO A THIRD PERSON WITH A RIGHT RECOGNIZED BY LAW. — Plaintiff purchased a certain lot from the defendant. Finding the area of the lot less than that stipulated in the contract of sale, plaintiff filed an action asking the court to either rescind the sale or compel the defendant to refund the amount of ₱4,000 as the proportionate reduction of the purchase price. The court decided in favor of the plaintiff. When judgment was sought to be executed, however, defendant chose and insisted on the first alternative, that is, rescission of the contract of sale and the return of the entire purchase price. On the other hand, plaintiff wanted to avail of the reduction in the purchase price only. Subsequently, plaintiff filed a petition asking that the status of the parties before she filed her case be maintained. She contended that only she as plaintiff, acquired a right under the decision which was in her favor and against the defendant and that she has a right to waive said right whereby the parties would be returned to their original status as if no complaint had ever been filed by the plaintiff against the defendant. *Held*, rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, good customs or prejudicial to a third person with a right recognized by law. When acting upon plaintiff's complaint which asked for two alternative remedies, the court rendered judgment giving the defendant the choice of complying with one of these remedies and he chose to comply with the first alternative, he certainly acquired a right recognized by law and he would be prejudiced by a subsequent waiver on the part of the plaintiff of her right acquired under the decision. PADILLA *v.* DIZON, G.R. No. L-8026, April 20, 1956.

CIVIL LAW — NATURALIZATION — THE TAKING OF AN OATH IS A PURELY PERSONAL MATTER AND CANNOT BE DONE BY ONE PERSON FOR ANOTHER. — On July 28, 1953, petitioner filed a petition in the CFI of Manila for the reconstitution of the records of a naturalization case filed by Ng Yoc Siu, alleged to have been decided in 1941. The records, so it is alleged, was destroyed during the war. Acting on the petition, the court declared the record as reconstituted, whereupon petitioner filed another petition praying that she be allowed to take the oath of allegiance for the said Ng Yoc Siu and that the court order the issuance of the corresponding certificate of naturalization of said Ng Yoc Siu for the benefit of the petitioner, who is his widow, and their children. This was opposed by the Solicitor General and the petition was denied. Petitioner appealed, claiming that in the reconstituted naturalization case a decision

was rendered in 1941 granting Filipino citizenship to Ng Yoc Siu but that he was not able to take the oath of allegiance because of the outbreak of the war and that he died in 1944 before a certificate of naturalization could be issued to him. *Held*, the taking of an oath is a personal matter. It is one of those things which by their nature cannot be done by one person for another. As the one required to take the oath in this case is already dead, it would be absurd to allow any other person to take it for him. This becomes more apparent when one examines the form of the oath provided in the Naturalization Act. In that oath the candidate for naturalization solemnly declares that he renounces his allegiance and fidelity to his former sovereign, accepts the supreme authority of the Government of the Philippines and promises to support and defend its constitution and observe its laws. How, we may ask, could a dead person be bound to do the things stipulated in the above oath? The petition asks that the court allow petitioner to do that which, it is obvious, cannot be legally done. CHUA CHIAN *v.* CONCEPCION, G.R. No. L-8697, May 31, 1956.

CIVIL LAW — PROPERTY RELATIONS — PROPERTY ACQUIRED DURING THE MARRIAGE, EVEN THOUGH REGISTERED UNDER THE NAME OF ONE OF THE SPOUSES, IS PRESUMED CONJUGAL. — Before Angela Joaquin and Joaquin Navarro were married, they entered into an ante-nuptial agreement called *capitulationes matrimoniales* where they listed certain real estate and other personal property as belonging to Angela Joaquin. In the administration of the estate of the deceased spouses, petitioner Joaquin, a son of Angela Joaquin, filed an inventory wherein a certain lot was listed as being paraphernal property of the Angela Joaquin. Respondent Navarro, a son of Joaquin Navarro by a former marriage, objected claiming that the lot was conjugal property of the spouses. After hearing, the probate court declared the land to be conjugal so petitioner appealed contending that the original certificate of title covering said lot was issued in the name of Angela Joaquin and is thus conclusive against the whole world. *Held*, this contention runs counter to the rule laid down in a long line of decisions that no matter in whose name the property is registered under the Torrens system, Act No. 496, as amended, if acquired during coverture, the same must be deemed conjugal unless it be shown that such property was acquired with funds or property belonging exclusively to one of the spouses. In this case such presumption has not been overcome because there is no evidence to that effect. The administrator indulges in conjecture by stating that since there were seven parcels of land listed in the *capitulationes matrimoniales* and only three now remain, together with the fact that there were no more jewelry left by the late Angela Joaquin, that the proceeds of the sale of those parcels of land and the jewelry were invested in the purchase of the parcel of land acquired during coverture which should be deemed as paraphernal property. A conjecture is not evidence and may and should not be taken as such to rebut or overthrow the presumption established by law and jurisprudence. Furthermore, in connection with the decree of registration which is conclusive against the whole world, the administrator overlooked the provisions of sec. 70 of Act No. 496 which expressly provides that "Nothing in this Act shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife." JOAQUIN *v.* NAVARRO, G.R. No. L-7544, May 31, 1956.

CIVIL LAW — PROPERTY — THE CHARACTER OF PERSONALTY IMPARTED BY PARTIES TO REAL PROPERTY IS NOT BINDING ON THE SHERIFF FOR PURPOSES OF THE NOTICE TO BE GIVEN OF ITS SALE AT PUBLIC AUCTION. — Petitioner Lucia Manarang obtained a loan of ₱200 from respondent Esteban to secure the payment of which she executed a chattel mortgage over a house of mixed materials erected on a lot in Manila. As petitioner did not pay the loan as agreed upon, Esteban brought an action against her to recover the same in the Municipal Court which decided in Esteban's favor and issued an execution against the house mortgaged. Before the property could be sold, petitioner offered to pay the amount of the judgment but the sheriff refused to accept the same unless an additional ₱260 representing the publication of the notice of sale in two newspapers be paid also. Petitioner thereupon brought suit to compel the sheriff to accept the offered amount and to annul the published notice of sale. The CFI denied her petition, holding that the sheriff was duty bound and therefore did not err in causing the publication of the notice of sale. Petitioner appealed, claiming that the publication of the notice of sale was unnecessary since the property in question should be considered as personal, not real, property. *Held*, although a building of mixed materials may, by the intention of the parties, be considered as real or personal property and in the latter case, be the subject of a chattel mortgage (Luna v. Encarnacion, 48 O.G. 2664; Standard Oil v. Jaramillo, 44 Phil. 630), the rules on execution do not allow, nor should they be interpreted as to allow, the parties to a contract the right to impart to real estate the character of personal property when they are not ordinarily so. The regulations governing sales on execution, which affect the public and third persons, are for public officials to follow. The form of proceedings prescribed for each kind of property is suited to its character, not to the character which the parties have given it. When the rules speak of personal or real property, they mean property ordinarily known as personal or real property. The regulations were never intended to suit the consideration that parties may have privately given to the property levied upon. Enforcement of the regulations would be difficult if the convenience or private agreement of parties were to govern the nature of the proceedings. Therefore, the mere fact that a house of mixed materials was the subject of a chattel mortgage and was considered as personal property by the parties does not make said house personal property for the purpose of the notice to be given for its sale at public auction. The requirement of publication in this case was therefore necessary. MANARANG *v.* OFILADA, G.R. No. L-8133, May 18, 1956.

CIVIL LAW — NUISANCE — AN OBSTRUCTION TO THE USE BY THE PUBLIC OF PARKS, PLAZAS, STREETS AND OTHER PUBLIC LANDS CONSTITUTES A PUBLIC NUISANCE AND MAY BE ORDERED DEMOLISHED. — Petitioners, in their behalf and for the benefit of forty-one other occupants of portions of the land known as Palomar Compound situated in Tondo, filed a petition for certiorari seeking to enjoin the respondents City Mayor and City Engineer from carrying out their order of demolition of the houses the petitioners had erected inside said compound. The petitioners occupied the premises inside the Palomar Compound without the knowledge, authority or consent of the City of Manila, although two of them later succeeded in securing from the City Mayor a sort of written permission to occupy the premises under certain specified conditions. Respondents, in line with the policy of restoring to the public the lawful use of streets, plazas and other public lands, ordered the removal of said houses on the ground that they constitute a public nuisance. This action of the respondents was claimed by petitioners as arbitrary and illegal. *Held*, the petitioners were allowed by the City of Manila to occupy the premises in question on the condition among others, that they would vacate the same upon reasonable notice to that effect. Considering that the structures or houses built by the petitioners constitute an obstruction to the use by the public of the parks, plazas, etc., that are affected, they constitute a public nuisance within the meaning of arts. 694 and 695 of the New Civil Code which can be ordered demolished by the city authorities pursuant to section 1122 of the Revised Ordinances of the City of Manila. Respondents therefore acted within the scope of their authority when they ordered the demolition of the houses belonging to the petitioners. HALILI *v.* LACSON, G.R. No. L-8892, April 11, 1956.

CIVIL LAW — SUCCESSION — THE CLAIM THAT A WILL WAS OBTAINED THRU UNDUE INFLUENCE AND IMPROPER PRESSURE MUST BE ESTABLISHED POSITIVELY BY SUBSTANTIAL EVIDENCE. — Carlos Palanca was born in China but died in Manila a Filipino citizen leaving a large estate and three sets of heirs. He first married Cesarea Victorina Gano with whom he had three children. When Cesarea died, he lived unmarried with Rosa Gonzales with whom he had eight children. At the same time he sustained relations with Maria Cuartero with whom he had six children. Realizing his old age and failing health, he legalized his relations with Rosa Gonzales in a marriage ceremony. And to put himself right with all his children, legitimate and illegitimate, he decided to make a will, engaging the services of Ramon Diokno for drafting the will. The will was drafted, made in clean form, signed and attested while Palanca was living with petitioner Roman Ozaeta, who was named as the substitute executor, his own house having been burned in the battle for the liberation of Manila. After Palanca's death, the will was presented for probate but it was opposed by Maria Cuartero and her six children as well as the three had by Palanca with Cesarea Victorina Gano allegedly because it was procured by fraud and undue pressure and influence. *Held*, no direct evidence was presented to support this contention. The decedent, though old and suffering from diabetes, appears to be still in full possession of his mental faculties and was not so helpless as appellants would picture him to be, and there is no showing that before, during, and after the execution of the will, he was not a master of his will but had to take orders from somebody. The will was signed in the office of a distinguished lawyer, who died a respected member of this Court, and without the presence of any of the beneficiaries named therein or of the petitioner himself whom appellants apparently suspect of having used pressure or influence in favor of said beneficiaries. It is obvious that the claim that the will was obtained thru undue influence and improper pressure has no substantial factual basis but is more a matter of conjecture engendered by suspicion which the weight of authority regards as insufficient to sustain a verdict defeating a will on that ground. It is not enough that there was an opportunity to exercise undue influence or a possibility that it might have been exercised. There must be substantial evidence that it was actually exercised. OZAETA *v.* CUARTERO, G.R. No. L-5597, May 31, 1956.

Section four of the chapter, title, and book mentioned provides that "the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously." (Art. 1216). Thus the action joining the Plaridel Surety & Insurance as party defendant is justified. Furthermore, an assignment without knowledge or consent of the surety is not a material alteration of the contract, sufficient to discharge the surety. Such assignment did not, therefore, release the Plaridel Surety & Insurance from its obligation under the surety bond. PNB *v.* MACAPANGA PRODUCERS INC., G.R. No. L-8349, May 23, 1956.

CIVIL LAW — CONTRACTS — THE PHRASE "END OF WAR" MEANS THE TERMINATION OF THE WAR BETWEEN THE ALLIED POWERS AND JAPAN, AND NOT ONE BETWEEN THE LATTER AND THE PHILIPPINES. — On December 18, 1944, defendant spouses executed in favor of plaintiff a promissory note for ₱3,000 "payable within two years after the end of war in the Philippines." On January 20, 1954, plaintiff Navarre filed an action for the recovery of the loan alleging that it was long overdue but that said defendants have refused to pay the same. Defendants answered that the suit was premature, alleging that the Philippines was still at war with Japan, there being no peace treaty signed between the two countries. The trial court ruled for plaintiff, finding that the war in the Philippines ended when Japan surrendered unconditionally to the Allied Powers on September 2, 1945. Defendants appealed, contending that the decision was erroneous and that it contravened the ruling laid down by the Supreme Court in several cases involving the meaning of the phrase "end of war," one of which being *De la Paz Fabie v. Court of Appeals*, G.R. No. L-6386, wherein it was held that "war terminates when peace is formally proclaimed, except where the parties have intended otherwise and merely meant cessation of hostilities, in which case their intention must be given effect." *Held*, when the parties used the phrase "end of war" in their contract, they could not have meant the war then raging between the Philippines and Japan but the one declared between Japan and the United States because at that time the Philippines was still a dependency of the United States. It is therefore erroneous to hold that in contemplation of law the war between the Philippines and Japan had not yet ended simply because no peace treaty had so far been signed between the two countries. True, the war with Japan had not legally terminated when said country surrendered unconditionally to the Allied Powers; in the legal sense, however, war formally ended in the Philippines the moment President Truman officially issued a proclamation of peace on December 31, 1946 (on the theory that the Philippines, even if already independent, was an ally of the United States) because, as held in the *De la Paz Fabie* case, "War terminates when peace is formally proclaimed." Even if the parties meant a formal treaty of peace, this purpose had already been accomplished when the treaty of peace with Japan was signed in San Francisco, California, by the United States and the Allied Powers, including the Philippines. Indeed, no other treaty could have been referred to by the parties because the war going on then was not really between the Philippines and Japan but between the latter and the Allied Powers. Plaintiff's action is not therefore premature. NAVARRE *v.* BARREDO, G.R. No. L-8660, May 21, 1956.

CIVIL LAW — SALES — A SALE IS NOT CONSUMMATED UNTIL THE PROPERTY

IS ACTUALLY DELIVERED AND THE PURCHASER HAS TAKEN POSSESSION AND PAID THE PRICE AGREED UPON. — Respondent was the owner of 15 sacks of rice offered for sale at her store. A person approached her and offered to buy the rice, and they agreed at ₱26 per sack, which the buyer promised to pay as soon as he has received the price of his adobe stones which were being unloaded from a truck at the opposite side of the street. Relying upon this promise and upon request of the buyer, respondent ordered the rice to be loaded in the aforementioned truck, of which petitioner was the caretaker (encargado). While the rice was being loaded on the truck and even thereafter, respondent was keeping an eye on them, waiting for the purchaser to come and pay her. But when the stones were completely unloaded from the truck, the purchaser was nowhere to be found. Respondent ordered the rice to be unloaded but petitioner refused on the ground that he had bought it from a person whom he did not know and whom he met only that morning. Respondent called a policeman but the latter, not knowing what to do, brought the rice to the municipal building where it was deposited pending investigation. Petitioner thus brought suit to recover the rice. The JP, and the CFI on appeal, ruled in his favor, but the respondent appealed to the Court of Appeals which reversed the decision in its favor. Petitioner thus appealed. *Held*, although a contract of sale is perfected upon the parties having agreed as to the thing which is the subject matter of the contract and the price (art. 1475, Civil Code), ownership is not considered transmitted until the property is actually delivered and the purchaser has taken possession and paid the price agreed upon (Art. 1524. Civil Code). The sale between the respondent and the unknown purchaser was not consummated, because although the former allowed the rice in question to be loaded in the truck, she did not intend to transfer its ownership until she was paid the stipulated price; and this is very evident from the fact that respondent continually watched her rice and demanded its unloading as soon as the unknown purchaser was missing. MASICLAT *v.* CENTENO, G.R. No. L-8420, May 31, 1956.

CIVIL LAW — SALES — THE SALE BY A GUARDIAN TO HERSELF OF THE WARD'S PROPERTY THRU AN INTERMEDIARY IS VOID EVEN IF NO ACTUAL COLLUSION IS PROVED BETWEEN SUCH GUARDIAN AND THE INTERMEDIARY. — Mariano Bernardo inherited several parcels of land from his father but in view of his minority, his stepmother, the respondent herein, who was the surviving spouse of the deceased, was appointed as guardian. In the guardianship proceedings, respondent filed a motion asking for authority to sell the parcels of land for the purpose of investing the money in a residential house. This motion was granted whereupon respondent sold the lots to Dr. Ramos, her brother-in-law, for ₱14,700. On August 12, 1947, she asked for and obtained judicial confirmation of the sale. The very next day, Dr. Ramos sold the same lots to respondent for ₱15,000. Petitioner Philippine Trust Co. replaced respondent as guardian of the minor on August 10, 1948, and it immediately sought to annul the said sales, claiming that the guardian in effect sold the ward's property to herself merely using Dr. Ramos as an intermediary. The CFI held that there was no proof that Dr. Ramos was a mere intermediary nor that there was a previous agreement between him and the guardian. The Court of Appeals affirmed this judgment, so the Philippine Trust Co. appealed. *Held*, there is no need of proof that the guardian had connived with Dr. Ramos. Remembering the general doctrine that guardianship is a trust of the highest order, and the

trustee cannot be allowed to have any inducement to neglect his ward's interest and in line with the courts' suspicion whenever the guardian acquires the ward's property, we have no hesitation to declare that in this case, in the eyes of the law, the guardian took by purchase her ward's parcels thru Dr. Ramos, and that art. 1459 of the (old) Civil Code applies. It is true she may have acted without malice; there may have been no previous agreement between her and Dr. Ramos to the effect that the latter would buy the lands for her. But the stubborn fact remains that she acquired her protege's properties thru her brother-in-law. That she planned to get them for herself at the time of selling them to Dr. Ramos, may be deduced from the very short time between the two sales (one week). The temptation which naturally besets a guardian so circumstanced, necessitates the annulment of the transaction, even if no actual collusion is proved (so hard to prove) between such guardian and the intermediate purchaser. This would uphold a sound principle of equity and justice. PHIL. TRUST CO. *v.* ROLDAN, G.R. No. L-8477, May 31, 1956.

CIVIL LAW — SALES — A BUYER WHO PURCHASES PROPERTY FROM A PERSON WHO IS NOT THE OWNER THEREOF AND WHO DOES NOT SELL UNDER AUTHORITY OR WITH THE CONSENT OF THE OWNER, ACQUIRES NO BETTER TITLE THAN THE SELLER HAD AND HAS NO RIGHTS AS AGAINST THE REAL OWNER. — The automobile, subject of the action, was originally owned by the plaintiff. Belizo, a dealer in second-hand cars, offered to sell the automobile for plaintiff claiming to have a buyer for it. Plaintiff agreed. As plaintiff's certificate of registration was missing and upon the suggestion of Belizo, plaintiff wrote a letter to the Bureau of Public Works for the issuance of a new one, stating that he was intending to sell his car. This letter was delivered to Belizo and upon the latter's pretext that he would show the car to a prospective buyer, the same was also delivered to him. Belizo falsified the letter by making it appear that the car was sold to him and succeeded in obtaining a certificate of registration in his name. Belizo later sold the car to the defendant Bulahan who in turn sold it to defendant Pahati. When plaintiff learned of this, he instituted an action for replevin. Defendant Bulahan contended that between two innocent parties, he who gave occasion, thru his conduct, to the falsification committed by Belizo, should be the one to suffer the loss and this one is the plaintiff. *Held,* this common law principle invoked by the defendant Bulahan cannot be accepted as the case is covered by an express provision of the New Civil Code. Art. 1505 of the New Civil Code provides that where goods are sold by a person who is not the owner thereof and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. Between a common law principle and a statutory provision, the latter must undoubtedly prevail in this jurisdiction. CRUZ *v.* PAHATI, G.R. No. L-8257, April 13, 1956.

CIVIL LAW — SALES — A BONA FIDE OFFER OF THE REDEMPTION PRICE IS SUFFICIENT TO PRESERVE THE VENDOR'S RIGHT OF ACTION IN CASES WHERE THE OFFER IS REFUSED. — Plaintiffs husband and wife sold to defendants a parcel of land under *pacto de retro.* The period of redemption was agreed to be three years from the date of the sale. Within said period, plaintiff husband offered to redeem the land but when asked if he had the money with him, he replied in the negative. Thereupon, defendants tried to dissuade him from redeeming the land by offering him a premium to which plaintiff husband replied that he would consult his wife. Plaintiffs never returned to the defendants but deposited the redemption price with the clerk of court requesting the latter to notify the defendants of the deposit. Thereafter, the plaintiffs brought an action to recover the parcel of land sold under *pacto de retro.* The defendants contended that while the plaintiffs made a deposit of the redemption money with the clerk of court, they however failed to give notice of their intention to deposit and that the deposit was not accompanied by proof of tender and notice of consignation which the law requires. Plaintiffs, on the other hand, maintained that they had substantially complied with the law regarding consignation and even if they failed, the tender of payment they made had the effect of preserving their right to the redemption. *Held,* the contention of plaintiffs is meritorious. A bona fide offer or tender of the price agreed upon for the repurchase is sufficient to preserve the rights of the party making it, without the necessity of making judicial deposit, if the offer or tender is refused. This is more so if an action is actually brought in court to enforce redemption as was done by the plaintiffs in this case. DE LA CRUZ *v.* RESURRECCION, G.R. No. L-9304, April 28, 1956.

CIVIL LAW — SALES — WHERE THE PARTIES TO A CONTRACT OF SALE SUBJECT THE SAME TO THE APPROVAL OF THE SECRETARY OF AGRICULTURE AND THEN DO NOT SPECIFY WHO SHOULD SECURE THE APPROVAL, THE DUTY OF OBTAINING SUCH APPROVAL DEVOLVES UPON THE VENDOR. — The improvements in question were originally owned by Ambuyon, Partosa and Abejay. Subsequently, these three owners sold their rights over the improvements to one Bonilla who later transferred his rights to the herein defendant. Defendant in turn sold the improvements to the herein plaintiff with the condition that the sale would be subject to the Secretary of Agriculture and Natural Resources' approving the transfer of rights by Ambuyon and the others to Bonilla. The question presented was whether the obligation of securing the approval of the Secretary of Agriculture and Natural Resources devolves upon the defendant-vendor or the plaintiff-vendee. *Held,* notwithstanding the fact that the contract does not specify the party who should secure the approval of the sale, such duty of securing the approval devolves upon the defendant-vendor because it is he who should give to the plaintiff-vendee a clear title to the property. He knew that under the law, the improvements on certain lots applied for as homestead cannot be transferred on pain of nullity without the approval of the Secretary, so much so that such approval was required by the vendee as a condition precedent to the validity of the sale. Because of that requirement of the law, it was his concern that approval be obtained within a reasonable period of time. BACALTOS *v.* ESTEBAN, G.R. No. L-9121, April 11, 1956.

CIVIL LAW — PARTNERSHIP — A DEFECTIVELY ORGANIZED PARTNERSHIP IS CONSIDERED A DE FACTO PARTNERSHIP AS FAR AS THIRD PERSONS ARE CONCERNED AND CAN HAVE A RESIDENCE FOR PURPOSES OF THE CHATTEL MORTGAGE LAW. — Stasikinocey, doing business at San Juan, Rizal, under the name of Cardinal Rattan Factory, is a partnership formed by Gorcey, da Costa, Kusik, and Gavino, but was denied registration by the Securities and Exchange Commission. It had an overdraft account with the respondent Bank which showed

a balance of ₱6,134 on June 3, 1949. Due to the failure of the partnership to pay, it was converted into an ordinary loan for which a promissory note was executed by da Costa for and in the name of the partnership. This promissory note was secured by a chattel mortgage on several motor vehicles owned by the partnership, which was duly registered in the Register of Deeds of Rizal. While the said loan was still unpaid and the chattel mortgage subsisting, the vehicles were sold to petitioner McDonald. When the respondent Bank learned of this, it brought action to annul the sale, to foreclose the mortgage and recover its credit. The trial court annulled the sale. This was affirmed by the Court of Appeals, so petitioner McDonald appealed claiming that Stasikinocey was an unregistered partnership which had no juridical personality and has no "domicile" and that the chattel mortgage executed by it in that "domicile" cannot bind third persons. *Held*, while an unregistered commercial partnership has no juridical personality, nevertheless, where two or more persons attempting to create a partnership fail to comply with all the legal formalities, the law considers them as partners and the association is a partnership so far as it is favorable to third persons, by reason of the equitable principle of estoppel. Petitioner McDonald cannot disclaim knowledge of the partnership Stasikinocey because he dealt with said entity in purchasing the vehicles in question. It has been held that "where a partnership not duly organized has been recognized as such in its dealings with certain persons, it shall be considered as a 'partnership by estoppel' and the persons dealing with it are estopped from denying its partnership existence." It results that if the law recognizes a defectively organized partnership as *de facto* as far as third persons are concerned, for purposes of its *de facto* existence it should have such attribute of a partnership as domicile. The registration of the chattel mortgage in question with the Register of Deeds of Rizal, the residence or place of business of the partnership Stasikinocey being in Rizal, was therefore in accordance with section 4 of the Chattel Mortgage Law. MACDONALD *v.* NATIONAL CITY BANK OF NEW YORK, G.R. No. L-7991, May 21, 1956.

CIVIL LAW — SURETYSHIP — A SURETY FILING A BOND IS NOT LIABLE TO ANY PERSON OTHER THAN THE ONE FOR WHOSE BENEFIT THE BOND IS FILED. — One Fernandez was appointed receiver of the Mabalacat Sugar Co. In view thereof, said Fernandez as principal, and the defendant insurance company, as surety, executed three bonds undertaking to pay any damage that may be caused to the properties of the sugar company. Subsequently, Fernandez, in his private and individual capacity, issued three sugar quedans in favor of the plaintiff bank in consideration of a transaction had with said bank. The sugar quedans were later found to be valueless and when Fernandez was declared insolvent, the plaintiff bank proceeded against the defendant insurance company on the amount of the bond. The defendant failed to pay. Hence, this action. *Held*, the plaintiff bank has no cause of action against the defendant insurance company and cannot go directly against the bond it had filed for Fernandez as receiver. The bond was filed not for the benefit of any one who may suffer damage by any misbehaviour, negligence or abandonment of the receiver but only for any damage that may be caused to the properties of said company. NATIONAL CITY BANK OF NEW YORK *v.* YEK TONG LIN FIRE AND MARINE INSURANCE CO., G.R. No. L-8369, April 20, 1956.

CIVIL LAW — MORTGAGES — THE PROPERTY OF A PERSON WHO MORTGAGES IT TO SECURE THE DEBT OF ANOTHER MAY BE SOLD EVEN WITHOUT EXHAUSTION OF THE PROPERTY OF THE LATTER. — Plaintiff loaned one Alfredo Brilliantes the sum of ₱2,889. To secure this debt, defendant Barbosa executed a real estate mortgage over his property in favor of the plaintiff to guaranty the payment of the debt of Brilliantes. Since Brilliantes failed to settle his obligation, plaintiff company brought action to foreclose the mortgage constituted in its favor by the defendant. The trial court ordered the defendant to pay the amount of the indebtedness or the property will be sold. Claiming that he was a mere guarantor and/or surety for the principal debtor and that the plaintiff had not exhausted all its legal remedies against the principal debtor who is still solvent, defendant appealed. *Held*, the right of guarantors, under article 2058 of the New Civil Code, to demand exhaustion of the property of the principal debtor, exists only when a pledge or mortgage has not been given as special security for the payment of the principal obligation. Guaranties, without any such pledge or mortgage, are governed by Title XV of said Code, whereas pledges and mortgages fall under Title XVI of the same Code, in which the following provisions are found: "It is also the essense of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor." (Art. 2087); and "The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted." (Art. 2126). It has already been held (Saavedra v. Price, 68 Phil. 688), that a mortgagor is not entitled to the exhaustion of the property of the principal debtor. SOUTHERN MOTORS INC. *v.* BARBOSA, G.R. No. L-9306, May 25, 1956.

COMMERCIAL LAW — CORPORATION LAW — THE SALE OF SHARES OF STOCK FROM A NON-RESIDENT TO A RESIDENT IS NOT A FOREIGN EXCHANGE AND DOES NOT NEED PRIOR LICENSE FROM THE CENTRAL BANK. — In the administration of the estate of the late Walter C. Wurdeman, plaintiff, as administrator, secured an order from the probate court to sell certain shares of stock of the estate for the payment of taxes in the Philippines and administration expenses. 2,500 shares of Certificate No. 10578 representing 7,500 shares of stock of the defendant company were sold but the defendant company refused to transfer or register in its books the sale of the 2,500 shares because it claimed that the transfer was from a non-resident to a resident and is thus a foreign exchange which it could not register without prior license from the Central Bank. *Held*, section 74 of Rep. Act No. 265 grants to the Central Bank the authority to "temporarily suspend or restrict sales of exchange . . . and may subject all transactions in gold and foreign exchange to license" "in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis." Foreign exchange is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another country. If that is what foreign exchange is and means, we fail to see how a sale of shares of stock of a domestic corporation belonging to a non-resident for the purpose of paying taxes due to the Government of the Republic and expenses incurred in the administration of the estate of a deceased may be considered a transaction in foreign exchange. By the sale of the shares of stock belonging to a non-resident to a resident, dividends

declared from time to time by the corporation, accruing and payable to a non-resident before the sale, part of which could only be remitted to him, as provided for in the regulations of the Central Bank, would no longer accrue and be payable to the non-resident but to the resident purchaser. In that case, we again fail to see how the disappearance or absence of the need or reason for remitting part of the dividends to a non-resident because they are due and payable to the resident purchaser may still be deemed a transaction in foreign exchange. The probability of remittance abroad of the proceeds of the sale of shares to a non-resident seller thereof does not make the sale of the shares to a resident a transaction in foreign exchange. A probable or possible remittance abroad of the proceeds of the sale of shares is not a transaction in foreign exchange. JANDA *v.* LEPANTO CONSOLIDATED MINING CO., G.R. L-6930, May 25, 1956.

COMMERCIAL LAW — TRANSPORTATION — THOUGH DAMAGES TO THE GOODS DURING THE TRANSPORTATION BY REASON OF ACCIDENT OR FORCE MAJEURE ARE FOR THE ACCOUNT AND RISK OF THE SHIPPER, THE PROOF OF THESE ACCIDENTS IS INCUMBENT UPON THE CARRIER AND HIS FAILURE TO PROVE THE SAME WILL MAKE HIM LIABLE FOR THE DAMAGES. — The defendant company entered into a contract with the plaintiff whereby it agreed to transport barrels of bulk gasoline from Manila to Iloilo. Defendant's barge which carried the gasoline was placed behind its tugboat "Snapper." While carrying the gasoline, the engine of one tugboat came to a dead stop because of a broken idler and while in that condition, the weather became worse and the wind increased in intensity. As a result, the "Snapper" was dashed against the rocks and the gasoline was damaged. When the defendant was sued for damages, he contended that the damage was due to fortuitous event and therefore, he should not be held liable. *Held*, it cannot be said that the loss of the gasoline was due to fortuitous event but to the failure of the defendant to exercise due diligence. The tugboat "Snapper" was a surplus property, has not been drydocked and was not provided with the requisite equipment to make it seaworthy. The defendant therefore failed to prove that the cause of the loss was due to fortuitous event when he was duty bound to do so to exempt himself from liability. While goods are transported at the risk of the shipper and he must suffer losses arising from force majeure, yet the carrier is bound to prove this force majeure, otherwise, he shall be liable for the loss. STANDARD VACUUM OIL CO. *v.* LUZON STEVEDORING CO., G.R. No. L-5203, April 18, 1956.

CRIMINAL LAW — SUBSIDIARY LIABILITY — A PAROLE GRANTED A PERSON CONVICTED OF HOMICIDE, ON CONDITION THAT HE PAYS ONE-FIFTH OF HIS MONTHLY SALARY TO THE HEIRS OF THE DECEASED, WHICH CONDITION HE COMPLIES WITH, DOES NOT BAR OR SUSPEND THE RIGHT OF THE SAID HEIRS TO AN ACTION TO ENFORCE THE SUBSIDIARY LIABILITY AGAINST THE EMPLOYER OF THE CONVICT. — One Bentres was convicted of homicide and was ordered to indemnify the heirs of the deceased. Execution having been issued against Bentres for the amount of said indemnity, the sheriff reported that the convict had no real or personal properties to be levied upon. Consequently, notice of garnishment was served upon the defendant company, employer of the convict at the time of the commission of the homicide, but the defendant did not answer the notice of garnishment. So the heirs of the deceased proceeded against the defendant company upon the latter's subsidiary liability in view of the finding

that Bentres acted in the performance of a duty as employee of the defendant company when he committed the crime. Bentres was released on parole on the condition that he shall give one-fifth of his earnings during the period of the parole to the payment of the indemnity to which he had been sentenced, which condition Bentres complied with. The defendant company argued that this fact suspended the right of the heirs to enforce the subsidiary liability against it. *Held*, this argument is untenable. The Parole Act contains no provisions modifying the liability of the party subsidiarily liable for the crime committed by the paroled convict, or suspending such liability upon the grant of parole. A modification of such liability or the conditions for the enforcement thereof, without opportunity on the part of the offended party or his heirs to be heard, would be deprivation of property without due process of law. BUYAYAO *v.* ITOGON MINING CO., G.R. No. L-8277, April 28, 1956.

CRIMINAL LAW — MALVERSATION OF PUBLIC FUNDS — IN THE ABSENCE OF CONSPIRACY THE PENALTY FOR MALVERSATION DEPENDS ON THE AMOUNT EACH PERSON HAD MALVERSED AND NOT ON THE TOTAL AMOUNT. — Alfonso Bacsarpa was a "collecting clerk," Venancio Lausa a "clerk messenger and market collector," and Fernando Macas a "collector" in the office of the municipal treasurer of Nasipit, Agusan. Later on, the municipal treasurer and a man from the office of the provincial auditor arrived and conducted an investigation of an alleged robbery case. They found that Macas was short of ₱71.06; Lausa of ₱193.20; and Bacsarpa of ₱17,730.68. Charged with malversation of public funds, they were convicted and sentenced with an aggregate penalty based on the total amount of the sums they have malversed. This judgment was affirmed by the Court of Appeals and they appealed, claiming that the Court of Appeals erred in taking into consideration the aggregate amount of ₱17,994.94 in the imposition of the penalty on all of them, instead of the true amount each has malversed. *Held*, the Court of Appeals made no finding on the conspiracy of the appellants to commit the crime at bar, if any; neither on the actual misappropriation in equal shares of the malversed amount mentioned in the information. The only evidence on record against them is the *prima facie* evidence arising from their failure to account for their respective collections. Consequently, under the findings of facts by the Court of Appeals, it can hardly be held that each of the appellants has malversed the aggregate sum of ₱17,994.94, for each of them has the obligation to account only for his individual collections and not for the collections of the others, and therefore their respective responsibility should be narrowed to their individual collections which each of them failed to account for. BACSARPA *v.* COURT OF APPEALS, G.R. No. L-8147, May 18, 1956.

CRIMINAL LAW — COERCION — WHERE A PUBLIC OFFICER MALTREATS A PRISONER WHO IS NOT UNDER HIS CHARGE FOR THE PURPOSE OF EXTORTING A CONFESSION, THE CRIME IS COERCION AND NOT MALTREATMENT OF PRISONERS. — Petitioner, the Municipal Mayor of Tiaong, Quezon Province, was accused of maltreatment of prisoners with physical injuries for having injured two persons for the purpose of extorting confessions from them. He moved to quash the information on the ground that its allegations do not constitute the crime of maltreatment of prisoners and that the trial court had no jurisdiction over the offense. This motion was denied and he was convicted of slight physical

injuries. On appeal, the Court of Appeals convicted him of grave coercion instead. He filed this petition claiming that the trial court had no original jurisdiction over the crime and that therefore the Court of Appeals had no appellate jurisdiction. *Held*, under article 235 of the Revised Penal Code, it is necessary that the maltreated prisoner be under the charge of the officer maltreating him. There is no such allegation in the information. The prisoners, according to the information, were simply kept in the camp of the Philippine Ground Force in the municipality of Tiaong; but it is not alleged therein that they were under the charge of the petitioner. Hence, one of the essential elements of the offense under art. 235 was lacking. Had that allegation been made in the information, the punishment being *arresto mayor* in its medium period to *prision correcional* in its minimum period, the Court of First Instance would have had jurisdiction, and consequently, the Court of Appeals, appellate jurisdiction. However, petitioner overlooks the allegation in the information that the maltreatment was committed by the accused "with evident purpose of extorting confession" from the offended party, while the latter was kept in the camp of the Philippine Ground Force of Tiaong. This allegation amounts to grave coercion, which is within the jurisdiction of the court of first instance, as it is punished under article 286 of the Revised Penal Code with *arresto mayor* and a fine not exceeding ₱500. PUNZALAN *v.* PEOPLE, G.R. No. L-8820, May 25, 1956.

CRIMINAL LAW — COERCION — COERCION FOR THE PURPOSE OF EXTORTING A CONFESSION IS CONSUMMATED EVEN IF THE AUTHORITIES DID NOT ACCOMPLISH THEIR PURPOSE OF GETTING THE CONFESSION. — Petitioner in this case was accused of maltreatment of prisoners with physical injuries for having injured two persons for the purpose of extorting confessions from them. The trial court found him guilty of slight physical injuries only. When he appealed to the Court of Appeals, the latter convicted him of grave coercion. Still unsatisfied, he filed this petition for certiorari claiming that the coercion was not consummated but only frustrated inasmuch as the offended parties did not confess the crimes attributed to them. *Held*, "the fact that an individual was maltreated for the purpose of compelling him to confess a crime which was attributed to him, constitutes the crime of consummated coercion, even if the agents of the authorities who carried out the maltreatment did not accomplish their purpose to draw from him a confession, which it was their intention to obtain by the employment of such means." (U.S. v. Cusi, 10 Phil. 433). This doctrine was reiterated in the case of *U.S. v. Pabalan*, (37 Phil. 352), where it did not appear that the offended party acceded to the purpose of the coercion. PUNZALAN *v.* PEOPLE, G.R. No. L-8820, May 25, 1956.

CRIMINAL LAW — ACTS OF LASCIVIOUSNESS — THE CARESSES OF A LOVER ARE NOT LASCIVIOUS AND ARE NOT PUNISHABLE. — The accused and the offended party in this case were sweethearts. It was shown that the offended party often asked for and received money from the accused for her needs at school and for her personal use. In a letter of December 2, 1953, the offended party asked the accused to meet her at their usual meeting place at the Far Eastern University stating that she needed some money for Christmas and for her personal expenses. When they met, the offended party said she needed ₱50 but the accused did not have any money at hand. He promised to secure the amount and give it to her that afternoon at a decided place.

Accordingly, he arrived there in a taxicab and the offended party boarded the vehicle. The accused said that he only had ₱10 at the time, then started embracing and kissing the offended party and taking liberties with her person. Evidently because of her disappointment in not getting the amount she needed, she resisted, jumped from the vehicle, and asked for help. Convicted of acts of lasciviousness, the accused appealed. *Held*, although the trial court concluded that the appellant embraced and kissed, and took liberties with the person of, the offended party against her strong resistance, it did not expressly find that said appellant was prompted by lust or lewd designs. Indeed, considering that the incident took place in a taxicab while passing along a public thoroughfare and at about noon time, it is difficult to believe that the apellant could have desired more than the ordinary outbursts of one in love. Even as regards the resistance put up by the offended party, the trial court observed that she struggled against appellant because of her disappointment in not receiving the ₱50 promised by him, — implying that she resisted not because she did not welcome appellant's caresses but because she expected him first to comply with his commitment. To sustain the charge of *abusos deshonestos*, something more must appear than that, with or without her consent, an ardent lover kissed and embraced for a moment a young woman of whom he was enamored. PEOPLE *v.* BUENAFUE, G.R. No. L-8056, May 30, 1956.

CRIMINAL LAW — FORCIBLE ABDUCTION — WHEN THE TAKING OF A WOMAN IS MOTIVATED BY LEWD DESIGNS, IT IS FORCIBLE ABDUCTION AND NOT KIDNAPPING. — Juanita Verdy, the complainant in this case, together with her sister and brother-in-law, were aroused one night by several persons. Admitted into the house, the men started drinking with the brother-in-law. After a while, one of them said that they came to take Juanita to her father at the latter's request. Sensing danger, she refused; but when threatened that they would take her forcibly, she ran away to a neighbor. Defendants, however, detected her and dragged her to a nearby forest where she was brutally ravished by two of them. The next day she subscribed to a complaint for kidnapping with rape. Convicted, one of the defendants, Teofilo Anchita, appealed denying his participation in the crime. *Held*, there is no doubt that appellant took part in the sexual assault. Either to help one of the criminals or to give vent to lewd designs, he inserted his fingers into the private part of the girl and stretched it wide open, thereby enabling said criminal to accomplish total penetration. Whether he acted out of lewdness or to help one of the assailants to consummate the act is immaterial: it was both, maybe. Yet surely, by his conduct, appellant conspired and cooperated, and is guilty. Nevertheless, the crime is not kidnapping with rape but forcible abduction with rape. When the violent taking of a woman is motivated by lewd designs, forcible abduction under article 342 of the Revised Penal Code is the offense. When it is not so motivated, such taking constitutes kidnapping under article 267 of the Revised Penal Code as amended. One offense is against chastity, the other against personal liberty. PEOPLE *v.* QUITAIN, G.R. No. L-8227, May 25, 1956.

INERNATIONAL LAW — ENEMY ALIENS — AN IRISH CITIZEN WHO WAS AUTHORIZED BY THE JAPANESE MILITARY ADMINISTRATION TO APPEAR IN ONE CASE CANNOT ALLEGE THAT HE WAS AN ENEMY ALIEN. — William Burke was an Irish citizen who loaned the Mortera spouses money on account of which

a mortgage was executed in his favor. When the husband died, the wife and the daughter adjudged to themselves the lots covered by the mortgage but still recognized the encumbrance. Later, the property was sold to Santiago with the condition that he secure the cancellation of the mortgage. Santiago offered to pay the indebtedness but Burke refused to accept it. By virtue of a court resolution, Santiago made a consignation of the amount in court and secured a new title in his name free from the encumbrance in favor of Burke. After the war, Burke refused to recognize the cancellation and brought suit to foreclose the mortgage. He died and was substituted by the plaintiff, who contends that Burke was deprived of his property without due process of law since he was an enemy alien during the Japanese time and could not defend his rights. *Held*, though in the beginning Burke was considered by the Japanese military administration as a British subject, he was in reality an Irish citizen and was, for that reason, authorized by the military administration to appear in court in the case of *Clara Tambunting de Legarda et al. v. Antonio Carrascoso, Jr.* (substituting *William J. B. Burke*), G.R. No. L-331 (46 O.G., 1s, 232), and if he was able to secure such authority in said case, we see no reason why he could not have done the same in the case at bar upon proof that he was in reality an Irish citizen. It thus appears that Burke had only himself to blame for his non-appearance in court in the consignation case. It is undisputed that he was personally notified of the hearing and furnished copy of the petition for consignation; but he paid no heed and refused even to acknowledge receipt of the same. Having thus been given an opportunity to defend his interests, but having of his own choice failed to take advantage of it, he cannot now complain that he was deprived of his rights without due process of law. DESRARATS *v.* VARELA VDA. DE MORTERA, G.R. No. L-4915, May 25, 1956.

LABOR LAW — LABOR DISPUTES — THE COURT OF INDUSTRIAL RELATIONS HAS JURISDICTION OVER LABOR DISPUTES AFFECTING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS. — The respondent Association submitted fourteen demands to the Board of Trustees of the petitioner Government Service Insurance System. As only four of the demands were granted after a conciliation conference, the Association declared a strike and the case was certified to the Court of Industrial Relations. The petitioner filed a motion to dismiss the case alleging that the members of the respondent Association are civil service employees whose demands, being covered by the Civil Service Law, are outside the jurisdiction of the Court of Industrial Relations. The Court denied the motion and set the case for hearing. Hence, this petition for a writ of prohibition with preliminary injunction. *Held*, though the petitioner is a government-owned or controlled corporation, its status is still that of a private concern. The Court of Industrial Relations has jurisdiction over labor disputes affecting government-owned or controlled corporations. Commonwealth Act No. 103, creating the Court of Industrial Relations, does not exclude from its jurisdiction civil service employees. GOVERNMENT SERVICE INSURANCE SYSTEM *v.* CASTILLO, G.R. No. L-7175, April 27, 1956.

LABOR LAW — "MESADA" — EMPLOYEES PAID ON A COMMISSION BASIS ARE ENTITLED TO A "MESADA" IF THEY ARE DISMISSED WITHOUT ONE MONTH'S NOTICE. — Petitioner Malate Taxicab, an operator of a fleet of taxicab paying its drivers on commission basis of 25% of their gross earnings, sold its franchise to another taxicab operator and dismissed its 360 drivers without giving them one month's prior notice or one month salary in lieu of such notice. The National Labor Union on behalf of the dismissed drivers filed a petition with the CIR asking that they be paid one month's separation pay. The CIR ordered petitioner to pay each of the 360 drivers dismissed ₱120 as separation pay, based on 30 working days at ₱4.00 per day, which is the minimum wage fixed by law. Petitioner brought this petition for review by certiorari to the Supreme Court arguing that the drivers, being paid on commission, are not entitled to the one month's prior notice or separation pay. *Held*, although it has been held that art. 302 of the Code of Commerce providing for "mesada" had been repealed by the New Civil Code, and in the case of *De Lara v. Del Rosario*, (50 O.G. 1975), it is also stated by way of dictum that, even assuming that said article was still in force, it would have no application to employees having "no fixed salary either by day, week or month," since computation of the month's salary payable in that case would be impossible, nevertheless R.A No. 1052, enacted subsequent to the above cited decision filled the void left by the repeal of art. 302 of the Code of Commerce by reenacting the "mesada" provision. This latter Act moreover speaks no longer of salary, but of compensation on a percentage basis. The interpretation is in accord with the liberal spirit of our labor laws. This aid given by law to a laborer, who, suddenly deprived of his livelihood without sufficient notice, would have no means of supporting himself and his family until he found another job, is just as necessary in case of a laborer earning on a percentage basis as it is when he is paid a fixed salary. Under the law as it stands, therefore, an employee who has been hired without any definite period and earning compensation on a percentage basis is, upon dismissal without a month's previous notice, entitled to the month's compensation therein provided for. MALATE TAXICAB & GARAGE INC. *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-8718, May 11, 1956.

LABOR LAW — TENANCY — A TENANT WHO RECEIVES A SHARE IN THE PRODUCE LESS THAN THAT ALLOWED TO HIM BY LAW, IS ENTITLED TO A RELIQUIDATION. — Petitioner Dahil had been the tenant of respondent Crispin for five years on an agricultural land located at Barrio Santiago, in Botolan, Zambales. In the agricultural year of 1950-1951, the land produced 40 cavans which petitioner demanded to be divided on a 75-25 per cent basis in his favor, there being no previous written agreement between the parties and principally because the tenant furnished the implements, work animals and the expenses for planting and cultivation of the land, in accordance with the provisions of sections 7 and 8 of Act No. 4054. The respondent did not agree and because of his fear of being ejected from the land by his landlord, petitioner agreed to divide the crop on a 50-50 basis, 20 cavans going to petitioner and 20 to respondent. A year later, petitioner instituted this case for the reliquidation of the 1950-1951 crop, which was dismissed by the CIR. Petitioner appealed. *Held*, since Act No. 4054 contains no provision as to prescription of actions that may arise thereunder and consequently art. 1145 of the New Civil Code which provides that an action based on an oral contract can be filed within 6 years may be applicable to this case, there is no unreasonable delay on the part of petitioner and his action had not prescribed because of his inaction for nearly a year. Therefore, under sec. 8 of Act No. 4054, as amended by

R.A. No. 34 — which clearly provides that "in the absence of any written agreement to the contrary and when the tenant furnishes the necessary implements and work animals and defrays the expenses for planting and cultivation of the land, the crop shall be divided as follows: 75% for the tenant and 25% for the landlord in case of land the average normal production of which is not more than 40 cavans of palay for one cavan of seed," respondent is not entitled to the 20 cavans he received and is ordered to return to petitioner 10 cavans to complete the latter's share in accordance with the above quoted provision of law. Moreover, under sec. 7 of the same Act, the tenant should not receive less than 55% of the net produce of the land and any stipulation between the landlord and the tenant to the contrary is declared to be against public policy. The petitioner herein was given in the partition complained of, a share less than 55%. Therefore he has a right to the reliquidation sought for in his petition. DAHIL *v.* CRISPIN, G.R. No. L-7103, May 16, 1956.

LABOR LAW — TENANCY — R.A. NO. 1199, GOVERNING LANDLORD-TENANT RELATIONS IN AGRICULTURAL LANDS AND PROVIDING FOR MECHANIZED FARMING AS ONE OF THE CAUSES FOR THE DISPOSSES.ON OF A TENANT, HAS NO RETROACTIVE EFFECT. — On August 12, 1954, Alzate as manager of an hacienda filed a petition with the CIR asking for permission to lay off 19 tenants working on a portion of the hacienda to enable its owner to introduce a mechanization program which would increase its production at a lesser cost. The tenants answered the petition and issues having been joined, the case was set for hearing. In the meantime, R.A. No. 1199 was approved governing the relations between landlords and tenants of agricultural lands. The Act provided that in order that the mechanization program may be undertaken, the landholder shall, at least one year but not more than two years prior to the date of his petition to dispossess the tenant, file notice with the court and shall inform the tenant in writing of his intention to cultivate the land himself either personally or thru the employment of mechanical implements, together with a certification of the Secretary of Agriculture and Natural Resources that the land is suited for mechanization. The tenants contended that the landlord having failed to fulfill this requirement, the court had no jurisdiction to hear the case. *Held*, it appearing that the petition was filed on August 12, 1954, that is, prior to the approval of R.A. No. 1199, said Act cannot be invoked in the present case. It is a well known rule that laws shall have no retroactive effect, unless the contrary is provided. There is nothing in said Act which would make its provisions operate retroactively even with respect to the provision regarding mechanized farming. The provision covering mechanized farming is clearly substantive in nature and cannot be given retroactive effect unless so clearly expressed in the law. TOLENTINO *v.* ALZATE, G.R. No. L-9267, April 11, 1956.

LABOR LAW — UNFAIR LABOR PRACTICES — A LABOR UNION WHICH EXPELS SOME OF ITS MEMBERS WITHOUT HEARING AND INVESTIGATION IS GUILTY OF UNFAIR LABOR PRACTICE. — Respondents were members of a duly registered union in the Manila Yellow Taxicab Co. On June 2, 1953, they filed a complaint with the Department of Labor against the petitioners for forcible deductions of their salaries and/or undue collections. On June 11, they were summoned by the board of directors of the union because of their complaint but they were not investigated. They requested a general meeting in order to air their grievances to all the members of the union and to justify their filing of the complaint but it was denied. Instead, they received from the company letters of dismissal upon the demand of the union pursuant to a closed-shop agreement between the company and the union. They filed a report in the form of a complaint charging petitioners with unfair labor practices under the provisions of sec. 17 of Rep. Act No. 875, claiming that their expulsion from the union caused by the petitioners was due, among others, to their attempt to inquire into and inspect the books of account and other records relative to financial activities of the union. After hearing, the CIR found the petitioners guilty of unfair labor practice so they appealed. *Held*, the complainants in this case have been expelled from the union, according to the resolution of its board of directors, because said complainants "with their activities fomented confusion, disorder and discontentment" among the members of the union and tried "to undermine and destroy the union." The complaint filed in the Department of Labor cannot possibly be considered a violation of the rules and regulations of the union nor a misconduct, negligence or disloyalty on the part of said complainants inasmuch as said complaint was to seek an investigation of an irregularity. It can be said further that the complaint was in the exercise of complainant's right as provided for in section 4 of Commonwealth Act No. 213. It is obvious, therefore, that the action of the board of directors of the union in expelling respondents from its membership and demanding their dismissal from the company, without proving satisfactorily that an investigation was ever conducted, is very arbitrary and unjust, and caused the employer to discriminate against respondents. Said action, pursuant to section 4(b), subsection (2) of Rep. Act No. 875, constitutes unfair labor practice. TOLENTINO *v.* ANGELES, G.R. No. L-8150, May 30, 1956.

LABOR LAW — INDUSTRIAL PEACE ACT — WHETHER A STRIKE IS LEGAL OR NOT DEPENDS ON THE MOTIVES OR GROUNDS FOR STAGING IT, NOT THE GOOD FAITH OF THE STRIKERS. — Petitioner, a labor association composed of employees of respondent Company, staged a strike to protest the action of the latter in discharging Marcelo, the union's president, allegedly for union activities. The CIR found that said Marcelo was not discharged but that he had voluntarily resigned his position and that the strike was staged by members of petitioner "for trivial, and unjust and unreasonable purpose." Hence, this petition for review under Rule 44 of the Rules of Court, filed by petitioners who claim that a strike by members of a labor union is but a lawful exercise of their right recognized by law for the purpose of rendering to themselves mutual aid and protection, and that, granting Marcelo was dismissed for cause, still the strike declared by members of petitioner aimed at his reinstatement under an erroneous belief that his discharge was discriminatory is a protected activity. *Held*, if the determination of whether a strike is legal or not were to depend upon the motive, no matter how groundless or false it may be, the striking members of a labor union had in mind or believed in good faith at the time they staged the strike, there would then be no need for the court to pass upon that question, because what the strikers had in mind or believed in good faith at the time they struck can hardly be refuted, rebutted or disproved. If the CIR were bound to believe the motive claimed as a reason for a strike by the strikers, then there would no longer be any necessity for holding hearings or presenting evidence to be passed upon by the court. The right to strike for mutual aid and protection is not absolute. It

deserves the protection of law only when the acts intended for such aid and protection arise from a lawful ground or reason; but if the motive that had moved the members of a labor union to strike, even if they had acted in good faith in staging it, be unlawful, illegitimate, unjust, trivial or unreasonable, and the CIR finds it so, then the strike must be declared illegal. INTERWOOD EMPLOYEES ASSOCIATION *v.* INTERNATIONAL HARDWOOD & VENEER COMPANY, G.R. No. L-7409, May 18, 1956.

LABOR LAW — WORKMEN'S COMPENSATION ACT — THE PRESUMPTION IS THAT INJURIES RESULTING FROM AN ASSAULT IN THE COURSE OF EMPLOYMENT AROSE OUT OF THE SAME, ESPECIALLY IF THE RISK OF SUCH ASSAULT IS INCREASED BY THE NATURE OF THE WORK OR ITS SETTING. — Aurelio Rivera, a driver employed by petitioner Batangas Transportation Company, was driving petitioner's bus on his regular route when he was shot from behind by an unknown assailant. Respondents, heirs of Rivera, filed a claim for compensation before the Workmen's Compensation Commission which ruled in respondents favor, holding that the words "arising out of" employment does not necessarily mean that the cause or motive of the assault or shooting of the late Rivera must have to be connected with the nature of his employment. The Court further said: "It is not the underlying cause or motive of the killing that determines the compensability of a claim; but rather, it is whether or not the killing itself occurred by reason of the exposure of the deceased to risk of death while in the pursuit of the business of his employer." Petitioner appealed, contending that the motive for Rivera's killing arose out of a personal grudge between the assailant and the deceased driver. *Held*, of petitioner's contention there is no evidence, and in the absence of evidence on this point, the natural presumption is that death in the course of employment *arose out of* such employment. This presumption is but fair, considering that the employer has every means of knowing the true facts. The Commission's ruling is not without judicial foundation, for authorities are numerous who hold that assaults arise out of employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work. Taxi drivers and bus drivers are held to be included within this rule, their vehicles being under obligation to pick up anyone who wishes to ride, even their enemies, who take up a position a few feet back of the driver who must keep his eyes on the road ahead. BATANGAS TRANSPORTATION CO. *v.* VDA. DE RIVERA, G.R. No. L-7658, May 8, 1956.

LABOR LAW — WORKMEN'S COMPENSATION ACT — WHERE CLAIMS FOR COMPENSATION HAVE ALREADY BEEN FILED UNDER THE WORKMEN'S COMPENSATION ACT, NO FURTHER CLAIM FOR THE SAME INJURY MAY BE FILED EITHER UNDER THE NEW CIVIL CODE OR OTHER LAWS. — The plaintiff filed an action against the defendant in the Court of First Instance of Batangas for damages under the Workmen's Compensation Act. The judge dismissed the case on the ground that the court had no jurisdiction to entertain it as the Workmen's Compensation Commissioner has exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court. The plaintiff, on the other hand, contended that the damages could be demanded and assessed under the Civil Code. *Held*, the contention of the plaintiff is untenable. Section 5 of the Workmen's Compensation Act specifically provides that the rights and remedies granted therein to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury. MANALO *v.* FOSTER WHEELER CORPORATION, G.R. No. L-8379, April 24, 1956.

LABOR LAW — WORKMEN'S COMPENSATION ACT — FAILURE BY A COMPANY TO CONTROVERT ITS LABORER'S CLAIM WITHIN TEN DAYS AFTER KNOWLEDGE OF THE ACCIDENT CONSTITUTES A RENUNCIATION. — Domingo Panaligan was an employee of the petitioner company. On November 23, 1953, he filed a claim with the Workmen's Compensation Commission for compensation for physical disabilities from an accident which happened on July 15, 1953. When the claim was transmitted to the petitioner, it did not controvert it but suggested that a physician from the P.G.H. examine the claimant to determine the extent of the injuries. Based on the findings of said appointed physician, respondent Commission sent to petitioner a computation amounting to ₱3,935 for the loss of 85% of the left eye, the use of the right leg, and temporary disability for 272 days of the claimant. When petitioner controverted said award, respondent Commission called petitioner to a conference and explained its reasons for the award. Whereupon the petitioner filed the present proceedings for certiorari and mandamus to compel respondent Commission to hold a trial for the reception of evidence which it may have against the claims of Panaligan. *Held*, under section 37 of the Workmen's Compensation Act, the petitioner was required, if it decided to controvert the right to compensation of Panaligan, to file within ten days after it had knowledge of the accident, a notice with the Commisison that compensation was not being paid, stating the reasons why it was not paid; and that failure to do so would constitute a renunciation of its right to controvert the claim. As in this case the petitioner not only did not file any opposition to the claim for compensation within the prescribed period, but admittedly paid Panaligan compensation by reason of the accident, the compensability of the claim in question has been settled. BACHRACH MOTOR CO. *v.* WORKMEN'S COMPENSATION COMMISSION, G.R. No. L-8589, May 25, 1956.

LAND REGISTRATION — BOUNDARIES AND AREAS — THOUGH GENERALLY BOUNDARIES PREVAIL OVER THE AREA, YET WHEN THE BOUNDARIES GIVEN ARE NOT SUFFICIENTLY CERTAIN AND THE IDENTITY OF THE LAND IS NOT CLEARLY PROVED BY SUCH BOUNDARIES, THE AREA MUST BE FOLLOWED. — The intestate estate of Fausto Bayot, represented by Celeste Bayot, filed an application for the registration of a parcel of land. This land originally belonged to one Perez who was granted title by the Spanish Government. At the time of such grant, the land was described as having 151 hectares, 47 ares and 80 centares, the boundaries of which were Mount Layat on the North, the river Potot on the East, the beach of Asid on the South and river Buracay on the West. The land was later sold to Fausto Bayot who declared the land for taxation several times, each time increasing its area until in the last tax declaration the land appeared to have an area of 1,134 hectares, more than seven times the area stated in the Spanish title by its original owner, Perez. Is the applicant entitled to the registration of 1,134 hectares of land on the basis of these facts? *Held*, though there have been cases to the effect that what really defines a

piece of land is not the area mentioned in the description but the boundaries laid down, a careful review of these cases will show that it is only when the boundaries given are sufficiently certain and the identity of the land clearly proved by the boundaries thus indicated that an erroneous statement concerning the area can be disregarded. Otherwise, the area stated could be followed. While on the east, south and west sides of the land it may be stated that the boundaries are definite and certain, the same cannot be said with regard to the boundary on the north which is Mount Layat. It does not state when the land ends and the mountain begins. INTESTATE ESTATE OF BAYOT *v.* DIRECTOR OF LANDS, G.R. No. L-8536, April 28, 1956.

LAND REGISTRATION — AMENDMENT OF CERTIFICATE — A PETITION OR MOTION FOR AMENDMENT OF THE CERTIFICATE OF TITLE MUST BE FILED IN THE ORIGINAL REGISTRATION CASE. — Francisco Villa-Abrille Lim Juna was a Chinese subject who arrived in Davao in 1871. He had marital relations with Maria Loreto Tan Sepo with whom he had several children. After residing continuously in the Philippines, Lim Juna died in 1943 leaving extensive holdings, among which were various tracts of land situated in Davao and registered under the Torrens system. These properties passed to his heirs, petitioners herein, who are referred to in the corresponding certificates of titles as "Chinese citizens," although they considered themselves as Filipino citizens. They thus filed a petition in court asking that they be declared as Filipino citizens and that it order the change of their status as found in the certificates from Chinese to Filipino citizens. When the court granted this petition, the Solicitor General appealed. *Held*, neither the petition nor the order appealed from cites the legal provision under which petitioners apply for an order requesting the Register of Deeds to change their citizenship status on the certificates, but the language thereof and the tenor of said order suggest that they rely upon section 112 of Act 496. However, petitioners are not entitled to the benefits of said provision, inasmuch as the relief therein contemplated may be granted only "in the original case in which the decree of registration was entered" and further, because there is no allegation in the petition nor any evidence that the reference to petitioners as "Chinese citizens" was due to any "error, mistake or omission." Indeed, considering that petitioners claim to have acquired their property rights by inheritance, said transfer certificates of title must have been issued in accordance with a deed of partition, either judicial or extra-judicial, stating that they are Chinese. This is one of the main reasons why section 112 of Act No. 496 provides that all motions or petitions under its provisions "shall be filed and entitled in the original case in which the decree of registration was entered." Compliance with this requirement is therefore essential to the relief provided in said section and may not be dispensed with. VILLA-ABRILLE LIM *v.* REPUBLIC, G.R. No. L-7096, May 31, 1956.

POLITICAL LAW — CONSTITUTIONAL LAW — THE RIGHT TO FREEDOM OF SPEECH AND TO PEACEFULLY ASSEMBLE ARE NOT ABSOLUTE BUT MAY BE REGULATED. — Petitioners are members of a religious sect commonly known as Jehovah's Witnesses. Desiring to hold a meeting in furtherance of its objectives, petitioners asked respondent mayor of Sta. Cruz, Zambales, to give them permission to use the public plaza, together with the kiosk, but instead of granting the permission, respondent allowed them to hold their meeting on the northwestern

part corner of the plaza. He adopted as a policy not to allow the use of the kiosk for any meeting by any religious denomination as it is his belief that said kiosk should only be used "for legal purposes." Their request for reconsideration being denied, petitioners brought this present action to compel the respondent to allow them to hold their meetings at the plaza and the kiosk, contending that the denial of their request was an abridgement of their constitutional rights of freedom of speech, assembly, and worship. *Held*, the right to freedom of speech and to peacefully assemble, though guaranteed by our Constitution, is not absolute, for it may be regulated in order that it may not be "injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society," and this power may be exercised under the police power of the state, which is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of the people. It is true that there is no law nor ordinance which expressly confers upon respondent mayor the power to regulate the use of the public plaza, together with its kiosk, for the purposes for which it was established, but such power may be exercised under his broad powers as chief executive in connection with his specific duty "to issue orders relating to the police or to public safety" within the municipality (sec. 2194, par. c, Rev. Adm. Code). And it may even be said that the above regulation has been adopted as an implement of the constitutional provision which prohibits any public property to be used, directly or indirectly, by any religious denomination. IGNACIO *v.* ELA, G.R. No. L-6858, May 31, 1956.

POLITICAL LAW — CONSTITUTIONAL LAW — THE RIGHT TO BAIL IN DEPORTATION PROCEEDINGS IS NOT PART OF THE DUE PROCESS GUARANTEED BY THE CONSTITUTION. — Petitioners are Chinese aliens who were admitted to the Philippines as temporary visitors. On November 22, 1955, the special prosecutor of the Deportation Board filed a complaint against them for illegally procuring, buying, and possessing U.S. dollars and smuggling them out of the country, praying that they be deported as undesirable aliens. Upon the filing of said complaints, warrants of arrest of petitioners were issued. Later, petitioners filed a petition for bail for their provisional release but this was denied by the Deportation Board when it found in the initial hearing of the deportation case that there is direct evidence to support the charge. Petitioners appealed claiming that their right to bail is guaranteed as a part of the due process of the Constitution. *Held*, this is untenable because, as it has been held, "the order of deportation is not a punishment for crime," nor does it constitute deprivation of life, liberty or property. Due process in deportation cases implies merely a full and fair hearing which includes the right of respondent to be heard by himself or counsel, to confront and cross-examine the opposing witnesses, and to produce witnesses in his own behalf. Or, as stated in section 69 of the Revised Administrative Code, it only means that the person subject of deportation "shall be informed of the nature of the charge or charges against him and shall be allowed not less than three days for the preparation of his defense," and shall have the right "to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross examine the opposing witnesses." Verily, this does not include the right to bail which is left entirely to the discretion of the Chief Executive or his duly authorized representatives. TIU CHUN HAI *v.* DEPORTATION BOARD, G.R. No. L-10109, May 18, 1956.

POLITICAL LAW — CONSTITUTIONAL LAW — AN ORDINANCE PROHIBITING THE CONSTRUCTION OR REPAIR OF BUILDINGS ON A CERTAIN AREA NEEDED FOR THE PROLONGATION OF A PUBLIC STREET AND PROVIDING PENALTY FOR ITS VIOLATION IS ILLEGAL. — The City of Iloilo passed an ordinance prohibiting the construction of buildings and the repair of buildings already existing, on a certain area needed for the prolongation of a public street and providing a penalty for its violation. A section of the ordinance instructed the City Fiscal to institute expropriation proceedings as soon as there are funds available for that purpose. The validity of the ordinance was questioned by two landowners affected on the ground that it was an unlawful deprivation or curtailment of the use and enjoyment of private property without compensation and without due process of law. *Held*, the ordinance is illegal except in so far as it instructs the City Fiscal to institute expropriation proceedings. It constitutes an unlawful deprivation of private property without due process of law and without compensation. It cannot be said that the passing of the ordinance was a valid exercise of the right of eminent domain. For such right to be validly exercised, the City has to file condemnation proceedings in court and pay compensation to the owners of the property affected. Mere passing of the ordinance is not enough. It is true that the ordinance instructed the City Fiscal to institute condemnation proceedings but a considerable length of time has passed without such proceedings being initiated, thereby depriving the owners of the property of the enjoyment of their property without compensation while waiting for the institution of the condemnation proceedings. CLEMENTE *v.* MUNICIPAL BOARD OF ILOILO, G.R. No. L-8633, April 27, 1956.

POLITICAL LAW — TAXATION — EXPENSES TO PREPARE AND PROVE A WAR DAMAGE CLAIM MAY BE DEDUCTED AS AN ORDINARY AND NECESSARY EXPENSE. — Respondent Philippine Education Co. lost all its pre-war books of accounts and records, so it employed the accounting firm of Dalupan, Sanchez and Co. to prepare and prove its war damage claim. When the War Damage Commission made the first payment to the respondent, it paid the accounting firm its stipulated fee. When respondent filed its income tax returns for that fiscal year, it claimed the sum it had paid to the firm as a deductible expense. Petitioner Collector of Internal Revenue disallowed the deduction, so the respondent appealed to the Court of Tax Appeals which reversed the view of the petitioner and declared the expense as deductible. Section 30 of the National Internal Revenue Code allows as deductions "all the ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business." The petitioner claims that since the business of the respondent was the purchase and sale of books, magazines, office and school supplies and other commodities, the fee paid by it to the accounting firm was not incurred in the kind of business transaction in which it is normally and customarily engaged. *Held*, this view is too narrow and technical. To carry on its business, even as specified by petitioner, the respondent not only must have sufficient assets but must preserve the same and recover any that should be lost. The fee in question was paid by the respondent to recover its lost assets occasioned by the war and thereby to be rehabilitated as to be able to carry on its business. The law does not say that the expense must be for or on account of transactions in one's trade or business. COLLECTOR OF INTERNAL REVENUE *v.* PHILIPPINE EDUCATION CO., G.R. No. L-8505, May 30, 1956.

POLITICAL LAW — TAXATION — THE DONOR'S GIFT TAX SHOULD NOT BE DEDUCTED FROM THE TOTAL NET VALUE OF THE DONATION IN COMPUTING THE GIFT TAX PAYABLE BY THE DONEE, UNLESS IT IS SHOWN THAT THE DONEE PAID THE DONOR'S GIFT TAX. — Respondents made donations of shares of stock to their respective children and were obliged to pay donor's gift taxes and donee's gift taxes both of which were computed on the total net value of the gifts. They filed petitions against petitioner Collector of Internal Revenue in the now defunct Board of Tax Appeals for an order of refund of the amounts paid allegedly in excess, contending that the donor's gift taxes should have first been deducted from the net total value of the gifts before the taxes payable by the donees were computed. The Court of Tax Appeals decided for respondents on the theory that inheritance and gift taxes should be governed by the same rules and ordered the Collector to make refund. The latter appealed, claiming that estate taxes are deductible from the net estates before computing inheritance taxes by express direction of the Revenue Code, whereas no such deduction of the donor's tax is directed by statute when the donee's gift tax is imposed and assessed. *Held*, this issue has already been passed upon in *Kiene v. Collector*, G.R. No. L-5794, wherein it was held that estate taxes and donor's taxes are treated differently for the reason "that estate taxes must necessarily be paid from the estate, thereby reducing it; whereas the donor's tax is or may be paid by the donor, who must be presumed to have reserved unto himself sufficient property." (Art. 759, New Civil Code). Hence, the gift received by the donee is not necessarily diminished by the payment of the donor's tax. The donor's tax is levied on the act of giving and the donee's tax on the act of receiving, both taxes being assessable on the aggregate sum of the gifts. And there is no legislative indication to the end that the donee shall pay less than the donor by deducting the tax assessed on the latter. It may not be said that the donor's tax necessarily reduces the gift received by the donee and there is nothing in the law requiring the donor's tax to be discounted from the donation. If in fact the donor's tax was paid by the donee out of his own pocket or property, "perhaps" there would be some ground to claim deduction thereof in the computation of the donee's tax. In other words, as the donor paid the tax, the amount donated was not reduced. It need only be added that the respondents point no stipulation or evidence showing that the donees in each of these cases agreed to pay the donor's taxes out of their own pockets. In the absence of such stipulation or evidence, as pointed out in the *Kiene* decision, since the law requires a donor to reserve enough properties to pay his obligations (Art. 759, New Civil Code), payment of the donor's gift tax by the donee would be an act done for and on behalf of the donor, entitling the donee to demand reimbursement of the sum paid. Hence, the donee may not claim that the payment has reduced his beneficial interest in the property donated. COLLECTOR OF INTERNAL REVENUE *v.* SORIANO, G.R. No. L-8499, May 21, 1956.

POLITICAL LAW — TAXATION — A TAX MAY NOT BE IMPOSED BY ORDINANCE UPON A SHIPYARD DEVOTED SOLELY TO THE REPAIR OF THE OWNER'S OWN WATERCRAFT AND WHICH IS NOT OPERATED AS A BUSINESS. — The municipal board of Cavite enacted an ordinance imposing an annual license tax of ₱400 upon marine shops located in said city. The plaintiff is a corporation engaged in the lighterage and water transportation business and in connection with that business, it runs a marine shop in that city for the repair of its own lighters and barges. Having been required to pay the annual licence tax on said shop,

plaintiff brought an action for declaratory relief to challenge the validity of the ordinance on the ground among others, that it is beyond the power of the municipal board to enact. *Held*, considering the amount of the charge imposed by the ordinance — P400, and the fact that the ordinance itself calls it a tax, it can only be regarded as such and not a mere fee for regulatory purposes in connection with the exercise of the police power. As a tax, it may be imposed by the ordinance upon a shipyard only when this is operated as a business, that is, when it builds or repairs ships for others, but not when it is devoted solely to the repair of the owner's own watercraft used by its lighterage and transportation business, which already pays a tax of its own as such business. This does not necessarily mean, however, that the ordinance in question is invalid but only that the plaintiff's shipyard is exempt from the payment of the tax imposed. MANILA LIGHTER TRANSPORTATION CO. *v.* MUNICIPAL BOARD, G.R. No. L-6848, April 27, 1956.

POLITICAL LAW — TAXATION — RACING CLUBS ARE NOT REQUIRED TO PAY AMUSEMENT TAX WHEN THEIR RACE-TRACKS ARE USED BY OTHER INSTITUTIONS AS REQUIRED BY LAW. — Respondents Manila Jockey Club and the Phil. Racing Club are corporations organized primarily for the purpose of holding horse races. Rep. Act No. 309, as amended, allows races to be held only on certain days of the year, apportioned among private racing clubs and certain charitable institutions, like the Philippine Anti-Tuberculosis Society, the White Cross Inc., and the Philippine Charity Sweepstakes Office. As the charitable organizations authorized by law to hold horse races do not own their race tracks, they lease the premises and facilities of either the Manila Jockey Club or the Phil. Racing Club, holding the races under their sole management. The petitioner sought to collect 20% of the gross receipts of the two racing clubs under paragraph 3 of section 260 (1) of the National Internal Revenue Code, contending that it is collectible whether or not it is derived from the holding of races or other amusements. *Held*, the law makes the proprietor, lessee, or operator, of the amusement place liable for the amusement tax, the three tax-payers being connected by the disjunctive conjunction "or," thereby positively implying that the tax should be paid by either the proprietor, the lessee, or the operator, as the case may be, singly and not by all at one and the same time. During days when the White Cross Inc., the Philippine Anti-Tuberculosis Society, and the Philippine Charity Sweepstakes Office hold their races, they become the lessees or operators of the race and therefore should be called upon to pay the 20% amusement tax. Under Rep. Act No. 309, the respondents cannot hold races on the days assigned to charitable institutions. It would therefore be anomalous for said respondents to be required to pay the amusement tax on rentals for the use of their hippodromes by said charitable institutions on days on which the respondents are prohibited from holding horse races. The anomaly would be heightened if the respondents were required to pay the amusement tax, when the charitable institutions holding their own races are themselves exempt from taxes. COLLECTOR OF INTERNAL REVENUE *v.* MANILA JOCKEY CLUB INC., G.R. No. L-7273, May 30, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — A MAYOR CANNOT LEGALLY REMOVE A MEMBER OF THE CIVIL SERVICE WITHOUT JUST CAUSE. — Petitioner is the incumbent Detective Second Lieutenant of the Secret Service of the San

Pablo Police Department, a duly qualified civil service eligible. On Jan. 11, 1954, respondent mayor requested petitioner to resign from the service but the latter refused, stating the reasons why he could not resign. Notwithstanding this, the Municipal Board of the City of San Pablo approved a resolution abolishing the position held by the petitioner in order to economize and also on account of an alleged unbecoming record of the petitioner which consisted of an act for which he had already suffered a 30-day suspension without pay. *Held*, the mayor cannot legally remove the petitioner without cause for, being a member of the Civil Service, his tenure of office is protected by section 4, article XII of the Constitution. The petitioner had already been punished for his irregular act, and had suffered said punishment. There appears no reason why he should be punished again. The abolition of positions in the municipal police force for reasons of economy, which results in the separation of incumbents, may be effected by complying with the provisions of the Provincial Circular of April 3, 1954, which requires that "no reduction of personnel may be effected wthout the previous approval of the Department Head concerned. With respect to the local police forces and provincial guard organizations,... no position therein shall be abolished without the approval of the President of the Philippines." It appears that neither the Department Head nor the President of the Philippines has approved the suppression or abolition of the position of the petitioner. Consequently, the abolition of his position is unjustified. PULUTAN *v.* DIZON, G.R. No. L-7746, May 23, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — THE APPOINTMENT OF A CIVIL SERVICE ELIGIBLE TO REPLACE A NON-ELIGIBLE, EVEN TO A POSITION OTHER THAN THAT FOR WHICH HE HAD QUALIFIED, IS VALID AND LEGAL. — Petitioner Amora was ousted and relieved by respondent Tavera as Chief of Police of Bato, Leyte, by an order of respondent Mayor Franco Bibera. Petitioner Matondo was likewise ousted and relieved by respondent Aguilar as sergeant of the police force of Bato, also pursuant to the same order. They raised the question of the legality of their ouster and the appointment of the respondents in their place and stead by *quo warranto* proceedings in the lower court which decided in their favor and ordered their reinstatement. The respondents appealed. *Held*, being a civil service eligible, respondent Tavera's appointment to replace petitioner Amora who is a non-eligible, as chief of police is valid and legal, the fact that Amora is a veteran not having the effect of giving him the status of a civil service eligible. Likewise the appointment of respondent Aguilar, an eligible, to replace petitioner Matondo, a non-eligible, as sergeant of police is valid and legal. The contention of petitioners that the respondents already lost their eligibility because of their failure to obtain employment in the Government within one year would have been sustained were it not for the fact that R.A. No. 1079 provides that "Civil Service eligibility shall be permanent and shall have no time limit and that this Act shall be retroactive so as to include persons whose civil service eligibility had expired prior to its approval." The fact that respondent Tavera and Aguilar were appointed to positions other than those for which they had qualified does not militate against their appointment, for petitioners have pointed out no law that prohibits the appointment of one who had passed a civil service examination to a position other than that for which he had qualified, especially when the position to

which he has been appointed does not call for special skill or knowledge. AMORA *v.* BIBERA, G.R. No. L-8873, May 2, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — THE TEMPORARY APPOINTMENT OF NON-ELIGIBLES TO REPLACE CIVIL SERVICE NON-ELIGIBLES WHOSE TERMS HAVE EXPIRED IS VALID, UNLESS THE LATTER ARE VETERANS. — Petitioner Signar, Lovete, Cinco, Rosal and Tablo were ousted and relieved as patrolmen of the police force of Bato, Leyte, by respondents Serdan, Briones, Red, Remolador and Aguilar in pursuance to an order of respondent Mayor Franco Bibera. They raised the legality of their ouster and the appointment of the respondents in their stead by *quo warranto* proceedings in the lower court which decided in their favor and ordered their reinstatement. Respondents appealed. *Held*, the temporary appointment of respondents Serdan and Briones, both without civil service eligibility to the position of policemen vice petitioners Signar and Lovete, also without civil service eligibility, is legal and valid. The temporary appointment of non-eligibles to replace non-eligibles whose terms have expired is not prohibited and displaced non-eligibles cannot invoke the provisions of R.A. No. 547, since the Act guarantees the tenure of office of provincial guards and policemen who are eligibles. The judgment appealed from insofar as it concerns Serdan and Briones is reversed and set aside and the petition as to them is dismissed. The replacement of petitioners Cinco, Rosal and Tablo, all veterans but without civil service eligibility, by respondents Red, Remolador and Aguilar, also without civil service eligibility, is illegal because petitioners are veterans and although non-eligibles, are entitled to protection in office pending receipt by the Chief of the Bureau of certification of eligibles from the Commissioner of Civil Service, even though respondents Red, and Aguilar are also veterans. The dismissal of policemen Cinco, Rosal and Tablo being illegal, the judgment appealed from insofar as it concerns them is affirmed and the respondent Mayor is hereby ordered to reinstate them. AMORA *v.* BIBERA, G.R. No. L-8873, May 2, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — PERSONS IN THE UNCLASSIFIED SERVICE ARE NOT EXCLUDED FROM THE BENEFITS EXTENDED TO THOSE OF THE CLASSIFIED SERVICE. — Petitioner was a foreman of the Group Disposal, Office of the City Health Officer of Cebu City. When the Group Disposal Division, including its personnel, was transferred from the City Health Department to the Office of the City Health Engineer, the City Mayor removed petitioner from the service and replaced him with other persons. Although petitioner sought to be reinstated, his petition was not heeded by respondents. Filing an action for reinstatement, the trial court held that petitioner is a person in the Philippine Civil Service, pertaining to the unclassified service (sec. 670, Rev. Administrative Code, as amended), and his removal is a violation of sec. 694 of the Rev. Administrative Code and sec. 4 of art. XII of the Constitution. Respondents appealed, claiming that the use of capitals in the words "Civil Service" in secs. 1 and 4 of art. XII of the Constitution and the use of small letters for the same words in sec. 670 of the Rev. Administrative Code indicate that only those pertaining to the classified service are protected in the above-mentioned sections of the Constitution. *Held*, capitals "C" and "S" in the words "Civil Service" were used in the Constitution to indicate the group. No capitals are used in the similar provisions of the Code to indicate the system. We see no difference between the use of capitals in the former and of small letters in the latter. There is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Both are expressly declared to belong to the Civil Service; hence, the same rights and privileges should be accorded to both. Persons in the unclassified service are so designated because the nature of their work and qualifications are not subject to classification, which is not true of those appointed to the classified service. This cannot be a valid reason for denying privileges to the former that are granted the latter. UNABIA *v.* CITY MAYOR, G.R. No. L-8759, May 25, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — A PERSON IN THE CIVIL SERVICE WHO FAILS TO FILE HIS ACTION FOR REINSTATEMENT WITHIN ONE YEAR FROM HIS ILLEGAL DISMISSAL IS DEEMED TO HAVE ABANDONED HIS OFFICE. — Petitioner was a foreman of the Group Disposal, Office of the City Health Officer of Cebu City. When the Group Disposal Division was transferred from the City Health Department to the Office of the City Engineer, the City Mayor removed the petitioner from the service and replaced him with other persons on June 16, 1953. His plea for reinstatement was denied by respondents so he filed an action for reinstatement. The trial court rendered judgment in his favor but the respondents appealed, claiming that petitioner had already abandoned his office since his action was filed only on July 1, 1954, or after a delay of one year and 15 days from his unjust removal. *Held*, if an employee is illegally dismissed, he may conform to such illegal dismissal or acquiesce therein, or by his inaction and by sleeping on his rights he may in law be considered as having abandoned the office to which he is entitled to be reinstated. These defenses are valid defenses to an action for reinstatement. Difficulty in applying this principle lies in the fact that the law has not fixed any period which may be deemed as abandonment of office. However, we note that in actions of *quo warranto* involving right to an office, the action must be instituted within the period of one year. This has been the law in the Islands since 1901, the period having been originally fixed in sec. 216 of the Code of Civil Procedure (Act No. 190). This provision is an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they are considered as having lost their right thereto by abandonment. There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. There must be stability in the service so that public business may not be unduly retarded; delays must be discouraged. Furthermore, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so. We hold that in view of the policy of the State contained in the law fixing the period of one year within which actions for *quo warranto* may be instituted, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one

year, otherwise he is thereby considered as having abandoned his office. UNABIA *v.* CITY MAYOR, G.R. No. L-8759, May 25, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — THE DURATION OF PREVENTIVE SUSPENSION IN ADMINISTRATIVE CASES AGAINST JUSTICES OF THE PEACE IS NOT LIMITED TO A DEFINITE PERIOD. — Respondent Teves filed an administrative complaint against the petitioner Justice of the Peace for electioneering, abuse of position and immorality. Respondent CFI judge Muñoz-Palma issued an order suspending petitioner from office immediately. A motion for reconsideration of said order was denied. Thereafter petitioner filed a motion with the respondent judge asking for his reinstatement on the ground that the purpose of the suspension had already been accomplished, which motion was subsequently denied. Upon a denial of the motion to reconsider this order, petitioner filed a petition for certiorari and mandamus. *Held*, the suspension of the petitioner herein is a preventive suspension and appears to have been decided upon by respondent judge in order to grant opportunity to the complainant in the administrative case to prove the charges filed against petitioner. That the need for such suspension could not have terminated with the closing of the evidence of the complainant is apparent, because the petitioner JP if holding office, could easily testify in his favor, in view of his office and position. There is no law that limits the period of preventive suspension such as exists in the cases of elective officials. The absence of such limitation in administrative cases against justices of the peace implies legislative intent to deny the right to a limited preventive suspension with the grant of full and ample discretion in administrative investigations. Petition for certiorari and mandamus denied. SUELTO *v.* MUÑOZ-PALMA, G.R. No. L-9034, April 13, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — THE PHILIPPINE NORMAL COLLEGE IS A PUBLIC CORPORATION WITH A CAPACITY TO BE SUED. — On July 6, 1954, twenty employees of the Philippine Normal College filed an action in the court of first instance against the Philippine Normal College for the recovery of salary differentials and overtime pay. The court dismissed the case on the ground that the defendant was neither a corporation nor a juridical entity with capacity to be sued. Plaintiffs appealed. *Held*, the appeal is meritorious. R.A. No. 416, which took effect in July, 1949, converted the old Philippine Normal School into the present Philippine Normal College and endowed it with the "general powers set out in section 13 of Act No. 1459, as amended" (Corporation Law), entrusting its government and administration of its affairs to a board of trustees therein created, which was to exercise for it "all the powers of a corporation as provided in (said) section," and in particular, "to administer and appropriate the funds of the Normal Hall and to supervise and control its income and expenses, all provisions of law to the contrary notwithstanding." One of the powers specifically enumerated in the said section 13 of the Corporation Law is the power "to sue and be sued in any court." With this express grant of power, we do not see how it could be doubted that the Philippine Normal College could be made a defendant in a suit in court. The Solicitor General admits that the Philippine Normal College has a juridical personality of its own, but contends that, as it is an instrumentality of government for the discharge of state functions, it may not be sued without the consent of the state. The answer to that contention is that the state has already given

that consent by investing the College with the express power to be sued in court. That the Act authorizes the College to be sued is also made clear in section 6, where it is provided that "all process against the Board of Trustees shall be served on the President or secretary thereof." BERMOY *v.* PHILIPPINE NORMAL COLLEGE, G.R. No. L-8670, May 18, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — THE PUBLIC OFFICER, NOT THE MUNICIPAL CORPORATION, IS LIABLE FOR HIS ACTS, DONE OUTSIDE THE SCOPE OF HIS DUTIES. — Plaintiff Palma was accused before the CFI of Cebu for "fraud against the public treasury" and for "malversation of public funds" under two separate informations. The first was dismissed and plaintiff was acquitted of the second. He thereupon brought this action for damages arising from the institution of the two criminal actions against him, naming as defendants, Garciano, Assistant Fiscal of the City of Cebu, and Cuenco, then Provincial Governor of Cebu, including in his complaint the City of Cebu and the Province of Cebu. Defendants filed four separate motions to dismiss all based on the ground that the complaint stated no cause of action. The CFI granted all motions and plaintiff appealed. *Held*, municipal corporations are liable for the acts of its officers if and when, and only to the extent, that they have acted by the authority of the law and according to the requirements thereof. The City and Province of Cebu, therefore, cannot be held liable for the acts of defendants Cuenco and Garciano, for these acts, being "contrary to law" as alleged in plaintiff's information, bore neither the approval nor the authority of said political subdivisions. This exemption from responsibility becomes more evident when we consider that the prosecution of crimes is an act which is governmental or political in character, not corporate, and that, in the discharge of functions of this nature, municipal corporations are not responsible for the acts of its officer done without the authority of law. The order appealed from insofar as it affects the Province and the City of Cebu must be upheld. But the order of dismissal insofar as it concerns defendants Garciano and Cuenco must be reversed. The allegations in plaintiff's complaint, taken on their face value, state a cause of action against the defendants, for it is well-settled that when a public officer goes outside the scope of his duty particularly when acting tortiously, he is not entitled to protection on account of his office but is liable for his acts like any private individual. PALMA *v.* GARCIANO, G.R. No. L-7240, May 16, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — A MUNICIPAL REGULATION OR PROHIBITION OF A CERTAIN LINE OF ACTIVITY MAY CO-EXIST WITH NATIONAL REGULATION OR PROHIBITION OF THE SAME. — The plaintiff brought an action to recover the sum of ₱4,630 which it paid to the City of Manila as inspection fees of its steam boiler in accordance with the Revised Ordinance in 1917 of said city. The plaintiff contended that said power to tax and regulate steam boilers had been repealed by C.A. No. 104 (1936) as amended by C.A. No. 696 (1945) because these two enactments direct that for the inspection of boilers and pressure vessels, the Secretary of Labor shall fix and collect reasonable inspection fees. The judge of the lower court perceived no repeal by implication pointing to the subsequent enactment in 1949 of the Revised Charter of the City of Manila repeating the identical provisions above-mentioned. Plaintiff appealed. *Held*, in the first place, the City's power to *tax* steam boilers

could not have been affected by the Department of Labor's power to *regulate* or inspect them. One is taxation, the other regulation. In the second place, the power of inspection of the Secretary of Labor does not necessarily conflict with that of the City authorities, because the former has particular relation to the safety of laborers and employees of industrial enterprises, whereas that of the City of Manila is not limited to such purposes, but is related to the safety and welfare of the inhabitants of the city. MANILA ELECTRIC CO. *v.* CITY OF MANILA, G.R. No. L-8694, April 28, 1956.

POLITICAL LAW — MUNICIPAL CORPORATIONS — A LEASE ENTERED INTO BY A MUNICIPALITY WITHOUT THE APPROVAL OF THE PROVINCIAL GOVERNOR IS NOT VOID PER SE BUT ONLY VOIDABLE. — A contract of lease was executed by the Municipality of Camiling in favor of defendant Lopez, leasing certain fisheries of the municipality for three consecutive years, the rentals to be in three yearly installments. Defendant paid the first two installments but failed to pay a balance corresponding to the third year of the lease. When the municipality brought suit to recover this amount, the trial court dismissed the action holding that the contract was null and void because it was not approved by the provincial governor. *Held*, the approval by the provincial governor of contracts entered into and executed by a municipal council, as required by section 2196 of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal government. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration and control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, *i.e.*, contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interests of the municipality; they would be denied approval if found illegal or unfavorable to public or municipal interest. The absence of the approval, therefore, does not *per se* make the contract null and void. There is nothing in the contract of lease which would taint it with illegality, like a violation of public order or public morality, or a breach of a declared national policy. It could have been ratified after its execution in the ordinary course of administration. It is merely *voidable* at the option of the party who in law is granted the right to invoke its invalidity. MUNICIPALITY OF CAMILING *v.* LOPEZ, G.R. No. L-8945, May 23, 1956.

POLITICAL LAW — IMMIGRATION LAW — THE RIGHT TO BAIL IN DEPORTATION PROCEEDINGS IS NOT A MATTER OF RIGHT ON THE PART OF THE PERSON SUBJECT TO DEPORTATION BUT A MATTER OF DISCRETION ON THE PART OF THE DEPORTATION BOARD. — Petitioners are Chinese aliens who were admitted to the Philippines as temporary visitors. Later, the special prosecutor of the Deportation Board filed a complaint against them for illegally procuring, buying and possessing U.S. dollars and smuggling them out of the country. Both were arrested upon recommendation of the Deportation Board which prayed that they be deported as undesirable aliens. Petitioners filed with the Deportation Board a petition for bail for their provisional liberty, but this was denied after the Board conducted the initial hearing of the deportation case and found that there is direct evidence to support the charge. Petitioners appealed from this denial, contending that the constitutional right to bail is available not only to persons against whom a complaint has been filed but also to persons arrested, detained, or otherwise deprived of their liberty. *Held*, there is nothing in the Constitution nor in section 69 of the Revised Administrative Code, which vests in the President of the Philippines the power of deportation of undesirable aliens, from which we can infer that the right of aliens facing charges before the Deportation Board to temporary liberty on bail is guaranteed. The provision in our Constitution which guarantees the right to bail to all persons before conviction merely applies to persons accused of offenses in criminal actions. And considering that deportation proceedings are not criminal in nature, or are "in no proper sense a trial and sentence for a crime or offense," but a procedure merely devised by the Chief Executive to enable him to exercise properly the power of deportation vested in him by law, it follows that the right to bail in deportation proceedings is not a matter of right on the part of petitioners, but a matter of discretion on the part of the Deportation Board. TIU CHUN HAI *v.* DEPORTATION BOARD, G.R. No. L-10109, May 18, 1956.

POLITICAL LAW — IMMIGRATION LAW — A BOARD OF SPECIAL INQUIRY MUST HAVE THREE MEMBERS AND THE CONCURRENCE OF TWO MEMBERS IS NECESSARY FOR THE VALIDITY OF ITS DECISIONS. — Dayata applied for documentation as as Filipino citizen with the Philippine consulate in Amoy and later in Hongkong when the consulate in Amoy was closed. The matter was referred to the Bureau of Immigration but it returned the papers stating it could not make a favorable recommendation because of the inconsistencies between the testimony of said Dayata and his alleged mother. In 1953, Dayata was allowed to land in the Philippines, and on the strength of the report of the NBI that he might possibly be the son of his alleged Filipina mother, he was allowed to file a bond to guarantee his temporary stay during the pendency of his petition for documentation as a Filipino citizen. In connection with this petition, Attorney Trias of the NBI was named investigator and Dayata presented evidence in support of his application. Before Trias could render his report, Dayata filed the present action in court alleging that the Commissioner of Immigration had threatened to cause his arrest on pain of detention without benefit of bail or bond if he did not leave the Philippines. The court issued a writ of preliminary injunction against the Commissioner. Then Trias submitted his report on his investigation wherein he concluded that Dayata was in fact the illegitimate child of the alleged Filipina mother and was therefore a Filipino citizen at birth. The record of the investigation was forwarded to the Department of Foreign Affairs which in turn forwarded it to the Department of Justice. The Undersecretary of Justice disapproved the finding and recommendation of Trias, declaring that Dayata was an impostor because of the unexplained inconsistencies in the testimony of Dayata and his alleged Filipina mother. Notwithstanding this, the court found that the finding of Trias was sustained by the evidence and that it was the decision of the Special Board of Inquiry which had already become final. The Commissioner appealed. *Held*, the law specifically provides that "every board of special inquiry shall be composed of a chairman and two members who shall be appointed by the President of the Philippines." (Section 27(a), Immigration Act of 1940, as amended.) This means that one man alone cannot take the place of the whole board nor could his "decision" be taken or have the effect of a

decision of a board of special inquiry legally constituted. This point is important because the object of the law in having the investigation conducted by a board of three members is to minimize the danger from corruption to which cases of this kind frequently give rise. Needless to say, adherence to the requirement that there be three members in the board is essential to the accomplishment of the purpose of the law. And surely that purpose would be defeated or circumvented if a lone investigator were to take the place of a board of three members. Trias could not by himself alone render a binding decision for the Board of Special Inquiry because under section 27(c) of the Philippine Immigration Act of 1940, as amended by Republic Act No. 543, for a decision of the board to be valid and binding the concurrence of any two of its members is necessary. DAYATA *v.* DE LA CRUZ, G.R. No. L-8775, May 30, 1956.

POLITICAL LAW — IMMIGRATION LAW— THE CLASSIFICATION OF AN ALIEN AS A "NON-QUOTA IMMIGRANT" BY A BOARD OF SPECIAL INQUIRY DOES NOT MEAN THAT HE IS ENTITLED TO PERMANENT RESIDENCE HERE. — Upon petition of the Chinese Chamber of Commerce Elementary School, petitioner was issued a visa as a non-quota immigrant for the purpose of teaching in said school. One of the conditions of the granting of the visa was that he shall remain in the Philippines only during the period of his employment, which period, however, shall not exceed two years after his arrival. Petitioner arrived from Hongkong on September 6, 1950, and was investigated and admitted by a Board of Special Inquiry as a non-quota immigrant under section 9 (g) of the Philippine Immigration Act of 1940. On June 18, 1954, petitioner filed a petition for an extension of stay in this country for another two years but respondent Board of Commissioners denied it and served notice that he leave the country voluntarily within fifteen days or be subject to deportation proceedings. Petitioner filed an injunction with court, which held that since the petitioner was admitted as a non-quota immigrant, he is entitled to permanent residence here. From this decision, the Board appealed. *Held*, the characterization of petitioner as a "non-quota immigrant" by the Board of Special Inquiry does not necessarily imply that he was admitted for permanent residence, for the authority granted by our Hongkong Consulate for issuance of his visa specified that he was to be admitted under section 13 (a) of the 1940 Immigration Act, and stipulated expressly that he was not to remain in the Philippines beyond two years after arrival. Having taken advantage of a visa issued to him under such authorization, petitioner is deemed to have agreed and accepted its conditions, and is therefore in estoppel to claim that he is entitled to permanent stay. Besides, it should have been apparent that if petitioner's admission was based on his pre-arranged employment contract to teach at the Chinese Chamber of Commerce Elementary School, his stay must necessarily be temporary and not permanent, since a hiring for life is void under our law (Civil Code of 1889, Art. 1593). The mere fact that the respondent Commissioners of Immigration did not choose to enforce the limitation on petitioner's stay immediately upon the expiration of the period given, did not confer upon petitioner a right to stay longer in these Islands. The petitioner so understood his situation to be, as shown by the circumstance that in 1954, he applied to the Immigration officers for an extension of his stay. ANG KOO LIONG *v.* BOARD OF COMMISSIONERS OF THE BURFAU OF IMMIGRATION, G.R. No. L-8789, May 18, 1956.

POLITICAL LAW — MILITARY LAW — MERE TRANSFER FROM ACTIVE TO INACTIVE SERVICE OF A MEMBER OF THE ARMED FORCES IS NEITHER DISMISSAL NOR DISCHARGE. — Appellant was the Naval Commanding Officer of a Philippine Chaser, a reserve officer of the Philippine Navy, Armed Forces of the Philippines. On November 16, 1953, his superior officer, respondent Alcaraz, recommended his reversion into inactive status on the ground of inefficiency; and acting on such recommendation, the Chief of Staff ordered appellant's reversion into inactive status. Shortly thereafter, charges of misappropriation of government funds while still in active duty were filed against him. He refused to submit to an investigation of the charges with a view to bringing him before a General Navy Court Martial claiming that the Philippine Navy no longer had jurisdiction over him since his reversion to civilian status. Then he filed a petition in court to enjoin respondents from further subjecting him to the aforesaid investigation, praying also that the order reverting him to inactive status be annulled because it constituted his summary dismissal from service without due process of law. This was denied so he appealed. *Held*, the argument is untenable for several reasons. First, appellant was ordered reverted to civilian or inactive status not by respondent Commander Alcaraz but by the Chief of Staff of the Armed Forces, upon order of the Secretary of National Defense based on a directive of the President of the Philippines. The court below could not, therefore, in any case have nullified and set aside said order of reversion because the real party in interest had not been impleaded and made party to the petition. Second, appellant's reversion to inactive status in the reserve force is not a dismissal from the service. Although he ceased to be in the active service of the Philippine Navy, he nevertheless remains an officer of the Army reserve forces. Officers in the naval reserve may be transferred from active to inactive service as the army authorities may see fit, and appellant cannot rightly complain that he had been dismissed or discharged without due process, because mere transfer from active to inactive service in the army is neither dismissal nor discharge. DE LA PAZ *v.* ALCARAZ, G.R. No. L-8551, May 18, 1956.

POLITICAL LAW — MILITARY LAW — AN OFFICER OF THE ARMED FORCES WHO IS REVERTED FROM ACTIVE TO INACTIVE STATUS IS STILL LIABLE FOR MISAPPROPRIATION OF GOVERNMENT PROPERTY COMMITTED WHILE IN ACTIVE MILITARY SERVICE. — Appellant is a reserve officer of the Philippine Navy, Armed Forces of the Philippines, being the Naval Commanding Officer of a Philippine Chaser. On November 16, 1953, his superior officer, respondent Alcaraz, recommended his reversion into inactive status on the ground of inefficiency; and acting on such recommendation, the Chief of Staff ordered appellant's reversion to inactive status. Shortly thereafter, charges were lodged against him for misappropriation of government property allegedly committed while he was still in active military service. Summoned to appear for an investigation into the charges with a view to bringing him before a General Navy Court Martial, appellant refused claiming that since he was reverted to civilian status, he was no longer within the jurisdiction of the Philippine Navy. He filed a petion to enjoin respondents from subjecting him into the aforesaid investigation and when this was denied, he appealed. *Held*, there is no question that although appellant had been reverted to inactive (civilian) status in the reserve force of the Philippine Army, he is still amenable to investigation and court-martial under the Articles of War by the Philippine Navy for alleged acts

of misappropriation of government funds committed while he was still in the active military service. Appellant's case falls within the provisions of article 95 of the Articles of War (C.A. No. 408, as amended), which provides that "...if any person, being guilty of any of the offenses aforesaid while in the military service of the Philippines, receives his discharge or his dismissal from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed." The lower court did not, therefore, err in refusing to enjoin appellant's investigation by the naval authorities, especially since he admits that he is still a member of the Reserve Force. DE LA PAZ *v.* ALCARAZ, G.R. No. L-8551, May 18, 1956.

POLITICAL LAW — MILITARY LAW — A MEMBER OF THE ARMED FORCES WHO CLAIMS TO HAVE BEEN ILLEGALLY DISCHARGED MUST EXHAUST ALL REMEDIES TO MILITARY AUTHORITIES BEFORE HE CAN SEEK RELIEF FROM THE COURTS OF JUSTICE. — Appellant is a reserve officer of the Philippine Navy, Armed Forces of the Philippines, being the Naval Commanding Officer of the Philippine Chaser P-19, RPS Cavite. On November 16, 1953, his superior officer, respondent herein, recommended his reversion into inactive status on the ground of inefficiency; and acting on such recommendation, the Chief of Staff ordered appellant's reversion to inactive status. Shortly thereafter, charges were lodged against him for misappropriating government property allegedly committed while he was still in active military service. Summoned to appear for an investigation into the charges with a view to bringing him before a General Navy Court Martial, appellant refused claiming that he was already a civilian and the Philippine Navy had no more jurisdiction over him. However, he filed a petition in court asking that the order of reversion be annulled because it constituted his summary dismissal from service without due process of law. When this was denied, he appealed. *Held*, the matter of transfer from one status to another, or even the dismissal or discharge, of officers and servicemen in the armed forces, is a matter entirely within the realm of the military. If petitioner felt aggrieved by the recommendation made by his superior officer of his reversion to inactive status without proper hearing and investigation of his alleged inefficiency, he should have sought redress by appeal to the President of the Philippines, who is the Commander-in-Chief of the Armed Forces, through the proper military channels. Not having exhausted all administrative remedies, appellant cannot seek relief in the courts of justice. DE LA PAZ *v.* ALCARAZ, G.R. No. L-8551, May 18, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — JUSTICE OF THE PEACE COURTS HAVE NO JURISDICTION TO DECIDE CASES ARISING FROM THE RELATIONSHIP OF LANDLORD AND TENANT. — The respondents filed a complaint for forcible entry in the Justice of the Peace Court against the petitioner herein praying among others that petitioner be ordered to vacate the four parcels of land he was occupying. The petitioner answered the complaint and by affirmative defense averred that the JP court had no jurisdiction to hear and decide the case as it involved the relationship of landlord and tenant. The court decided the case in favor of the respondent despite the fact that the landlord-tenant relationship was shown by the evidence. Hence, this petition for a writ of certiorari. *Held*, when the evidence presented showed that there was the relationship of landlord and tenant between petitioner and respondents, the Justice of the Peace should have dismissed the case. All cases involving the dispossession of a tenant by the landlord or a third party and/or the settlement of disputes arising from the relationship of landlord and tenant shall be under the original and exclusive jurisdiction of the Court of Industrial Relations. BASILIO *v.* DAVID, G.R. No. L-8702, April 28, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE BROTHERS AND SISTERS OF THE DECEASED ARE NOT PROPER PARTIES FOR BRINGING AN ACTION FOR DAMAGES ARISING FROM HIS DEATH IF HE HAS A DESCENDANT. — Gervasio Gonzales was run over by a bus of the defendant and died, as a result, it is alleged, of the reckless, negligent and careless driving of its chauffeur. Those who brought the action are the five brothers and sisters of the deceased and his minor son. Plaintiffs prayed that one of the brothers be appointed as guardian *ad litem* of the minor child but this petition was not acted upon by the court. The defendants moved to dismiss the complaint on the ground that the brothers and sisters are merely collateral relatives and under the laws of descent are excluded when there is a descendant; and that the only descendant has no capacity to sue since he is a minor and is not represented by a guardian. The lower court dismissed the action. Plaintiffs appealed, claiming that they are entitled to moral damages under the New Civil Code and that the mother of the minor son could not legally and morally represent the minor because she and the deceased have been estranged for 15 years due to her bad character and unfaithfulness and had never been reconciled. *Held*, under the laws of descent collateral relatives are excluded from inheriting if and when the decedent is survived by a descendant who is the only one entitled to sue for damages arising out of or from the death of the decedent caused by a wrongful or tortious act of the defendants. Article 2217 and article 2206 (3) of the New Civil Code do not grant the sisters and brothers of the deceased a right to recover moral damages. The trial court should have acted on the petition for the appointment of a guardian *ad litem* for the minor son of the deceased since he is the only one entitled to bring the action. HEIRS OF GONZALES *v.* ALEGARBES, G.R. No. L-7821, May 25, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE RULES OF COURT ONLY REQUIRE AS A GROUND FOR THE DISMISSAL OF A COMPLAINT A PENDING ACTION, NOT A PENDING PRIOR ACTION. — Plaintiff Teodoro was a lessee of a parcel of land in Ermita, Manila, belonging to defendant Mirasol under a lease contract which provided that the term of the lease should be two years, beginning on Oct. 1, 1952, which may be extended for another period not exceeding two years with the written consent of both parties. On October 15, 1954, defendant-lessor wrote plaintiff-lessee that the lease expired on October 1, 1954 and as the latter had lost interest in renewing the same, defendant was giving plaintiff notice of the termination of the contract. Plaintiff then instituted this action in the CFI praying that the court extend the lease for another period of two years, alleging that he had not lost interest in renewing the same and that as defendant had allowed plaintiff to choose to continue the lease for another two years, defendant is now estopped from denying that the lease had already thus been extended. Defendant moved to dismiss the complaint of plaintiff stating as one of many grounds that there is another action pending between the same

parties and for the same cause, referring to the ejectment suit filed by him in the Municipal Court of Manila against plaintiff. The trial court sustained the motion for dismissal. Plaintiff appealed, claiming that the action of defendant was instituted after the action of plaintiff, and that defendant's ejectment suit should be the one dismissed. *Held*, the order of dismissal appealed from should be sustained. The real issue between the parties is whether or not plaintiff-appellant should be allowed to continue occupying the land. As has been held in the case of *Lim Si v. Lim*, G.R. No. L-8496, this issue should be decided in an unlawful detainer or ejectment suit, under Rule 72 of the Rules of Court, even if filed later than another action. The Rules do not require as a ground for the dismissal of a complaint that there is a prior, pending action. They provide only that there is a pending action, not a pending, prior action. TEODORO *v.* MIRASOL, G.R. No. L-8934, May 18, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — PROPERTY IN THE HANDS OF AN ADMINISTRATOR IS IN *CUSTODIA LEGIS* AND THEREFORE NOT SUBJECT TO EXECUTION UNLESS THE JUDGMENT DEBTOR DIES AFTER EXECUTION IS ACTUALLY LEVIED UPON HIS PROPERTY. — On July 30, 1941, judgment was rendered against Zacarias Alo in favor of the respondent Nacua. Alo appealed to the Court of Appeals but before the case was decided, the war broke out and the records in the appellate court were lost. The records in the trial court, however, remained intact. Alo died during the war and after liberation his estate was placed under the administration of his daughter, petitioner herein. On April 28, 1947, Nacua filed a claim in the administration proceedings on the basis of the judgment rendered by the trial court in July 30, 1941. The claim was allowed and Alo's daughter, as administratrix, appealed to the Court of Appeals. When the case reached the Supreme Court, said Court granted the administratrix thirty days within which to perfect an appeal from the decision of the trial court on July 30, 1941. Before the perfection of this appeal by the administratrix, Nacua filed a motion in the trial court for execution pending appeal of its decision, which motion the lower court granted for the reason that the proceedings for the settlement of Alo's estate might be terminated before its decision would be reviewed on appeal. The administratrix contended that no valid or special reason existed for such execution and filed a petition for certiorari. *Held*, if a judgment to recover money as in the present case cannot be issued even when the debtor dies after such judgment becomes final, there is greater reason why execution should not issue when the debtor dies before finality of the judgment. The reason given by the trial court that the administration proceedings may be determined before its decision is reviewed on appeal is inadequate to warrant disregard of a well-known rule that property in the hands of an administrator is in *custodia legis* and therefore not subject to execution unless the judgment debtor dies after execution is actually levied upon his property. ALO *v.* NOLASCO, G.R. No. L-8899, April 28, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — A MOTION FOR NEW TRIAL ON GROUNDS PREVIOUSLY RAISED IN A MOTION PRIOR TO THE RENDITION OF THE JUDGMENT INTERRUPTS THE PERIOD OF APPEAL. — The respondent Golangco filed an action in the Court of First Instance of Manila against the petitioner Villalon. After Golangco had rested his case, counsel for petitioner Villalon moved for a continuance on the ground that the petitioner was sick and could not attend trial. This motion was denied and a motion to reconsider said

order was likewise denied. Subsequently, petitioner filed a motion for reopening on the same ground, to wit, the sickness of the petitioner. This motion was also denied. On June 25, 1954, petitioner filed a motion to set aside the judgment and for a new trial based on the same grounds as the previous motions, and again it was denied. Petitioner appealed. The Court of Appeals denied petitioner's appeal on the ground that it was filed beyond the 30-day period inasmuch as petitioner's motion did not suspend the running of said period. The Court of Appeals argued that the filing of said motion for new trial was for the purpose of delay and therefore did not interrupt the period of appeal. The question presented was should the *pro forma* rule on motions, that is, motions on the ground of insufficiency of evidence or on the ground that the judgment is contrary to law which do not point out the supposed defects in the judgment be extended to a motion for new trial on grounds which have already been raised previously in a motion before jugdment? *Held*, though under the new Rules of Court, a *pro forma* motion for new trial is not permitted and does not interrupt the running of the period for appeal, the presentation of a motion for new trial on grounds previously raised in a motion prior to the rendition of the judgment is not prohibited. It does not follow necessarily that because a motion for continuance had been denied, the ground demanding such continuance, like illness, may not be sufficient ground for obtaining a reconsideration or setting aside of a judgment. Considering the above possibility and the general rule that the presentation of a motion for new trial after judgment ordinarily suspends the period of appeal and there being no express prohibition against the presentation of a motion for new trial on grounds previously raised, the motion for new trial of herein petitioner must be held to have stopped the running of the period for appeal. VILLALON *v.* YSIP, G.R. No. L-8546, April 20, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — AN APPEAL WHICH IS PREMATURELY TAKEN MAY NOT BE ALLOWED EVEN IF THE ADVERSE PARTY DOES NOT OBJECT THERETO. — A decision was rendered against the defendant in a forcible entry case originally instituted in the JP court of Papaya, Nueva Ecija. Execution of the judgment was stayed upon defendant's filing a supersedeas bond. Defendant appealed to the Court of First Instance. The clerk of court notified the parties that the records of the case had been received by him. Both parties, as well as the court however, took no action in the case until a year later when plaintiff's counsel moved that defendant be declared in default for having failed to present an answer. The court granted the motion and authorized the clerk of court to receive the evidence of the plaintiff. Plaintiff presented his evidence as ordered. Whereupon, defendant filed a motion praying that he be relieved from the effects of said order, alleging that he had overlooked filing his answer because he had lost the copy of the notice he had received and that he had a meritorious case. The court denied defendant's motion. Consequently, defendant filed a notice of appeal against the order of the court denying his motion for relief from the order of default. The question presented was whether the merits of the appeal could be considered notwithstanding the fact that there was no judgment on the merits of the case yet and the adverse party failed to object to the prosecution of the appeal. *Held*, the regulation of the right to appeal is founded on rules of policy and convenience. It will be seen that this rule has been adopted in the interest of speedy trials and proceedings and not for the convenience of the parties alone.

Therefore, the failure of the adverse party to object to the appeal for the reason that the order is merely interlocutory is no reason why the appeal, which is premature in this case, should be allowed. ABESAMIS *v.* GARCIA, G.R. No. L-8020, April 11, 1956.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — AN IRREGULAR COURSE TAKEN BY THE COURT, WHICH DOES NOT AMOUNT TO EXCESS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION, CANNOT BE CORRECTED BY CERTIORARI AND MANDAMUS BUT BY APPEAL. — An application for a fishpond permit was filed with the Bureau of Fisheries covering two parcels of land. An objection thereto was filed by the petitioners herein claiming that the land where the fishponds are located was their private property. As a result, a committee was appointed to ascertain the nature of the land. Upon a report of the committee finding the land to be a part of the public domain, the Bureau of Fisheries dismissed petitioners' opposition. Whereupon, petitioners filed a petition in court to enjoin the Bureau of Fisheries from further proceeding in the matter until the nature of the land has been finally determined in an action. This petition was granted but when petitioners filed a motion for admission for an amended petition, the court dismissed the petition on the ground that the petitioners for a writ of prohibition have not exhausted all the administrative remedies provided for by law. For this reason, petitioners filed a petition for certiorari and mandamus against the respondent judge. *Held*, true, the respondent court followed an irregular course in deciding and rendering judgment in the action brought to it without holding any trial or hearing where the parties should have been allowed to present their respective evidence in support of their case and without acting upon a motion of petitioner to allow an amended petition attached thereto. Such an irregular course, however, taken by the court, which does not amount to excess of jurisdiction or grave abuse of discretion, cannot be corrected by the special civil action of certiorari and mandamus but by an appeal which is the plain, speedy and adequate remedy in the ordinary course of law. DIZON *v.* BAYONA, G.R. No. L-8654, April 28, 1956.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — THE QUESTION OF THE AMOUNT OF RENT TO BE PAID BY A LESSEE TO THE LESSOR CANNOT BE DECIDED UPON IN AN ACTION OF CONSIGNATION BUT IN THAT OF FORCIBLE ENTRY AND DETAINER. — The plaintiff was a lessee of an accesoria belonging to the defendant. Upon the reconstruction of the building, the plaintiff offered to pay ₱600 as monthly rent. The defendant refused to accept this offer and fixed the rent at ₱700 per month. As the plaintiff was not willing to pay this rent and fearing that the defendant would bring an action of unlawful detainer to eject him and to recover said rents for the premises, plaintiff deposited the sum of ₱600 every month in court and he filed an action asking the court to fix the monthly rental at ₱600 and that he be authorized to continue occupying the premises. The defendant filed a motion to dismiss said action alleging that the plaintiff's action is one of consignation, which is not the proper remedy, because the question involved should be decided in an action of forcible entry and detainer and subsequently filed an action of that nature. *Held*, the disagreement between a lessor and a lessee as to the amount of rent to be paid by a lessee cannot be decided in an action of consignation but in that of forcible entry and detainer that the lessor institutes when the lessee refuses

to pay the rents that he has fixed for the property. Consignation is proper when there is a debt to be paid, which the debtor desires to pay and which the creditor refuses to receive or neglects to receive, or cannot receive by reason of his absence. The purpose of consignation is to have the obligation or indebtedness extinguished. In the case at bar, the plaintiff sought to have the obligation determined and fixed, hence his action should not be one of consignation. LIM *v.* LIM, G.R. No. L-8496, April 25, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS FOR EXTRA-JUDICIAL PARTITION OF PROPERTY IS SUFFICIENT. — Plaintiffs, Santiago, Feliza, Rosalia, Rosa and Ceferina, all surnamed Esquivel, are co-owners of a parcel of land left by their deceased parents. On September 27, 1946, Anastacia, a sister of the plaintiffs, sold the lot allegedly alloted to her by virtue of an extra-judicial partition among the heirs, the existence of which the plaintiffs disputed, to the defendants. It appeared that prior to this sale by Anastacia to the defendants, some of the plaintiffs had declared their lots corresponding to their share in the inheritance for tax purposes and had sold the same. Subsequently, plaintiffs brought an action to annul the contract of sale between Anastacia and the defendants alleging that since there was no partition of the property yet, the sale was null and void as it was made without their consent as co-owners. When the case reached the Court of Appeals, that court held that although the instrument itself containing the extra-judicial partiion has not been presented as evidence, nevertheless, by superabundance of circumstantial evidence, it was shown that after said partition was effected, almost all of the heirs had disposed of the properties they had inherited and made a written recognition of that fact in documents duly executed by them in connection with the transfers. Plaintiffs appealed contending that in order that a partition may be valid, it must be shown that (a) the decedent left no debts or all debts had been paid, (b) that the heirs and liquidators are all of age and the minors are represented by their judicial guardians, (c) that the partition is made by means of a public instrument or affidavit duly filed with the Register of Deeds, which they asserted were not complied with. *Held*, the evidence obtaining substantially complies with these requirements because it appears that all the heirs were of age, the deceased left no debts and that the partition is evidenced by an affidavit executed by at least five of the heirs. ESQUIVEL *v.* COURT OF APPEALS, G.R. No. L-8825, April 20, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A SPECIAL ADMINISTRATOR MAY BE REMOVED IF HE DOES NOT SUBMIT AN INVENTORY OF THE ESTATE WITHIN A REASONABLE PERIOD. — On May 17, 1945, Vito Borromeo executed a will naming therein Jose Junguera as executor. On March 13, 1952, Vito died and Junguera filed a petition in court praying for the probate of the will. On June 14, 1952, Junguera was appointed as special administrator upon filing a bond as fixed by the court and letters of administration were issued to him. On January 2, 1953, the oppositors to the probate of the will filed a motion for the removal of Junguera as special administrator on the ground that he failed to submit an inventory of the estate as required by law and had thus neglected his duties as administrator. Upon his dismissal, Junguera appealed claiming that his failure to file an inventory was caused by the fact that the papers and docu-

ments relating to the estate were in the possession of one of the oppositors. *Held*, from the time he assumed office as a special administrator until the motion for removal was filed, a period of approximately seven months has passed, and yet he appears not to have taken any steps to determine the property, real or personal, belonging to the estate and much less has filed an inventory thereof with the court as required by law. While section 4 of Rule 82 does not fix any period within which he is required to submit an inventory of the estate, it cannot be denied that such duty has to be performed within a reasonable period, if not as soon as practicable, in order to preserve the estate and protect the heirs of the deceased. Only in that manner can we satisfy the real purpose for which the office of special administrator is provided for. If such were not the case we would be opening the door to the commission of irregularities or other mischiefs which may redound to the detriment of the estate and of the heirs entitled to its distribution. His claim that the papers and documents relative to the estate were in the possession of one of the oppositors is too flimsy to justify the long delay he has incurred in the submission of the requisite inventory. TESTATE ESTATE OF BORROMEO *v.* BORROMEO, G.R. No. L-9314, May 28, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE DISCOVERY OF AN ALLEGED WILL AFTER THE APPOINTMENT OF AN ADMINISTRATOR DOES NOT IPSO FACTO NULLIFY THE LETTERS OF ADMINISTRATION ALREADY ISSUED. — Upon the death of Josefa Lacson Advincula, her husband, petitioner herein, was appointed administrator of her estate. After Advincula had qualified as such, the brothers of the deceased, who left no issue, submitted to the court for allowance an alleged last will of the deceased. Later, Enrique Lacson, one of the brothers, filed a motion praying that he be appointed as administrator of the estate in lieu of the petitioner inasmuch as he was the executor named in the alleged will. This was opposed by the petitioner but his opposition was denied and Lacson was appointed administrator. His motion for reconsideration of this order having been denied, Advincula appealed. *Held*, Lacson's appointment, in lieu of Advincula, as administrator of the estate of Josefa Lacson Advincula, is predicated upon the fact that the former is named executor in the alleged will of the deceased. The provision therein to this effect cannot be enforced, however, until after said document has been allowed to probate. The discovery of a document purporting to be the last will and testament of a deceased, after the appointment of an administrator of the estate of the latter, upon the assumption that he or she had died intestate, does not *ipso facto* nullify the letters of administration already issued or even authorize the revocation thereof, until the alleged will has been "proved and allowed by the court." Rule 83, section 1, of the Rules of Court, is plain and explicit on this point. ADVINCULA *v.* TEODORO, G.R. No. L-9282, May 31, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A GUARDIAN MAY INVEST THE WARD'S MONEY AND THE COURT'S AUTHORITY GRANTING HIM THAT RIGHT MAY BE MADE AFTER THE INVESTMENT. — The Philippine Trust Co. was appointed guardian of the property of the incompetent Braulio and the latter's wife was appointed guardian of his person. The Philippine Trust Co. filed inventories corresponding to several years in which there appear several mortgage investments from the money of the ward. These inventories were approved by the

court despite the wife's objection to one of them. In the inventory account covering the period from 1942 to 1947, there appeared under "Recapitulation" a deduction from the cash balance of the sum of ₱5,841.46 representing payment of various loans given by the Philippine Trust Co. and paid during the Japanese occupation in military notes which were invalidated thus resulting in a loss. The wife filed an opposition to the deduction thus made contending that the mortgage investments made by the Philippine Trust Co. must be deemed to pertain to its private enterprise and could not be validly charged against the funds of the ward. The lower court sustained the wife's opposition and held that as the Philippine Trust Co. had not secured prior judicial authority to make the investments in question, the same cannot be binding upon the funds of the ward. The company appealed. *Held*, section 5 of Rule 96 of the Rules of Court giving the guardian the right to invest the funds of the ward, while requiring judicial authority for such purpose, does not require that such authority must always be prior to the investment. It must be noted that the several inventories filed by the guardian in this case were approved by the court and this approval had the effect of impliedly validating the company's acts and making them binding upon the ward. MARCELINO *v.* BALLESTEROS, G.R. No. L-8261, April 20, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — A LIBEL ATTRIBUTING A DEFECT OR VICE, REAL OR IMAGINARY, WHICH DOES NOT CONSTITUTE A CRIME AT ALL, MAY VALIDLY BE PROSECUTED BY THE FISCAL. — The accused was charged with slander in an information filed by the fiscal for having uttered the slanderous words "Putang ina mo, walang hiya ka, matanda ka," to the offended party. The accused filed a motion to dismiss the case on the ground that the court had no jurisdiction over the offense charged, because the slanderous words do not impute to the offended party a crime or offense which may be prosecuted *de officio* or at all. *Held*, a libel imputing the commission of a crime which cannot be prosecuted *de officio* such as adultery, concubinage, etc., cannot be prosecuted except at the instance of or upon complaint expressly filed by the offended party. A libel therefore attributing a defect or vice, real or imaginary, which does not constitute a crime at all does not come under this rule. Hence, this case was validly initiated by the filing of an information by the fiscal. PEOPLE *v.* AÑEL, G.R. No. L-8393, April 27, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — A COMPLAINT FOR DEFAMATION WHICH ERRONEOUSLY NAMES THE OFFENDED PARTY SUFFERS A MATERIAL MISTAKE AND MUST BE DISMISSED. — A complaint was filed in the justice of the peace charging the accused with defamation against Demetria Somod-ong which was supported by affidavits of Pastora Somod-ong and other witnesses. The court found the existence of probable cause and the case was forwarded to the court of first instance. When the fiscal filed the information, however, he erroneously named Pastora Somod-ong as the offended party and not Demetria Somod-ong. During the trial, all the witnesses testified that it was Demetria Somod-ong who was the offended party. The accused thus asked for the dismissal of the case on the ground that the defamatory remarks were uttered against Demetria and not against Pastora as alleged in the information. The judge dismissed the case and the Solicitor General appealed claiming that the court should have ordered the fiscal to amend the information by changing the

name of the offended party so as to conform to the evidence since the change was merely one of form permitted by section 13 of Rule 106. *Held*, while it is probably true that the fiscal or his clerk made a clerical error in putting in the information the name of Pastora Somod-ong instead of Demetria Somod-ong, as the offended party, the mistake thus committed was on a very material matter in the case, such that it necessarily affected the identification of the act charged. The act of insulting X is distinct from a similar act of insult against Y, even if the insult was proferred by the same person, in the same language and at about the same time. Note that the pleading that gave the court jurisdiction to try the offense is not the complaint of the offended party, but the information by the fiscal, because the charge is the utterance of insulting or defamatory language, not the imputation of an offense which can be prosecuted only at the instance of the offended party. The court did not therefore err in dismissing the case for variance between the allegations of the information and the proof. The court should have, however, ordered the fiscal to file another information with Demetria Somod-ong as the offended party and hold the accused in custody to answer the new charge. PEOPLE *v.* UBA, G.R. No. L-8596, May 18, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — IT IS FOR THE TRIAL COURT RATHER THAN THE APPELLATE COURT TO FIND AND CONSIDER THE CIRCUMSTANCE OF LACK OF INSTRUCTION. — The accused in this case was seen by an eyewitness in a cassava plantation dragging the deceased Mora Anang by the hand. When the witness told the accused, "You are not satisfied that you have caused the pregnancy of the sister of your mother and you have a wife and now here you drag Anang?" the accused answered, "Why, when she consented to this and yet she shouted and cried." Whereupon he hacked the victim with a bolo on the right shoulder. The witness ran to the P.C. Headquarters and reported the crime. Prosecuted and convicted of murder, accused appealed claiming to be entitled to the benefit of the mitigating circumstance of lack of instruction, and the provisions of section 106 of the Administrative Code of Mindanao and Sulu. *Held*, we have repeatedly ruled that it is for the trial court rather than the appellate court to find and consider the circumstance of lack of instruction and similar circumstances in favor of the accused; for it is not illiteracy alone, but the lack of sufficient intelligence and knowledge of the full significance of one's acts, which only the trial court can appreciate, that constitutes this mitigating circumstance. PEOPLE *v.* SAHIBOL SARI, G.R. No. L-7169, May 30, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — A MOTION TO DISMISS BASED ON THE GROUND THAT COMPLAINT STATES NO CAUSE OF ACTION MUST BE DECIDED ON THE BASIS OF THE ALLEGATIONS OF THE COMPLAINT, ASSUMING THEM TO BE TRUE. — Plaintiff Palma was accused in two criminal cases for "fraud against the public treasury" and for "malversation of public funds" of which he was acquitted. He then brought this action against defendants Garciano and Cuenco, to recover damages arising from the institution of the two criminal actions against him, alleging in his complaint that the informations in the above-mentioned criminal cases were caused to be filed through "malicious machination" and in "bad faith," as well as "without any probable cause" and "with the intention of harassing and embarrassing the plaintiff" and "to besmirch his

honor and his reputation" by defendant Cuenco, the Provincial Governor of Cebu, who, it is further said, "acted with evident premeditation" and "due to personal hatred and vengeance against plaintiff" in connivance with defendant Garciano, as Assistant Fiscal of the City of Cebu and "contrary to law." Defendants filed motions to dismiss upon the ground that plaintiff's complaint stated no cause of action which the CFI of Cebu granted. Hence, this appeal by plaintiff Palma. *Held*, the only question for determination by the court, at the time of the order of dismissal, was whether or not the complaint stated a cause of action. This implied that said issue was to be passed upon on the basis of the allegations in the complaint, assuming them to be true. Instead, the trial court inquired into the truth of said allegations and, in effect, found them to be false. And this it did without giving the plaintiff an opportunity to prove his aforesaid allegations. Thus, the lower court had not only exceeded its jurisdiction by going beyond the purview of the issue posed by defendant's motions to dismiss, but had also denied due process of law to plaintiff herein, by, in effect, deciding the case on the merits before it had been submitted for decision and before plaintiff had a chance to introduce evidence in support of the allegations in his complaint. PALMA *v.* GARCIANO, G.R. No. L-7240, May 16, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — FAILURE BY THE COURT TO SPECIFY THE PARTICULAR PROVISION OF THE PENAL CODE WHICH WAS VIOLATED DOES NOT OF ITSELF CONSTITUTE AN ERROR. — The defendant was a salesman of the U.S. Tobacco Corporation whose duty was to sell cigarettes of the corporation in Manila and environs. He could withdraw the products from the warehouse of the corporation but was under obligation to turn over the proceeds thereof to the cashier. From August to November, 1951, his accounts were found short by ₱1,044. Defendant could not account for the shortage and admitted that he kept the amount to himself without turning them over to the corporation nor advising the company of the collections. Prosecuted for estafa, he was found guilty. He appealed, contending that the judgment does not specify the particular provision of the Revised Penal Code under which he was prosecuted and convicted. *Held*, the lower court found the defendant guilty of estafa. Estafa is a well-known crime not only to lawyers but to the community in general, and especially to businessmen and business agents. The penalty imposed upon him also indicates the kind of estafa committed. It is not necessary, therefore, for the court to specify the particular article and paragraph of the Revised Penal Code, which has been violated by the appellant. There are cases where the law or legal principle involved is not obvious or clear. It is in those cases that it would be necessary for the court to specify the particular statute or principle violated. On the other hand, where the statute or principle concerned is readily understood from the facts, the conclusion and the penalty imposed, an express specification of the statute or an exposition of the law is not necessary. Although the decision appealed from does not specify the particular article and paragraph of the Revised Penal Code violated, it cannot be held void for that reason as claimed by appellant, because it was rendered by a court of competent jurisdiction. PEOPLE *v.* SILO, G.R. No. L-7916, May 25, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — A SURETY ON A BOND WHO FAILS TO

PRODUCE THE BODY OF THE ACCUSED OR GIVE SATISFACTORY EXPLANATION FOR ITS NON-PRODUCTION WITHIN THE 30 DAYS GRANTED TO HIM IS NOT ENTITLED TO A FULL DISCHARGE ON HIS BOND, THOUGH IT IS LATER FOUND OUT THAT THE ACCUSED DIED BUT AFTER THE EXPIRATION OF SAID THIRTY DAYS. — The defendant surety company executed a bond for the provisional release of an accused in a criminal case. When the accused failed to appear for arraignment, the bond was ordered confiscated and the defendant was given 30 days within which to produce the body of the accused and to explain why judgment should not be rendered against it. Instead of producing the body of the accused and explaining why no judgment should be rendered for the amount of the bond, the defendant filed an *ex-parte* motion for the immediate issuance of the order of arrest of the accused on the ground that there was sufficient ground to believe that the accused intends to jump his bail. The motion was granted but the defendant did nothing to arrest the accused or to procure said arrest by virtue of the warrant of arrest issued pursuant to said motion. It was found out later that the accused died but his death occurred after the expiration of the thirty-day period granted to the defendant to produce his body. For this reason, defendant filed a motion for the cancellation of the bond. The Provincial Fiscal opposed this motion. *Held*, under section 15 of Rule 110 of the Rules of Court, the defendant should have produced the body of its principal or should have given the reason for its non-production and should have explained satisfactorily why the defendant did not appear before the court when first required to do so. The defendant surety company was negligent in its duties as bondsman in failing to follow the above-mentioned requirements. At most the defendant is entitled to a partial exoneration from its obligations in view of the death of the accused which occurred after the expiration of the 30-day period granted to the defendant to produce his body or explain the reason for its non-production. PEOPLE *v.* LUZON SURETY CO., G.R. No. L-6952, April 25, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — WHEN AN ACCUSED GIVES NOTICE ORALLY IN OPEN COURT OF HIS INTENTION TO APPEAL AT THE PROMULGATION OF THE JUDGMENT AGAINST HIM, HE MAY BE CONSIDERED AS HAVING PERFECTED HIS APPEAL, NOTWITHSTANDING HIS FAILURE TO FILE A WRITTEN NOTICE OF APPEAL. — On April 24, 1953, Jesus Agasang was convicted by the CFI of Nueva Ecija for the crime of serious physical injuries. On June 16, 1953, the decision was promulgated and immediately thereafter, in open court and in the presence of the Provincial Fiscal, Agasang orally announced his intention to appeal and filed a bond wherein he stated he had appealed from the decision, which bond was approved by the Court. On July 16, 1953, he filed a motion for new trial on the ground that the offended party had retracted from his testimony. The Provincial Fiscal opposed said motion on the ground that the decision had already become final because Agasang had failed to perfect his appeal since he had not filed a written notice of appeal within the reglamentary period of 15 days as required by sec. 3 of Rule 118 of the Rules of Court. After due hearing, the trial court denied the motion for new trial on the ground that it was filed out of time. Agasang appealed, claiming that he had complied substantially with the requirements of the law. *Held*, sec. 3 of Rule 118 should be construed liberally for its strict application may cause irreparable damage. The herein appellant never lost interest in his appeal and should not be deprived of his right to appeal simply because he has not filed a written notice of appeal, for he has given verbal notice thereof in open court and in the presence of the adverse party and immediately posted a bond for his provisional release which was duly approved by the court on the very day the decision was promulgated. When an accused manifests his intention to appeal in open court within 15 days from the promulgation of the judgment against him, he may be considered as having perfected his appeal, notwithstanding his failure to file a written notice of appeal and to serve a copy thereof on the adverse party as required by sec. 3 of Rule 118 of the Rules of Court. Since there has been substantial compliance with the law, the appeal is considered perfected and therefore the judgment had not yet become final when appellant filed his motion for new trial. PEOPLE *v.* AGASANG, G.R. No. L-7155, May 4, 1956.

COURT OF APPEALS

CIVIL LAW — PERSONS — A MOTHER MAY BE DEPRIVED OF THE CARE AND CUSTODY OF HER CHILDREN BY REASON OF ADULTERY BECAUSE SUCH MORAL DEPRAVITY IS ONE OF THE CAUSES FOR THE LOSS OF PARENTAL AUTHORITY. — In 1936, plaintiff and defendant, widow and widower respectively, started living together as husband and wife without the benefit of marriage. Out of the union, three children were born. They were legally married only on November 4, 1947. One night, on his way home, defendant caught his wife and their family driver in the act of sexual intercourse. For this offense, the defendant drove his wife away from the conjugal home. She and the children went away and she committed further acts of adultery with the driver. Later, she brought an action for support for herself and the three children under her custody. The lower court denied her support but granted her custody of the children, so the defendant appealed. *Held*, the plaintiff had committed adultery and therefore she had no right to demand support. This judgment of the lower court not having been appealed from by the plaintiff, is already conclusive with binding finality. Section 6 of Rule 100 provides that "when husband and wife are divorced or living separately and apart from each other, . . . the court . . . shall award the care, custody, and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, . . ." Article 171 of the (old) Civil Code provides that courts may deprive parents of their parental authority or suspend the exercise of the same, whenever they treat their children with excessive cruelty or whenever they give them corrupting orders, advice or example. Adultery being a moral depravity, will give a corrupting example to and have a pernicious influence upon the young children of the defendant. To give the plaintiff the care, custody, and control of said children would not at all be conducive to their best interest. BENITO DE CASTILLO *v.* CASTILLO, (CA) G.R. No. 8674-R, Feb. 21, 1956.

CRIMINAL LAW — ASSAULT UPON PERSON IN AUTHORITY — ASSAULT AGAINST A PUBLIC SCHOOL TEACHER NEED NOT BE COMMITTED BY THE PUPILS OR RELATIVES OF THE PUPILS, BUT MAY BE COMMITTED BY ANY PERSON HAVING KNOWLEDGE THAT THE PERSON ASSAULTED IS A PUBLIC SCHOOL TEACHER. — At