R.A. No. 2090. An Act granting Felix Alberto and Company, Incorporated, a franchise to establish radio stations for domestic and transoceanic telecommunications. (H. No. 1177).

R.A. No. 2091. An Act to amend Republic Act Numbered Seven hundred sixty-five, entitled "An Act granting Henry R. Canoy a temporary permit to construct, maintain and operate a radio broadcasting station in the City of Cagayan de Oro." (H. No. 1267).

R.A. No. 2092. An Act granting the Tarlac Development Corporation a temporary permit to construct, establish, maintain and operate private fixed point-to-point radio stations for the reception and transmission of radio communications within the Philippines. (H. No. 1492).

R.A. No. 2093. An Act appropriating funds for public works and for other purposes. (H. No. 1780).

CASE DIGEST

SUPREME COURT

CIVIL LAW — CONTRACT — A TELEGRAPHIC TRANSFER CANNOT BE CONSIDERED TENDER OF PAYMENT WHEN SUCH TRANSFER IS NOT DELIVERED TO CREDITOR. — Defendant acknowledges receipt from the plaintiff of goods valued at ₱1,798.95. Defendant on various occasions from January 6, 1949 up to and including December 17, 1951 made payments with an aggregate total of P1,331.00, leaving a balance of P459.95 on the actual value of said goods. As of April 30, 1952 the total balance on account of the said goods, including interest amounted to P816.88. On October 22, 1952 defendant sent a telegraphic transfer in the amount of P458.92 in favor of plaintiff, said amount being in accordance with the statement of accounts prepared by defendant's accountant. The said telegraphic transfer was not, however, delivered and was returned to defendant. **Held,** when defendant made partial payments, it clearly indicates that it agreed to the terms and conditions of the sale. The fact that defendant sent telegraphic transfer of P458.92 to the Clerk of Court of the Municipal Court of Manila in payment of all obligations had with the plaintiff cannot be considered as tender of payment because it was not received and therefore it cannot be given effect even as partial payment, and obviously it cannot release the obligation, for it did not comply with the requisites provided in articles 1256, 1257, and 1258 of the New Civil Code. ALEMAR'S *v.* CAGAYAN VALLEY COLLEGE, INC., G.R. No. L-11270, April 28, 1958.

CIVIL LAW — CONTRACT — EACH ONE OF THE ITEMS IN AN "INVITATION TO BID" BEING COMPLETE IN ITSELF, THE AWARD OF JUST ONE ITEM TO A BIDDER IS NEITHER A MODIFICATION OF HIS OFFER NOR A PARTIAL ACCEPTANCE THEREOF, ALTHOUGH HE BIDS FOR ALL THE ITEMS. — Prior to May 15, 1952, respondent Rehabilitation Finance Corporation advertised to the public an "invitation to bid" for the construction of a reinforced concrete building at Claveria St., Davao City. The "invitation to bid" contained four separate and distinct items. In response to the invitation, petitioner Valencia submitted a bid, dated May 15, 1952, for all the items. On June 9, 1952, the RFC Board of Governors passed a resolution awarding the contracts on the different items to different bidders. The contract for the fourth item, which was for the plumbing installations, was awarded to Valencia for P12,800. On Aug. 28, 1952, after being notified of the said award, petitioner wrote to the Davao Manager of the RFC, stating that it would be to the advantage of respondent to award the contract for the plumbing installations to the contractor of the main building. In view of petitioner's failure to sign the contract for the plumbing installations, respondent was forced to award the same for P19,000.00 to the contractor for the construction of the building. Hence the action by respondent to recover the sum of P6,200.00,

representing the difference between the amount of the contract awarded to petitioner herein and the price at which the plumbing installations were awarded to the contractor for the building, from Valencia. Valencia alleged, among others, that there was a modification of his offer since he bid for all the four items and was awarded only the contract for item four. **Held,** each one of the items was complete in itself. The award, therefore, in favor of the herein petitioner, implied neither a modification of his offer nor a partial acceptance thereof. It was an unqualified acceptance of the fourth item of his bid, and such acceptance had the effect of perfecting a contract, upon notice of the award to petitioner herein. VALENCIA *v.* REHABILITATION FINANCE CORPORATION ET AL., G.R. No. L-10749, April 25, 1958.

CIVIL LAW — CONTRACTS — A CONTRACT, ONCE PERFECTED, IS BINDING ON BOTH PARTIES AND ITS VALIDITY OR COMPLIANCE CANNOT BE LEFT TO THE WILL OF ONE OF THEM. — The petitioner was the owner of a parcel of land occupied and utilized by the Armed Forces of the Philippines as impact area. A quitclaim agreement was signed by the petitioner whereby the Armed Forces agreed to pay ₱15,067.31. Before the agreement could be signed in behalf of the Republic, a survey was made by the Armed Forces to ascertain the damage to the property. The survey party found no substantial damage to the property to justify the payment of ₱15,067.31. The petitioner was offered ₱3,386.40 which he refused to accept. During the negotiations the petitioner was paid ₱7,000 without prejudice to further claims on the balance. The petitioner requested payment of the balance of her claim from the Auditor General. The claim was denied, hence the present petition for review. **Held,** a contract, once perfected, is binding on both parties and its validity or compliance cannot be left to the will of one of them. DE MURCIANO *v.* AUDITOR GENERAL, G.R. No. L-11744, May 28, 1958.

CIVIL LAW — CREDIT TRANSACTIONS — BETWEEN TWO JUDGMENT CREDITS, ONE PRIOR IN TIME AND SECURED BY A REAL ESTATE MORTGAGE AND THE OTHER LATER IN TIME AND UNSECURED, THE FORMER IS PREFERRED. — G. K. Co Bun was the owner of a seventeen-door apartment building on a land leased from another. The apartment was mortgaged by its owner in favor of three persons to secure the payment of 3 loans contracted for the preservation of the building. There was a foreclosure of the second mortgage, but the execution was not carried out because the building was put under receivership. The petitioner subsequently became the assignee of the rights under the three mortgages. In the meantime, a judgment was rendered in favor of the owner of the land on which the apartment was constructed for nonpayment of back rentals. The petitioner filed a motion in the receivership case to pay him the judgment rendered during the foreclosure of the second mortgage. The motion was denied giving the impression that the judgment in favor of the owner of the land for back rentals had preference. Hence this petition for certiorari. **Held,** between two judgment credits, one prior in time and secured by a real estate mortgage and the other later in time and unsecured, the former is preferred. CORDOVA *v.* NARVASA, G.R. No. L-12348, May 28, 1958.

CIVIL LAW — INDEPENDENT CIVIL ACTION — A CIVIL ACTION BASED ON A QUASI-DELICT MAY PROCEED INDEPENDENTLY OF THE CRIMINAL PROCEEDINGS AND REGARDLESS OF THE RESULT OF THE LATTER. — A passenger bus of the Philippine Rabbit Co. bumped and crashed into the rear of Alfredo Chan's freight truck, resulting in the death of several passengers and in physical injuries to others. The collision also caused injury to the freight truck's driver, and damage to the truck itself and its cargo of rice and other commodities. As a consequence, the driver of the passenger bus was prosecuted for multiple homicide, serious physical injuries, and damage to property through reckless imprudence. While the criminal prosecution was pending, a civil action by Chan was filed against the Philippine Rabbit Co. to recover the value of damages caused to his truck and cargoes, consequential losses, salaries to the driver, and attorney's fees. The respondent judge, however, suspended the proceedings on the civil case when he learned of the pending criminal prosecution arising from the same transaction or occurrence. His motion for reconsideration having been denied, Chan filed this present petition to annul such order. **Held,** since the case is one of the independent civil actions, it may proceed independently of the criminal proceedings and regardless of the result of the latter. CHAN *v.* YATCO, G.R. No. L-11163, April 30, 1958.

CIVIL LAW — OBLIGATIONS — THE MERE FAILURE ON THE PART OF THE CREDITOR TO DEMAND PAYMENT AFTER THE DEBT HAS BECOME DUE DOES NOT CONSTITUTE AN EXTENSION OF THE TERM OF THE OBLIGATION. — On August 21, 1952, defendants-appellants Reyes and Enriquez mortgaged to plaintiff-appellee Lerma a parcel of land and the improvements thereon for the sum of ₱70,000.00 with interest at the rate of 12% per annum, the interest for the months of August to October payable at the execution of the contract, and the succeeding monthly interests on the first day of every month, the mortgage, to expire on August 1, 1953, unless extended for another year if the mortgagor would have complied with all its provisions. The mortgage was duly registered. The defendants paid the interests for the months of August 1, 1952 to June, 1953 and thereafter failed to pay further interests or the principal loan. The plaintiff filed an action for the payment of the mortgage debt of ₱70,000, the accrued interest of ₱7,700, the fire insurance premiums of ₱937.50 plus attorney's fees, and upon failure of defendants to pay these amounts, for the foreclosure of the property mortgaged. The defendants answered that they were given an indefinite extension of time to pay the loan and thus the filing of the action was premature. The lower court found that although the plaintiffs had given the defendants an extension of time to pay the interest due for the months of May to September of the year 1953, he did not extend the period for the payment of the principal loan of ₱70,000, with the effect that the capital and the accrued interests became due one year from August 1, 1952. Judgment was rendered against the defendants. The defendants appealed contending that the plaintiff by giving them an indefinite extension of time to pay the interests on the loan in question for the months of May to September, 1953, and did not file the action for foreclosure at the expiration of one year from August 1, 1952, also extended the payment of the principal loan for another year, or up to August 1, 1954. **Held,** the mere failure on the part of the creditor to demand payment after the debt has become due does not constitute an

extension of the term of the obligation. LERMA *v.* REYES, G.R. No. L-12081. May 30, 1958.

CIVIL LAW — PERSONS — WHERE THE WIFE ASSUMED MANAGEMENT OF THE CONJUGAL PARTNERSHIP WITHOUT THE HUSBAND'S CONSENT, HIS REMEDY DOES NOT LIE IN A JUDICIAL SEPARATION OF PROPERTY FOR MISMANAGEMENT OR MALADMINISTRATION BUT IN AN ACTION TO ENFORCE HIS RIGHT TO POSSESSION AND CONTROL OF THE CONJUGAL PROPERTY, EVEN TO THE EXTENT OF ANNULLING AND RESCINDING ANY UNAUTHORIZED ALIENATION OR ENCUMBRANCES. — Gonzalo Garcia and Consolacion Manzano were husband and wife. As a result of their efforts, they acquired and accumulated real and personal properties. The couple separated and the defendant Manzano assumed the complete management and administration of the conjugal partnership property. The plaintiff Garcia filed an action for the judicial separation of their conjugal partnership property on the ground of mismanagement on the part of his wife. **Held**, when the wife assumed management of the conjugal partnership without the husband's consent, his remedy does not lie in a judicial separation of property for mismanagement or maladministration, but in an action to enforce his right to possession and control of the conjugal property, even to the extend of annulling and rescinding any authorized alienation or encumberances. GARCIA *v.* MANZANO, G.R. No. L-8190, May 28, 1958.

CIVIL LAW — PERSONS — WHERE BOTH THE HUSBAND AND THE WIFE COMMITTED MARITAL OFFENSES AGAINST ONE ANOTHER, THE FORMER CANNOT CLAIM THE ADULTERY OF THE LATTER AS A DEFENSE TO FREE HIM FROM THE OBLIGATION TO GIVE HER SUPPORT. — Plaintiff Hipolita Almacen and defendant Teodoro Baltazar were legally married. In 1937 plaintiff committed adultery with defendant's cousin. But prior to this defendant was also unfaithful to his wife as he was once confined in a hospital for venereal diseases. After the defendant separated from the plaintiff due to the latter's infidelity, he lived with another woman. After their separation the defendant, on certain occasions, sent plaintiff some money thru third persons. Upon these facts the Court of First Instance of Manila sentenced the defendant to give a ₱50.00 monthly support to his wife. He appealed alleging that the Court erred in not taking the plaintiff's adulterous act as a defense against her claim for support and in not exempting him from such support. **Held**, where the husband and the wife both acted in bad faith, being in **pari delicto** for having committed marital offenses against one another, they shall be considered to have acted in good faith and the husband, consequently, cannot claim the adultery of his wife as a defense to free him from the obligation to give her support. ALMACEN *v.* BALTAZAR, G.R. No. L-10028, May 23, 1958.

CIVIL LAW — PERSONS — THE RIGHT TO SUPPORT DOES NOT ARISE FROM THE MERE FACT OF RELATIONSHIP, BUT FROM IMPERATIVE NECESSITY. — Jocson was appointed guardian of the persons and properties of his then minor children. Carlos, Rodolfo, Perla, Enrique and Jesus, on October 3, 1950. He had filed bond with the Empire Insurance Co. as surety. In the course of the guardianship, Jocson submitted periodic accounts to the court, among them those expenses incurred for the education and clothing of the wards. The reports

were approved by the court. Jocson died on February 12, 1954 and Perla, who together with Carlos and Rodolfo, had already attained the age of majority, was appointed guardian of the remaining minors, Enrique and Jesus. On September 29 of the same year, Perla filed a petition to have the accounts of the deceased guardian reopened, claiming that the disbursement made from the guardianship funds were illegal. Upon coming of age, Enrique and Jesus adopted the petition as their own and then moved that the disbursements in question be declared illegal and that Jocson's bond as guardian be made to answer therefor. The appellants contended that the expenses for their education and clothing were part of the support they were entitled to receive from their father, so that such expenses should not be taken from the guardianship funds. **Held**, support includes what is necessary for the education and clothing of the person entitled thereto, but support must be demanded and the right to it established before it becomes payable. The right to support does not arise from the mere fact of relationship, but from imperative necessity. JOCSON *v.* EMPIRE INSURANCE Co., G.R. No. L-10792, April 30, 1958.

CIVIL LAW — PRESCRIPTION — THE PRESCRIPTIVE PERIOD OF A CIVIL ACTION ARISING FROM LIBEL IS ONE YEAR. — Plaintiff-appellant filed a civil action for recovery of damages which she allegedly suffered because of the publication of a libelous letter of separation written by her former employers. The complaint was filed one year and six months after the publication of the alleged libelous letter. Defendant moved for the dismissal of the case on the ground of prescription. The motion for dismissal was granted, hence, this appeal. **Held**, an action for defamation must be filed within one year. The broad term "defamation," in the absence of any other specific provision of law, includes libel. TEJUCO *v.* E. R. SQUIBB & SON PHIL. CORP., ET AL., G.R. No. L-11052, April 30, 1958.

CIVIL LAW — PROPERTY — A HOUSE CONSTRUCTED BY THE LESSEE OF THE LAND ON WHICH IT IS BUILT SHOULD BE DEALT WITH, EVEN FOR PURPOSES OF ATTACHMENT, AS AN IMMOVABLE PROPERTY. — On June 4, 1949, petitioner Santos Evangelista instituted a civil action against Ricardo Rivera for the recovery of a sum of money. Petitioner obtained a writ of attachment which was levied upon the house built by Rivera on a land leased to him by filing a copy of said writ and the corresponding notice of attachment with the Office of the Register of Deeds of Manila on June 8, 1949. In due course, judgment was rendered in favor of Evangelista who, on Oct. 8, 1951, bought the house at the public auction held in compliance with the writ of execution issued in said case. A deed of sale was issued to him on Oct. 22, 1952. When Evangelista sought to take possession of the house, Rivera refused to surrender it on the ground that the Alto Surety & Insurance Co., was the true owner of the property because on May 10, 1952, a definite deed of sale of the same house had been issued to the said company as the highest bidder at an auction saled held on Sept. 29, 1950, in compliance with a writ of execution issued in the civil case brought by the herein respondent company against Quiambao, Guevara, and Rivera. Hence, this action to establish petitioner's title over the house, and to secure possession thereof, apart from the recovery of damages. Respondent alleged that it

had a better right to the house since the definite deed of sale made in its favor is prior to that made in favor of the petitioner. **Held**, a house constructed on leased land is an immovable property, and should be considered such even for purposes of attachment. Petitioner has a better right to the house since the attachment, which was prior to the execution of the deed of sale in favor of the respondent company, was valid for the reason that Rivera had notice thereof. EVANGELISTA *v.* ALTO SURETY & INSURANCE CO., INC., G.R. No. L-11139, April 23, 1958.

CIVIL LAW — PROPERTY — ACTIONS TO QUIET TITLE TO PROPERTY ARE IMPRESCRIPTIBLE. — Sapto, now deceased was the registered owner of a parcel of land under TCT No. T-5701. When he died, he left three sons as heirs to the property. Ramon predeceased his two brothers, Constancio and Samuel, leaving no other heirs. On June 6, 1931, Samuel and Constancio executed a deed of sale of a portion of the land in favor of the defendant. The sale was duly approved by the Provincial Governor of Davao but was never registered. Constancio died without any issue. Samuel at his death left a widow and two children who, on Oct. 19, 1954, filed an action for the recovery of the land sold by their predecessors to the defendant in 1931. The defendant had been in the possession of the land since 1931. After the trial, the lower court ruled that the sale, although not registered, was valid and binding upon the parties and the vendor's heirs, and ordered the plaintiffs to execute the necessary deed of conveyance in the defendant's favor and its annotation in the certificate of title. The plaintiff appealed, contending that it was error to require them to execute a deed of conveyance and arguing that the action has long prescribed, twenty years having elapsed since the original sale. **Held,** the action is actually one for the quieting of title. Actions to quiet title to property are imprescriptible. SAPTO *v.* FABIANA, G.R. No. L-11285, May 16, 1958.

CIVIL LAW — PROPERTY — A BUILDING CANNOT BE DIVESTED OF ITS CHARACTER OF A REALTY BY THE FACT THAT THE LAND ON WHICH IT IS CONSTRUCTED BELONGS TO ANOTHER. — The spouses Valino were the owners and possessors of a house of strong materials constructed on a lot, which they purchased on installments from the Philippine Realty Corporation. On November 16, 1951, to enable her to purchase rice from the NARIC on credit, Lucia Valino filed a bond subscribed by the Associated Insurance and Surety Co. and as counter-guaranty therefor, the spouses executed a chattel mortgage on the house in favor of the surety company, which encumbrance was duly registered with the Chattel Mortgage Register of Rizal on December 6, 1951. At the time of the mortgage, the land on which the house was erected was still in the name of the Philippine Realty Corporation. On October 18, 1952, the spouses completed payment of the purchase price of the land and obtained a certificate of title. On October 24, 1952, the spouses obtained a loan from Isabel Iya, and executed a real estate mortgage over the land and the house, which was duly registered and annotated at the back of the title. Lucia Valino failed to pay her obligation to the NARIC, and the surety company was compelled to pay the same. The spouses were not able to reimburse the surety company, as a consequence of which the latter foreclosed the chattel mortgage. On

December 26, 1952, the surety company acquired the house at a public auction. In July, 1953, the surety company filed an action for the exclusion of the house from the real estate mortgage in favor of Iya. On October 29, 1953, upon failure of the spouses to pay the loan, Iya brought an action for the foreclosure of the mortgage. The two cases were jointly heard. The lower court held that the surety company had a superior right over the house, because the chattel mortgagors were not yet the registered owners of the land on which the building was erected. Hence this appeal. **Held,** a building cannot be divested of its character of a realty by the fact that the land on which it is constructed belongs to another. The foreclosure of the real estate mortgage should extend to the land and the house. IYA *v.* VALINO, G.R. No. L-10838, May 30, 1958.

CIVIL LAW — SALE — A SALE BY VIRTUE OF AN ATTACHMENT RETROACTS TO THE DATE OF THE REGISTRATION OF THE WRIT OF ATTACHMENT AND THE PREFERENCE OF THE ATTACHMENT CREDITOR IS DETERMINED, NOT BY THE DATE OF EXECUTION SALE, BUT BY THE DATE OF REGISTRATION OF THE WRIT. — This is an appeal from judgment of the CFI of Nueva Ecija declaring the PNB absolute owner of the rights, interests, and participation of spouses Candelaria and Tecson on several parcels of land by virtue of final bill of sale executed by the sheriff in its favor. In a case between the PNB and the spouses, the former secured a writ of attachment against the land of the spouses which writ was registered on March 25, 1949. Then on Oct. 13, 1950, the spouses made an assignment in favor of the PNB was not registered. The lands were sold at public auction and the PNB was the highest bidder. The sheriff issued a certificate of sale which was registered only in Dec. 24, 1954. In another case between Viola and the spouses, Luzon Surety secured a writ of attachment on the same land which was sold to the PNB. Such writ was registered on April 5, 1949. By virtue of a judgment, the lands were sold at public auction. Luzon Surety was the highest bidder and therefore bought the land. The sheriff executed a certificate of sale which was registered on Oct. 10, 1951. Upon failure to redeem the lands, the final bill of sale was executed by the sheriff on Nov. 29, 1952. In a cadastral case, the court ordered the registration of the final bill of sale issued by the sheriff in favor of the PNB and the Luzon Surtey. The PNB registered its bill of sale but the Luzon Surety did not. **Held,** a sale by virtue of an attachment retroacts to the date of registration of the writ of attachment, and the preference of attachment creditor is determined, not by the date of execution sale, but by the date of the registration of the writ. Therefore, the PNB has acquired a valid and preferential title to the lands in question by virtue of the final bill of sale executed in its favor by the sheriff as a result of the auction sale. And since the appellant, Luzon Surety, was merely a redemptioner who stepped into the shoes of the judgment debtors and has failed to exercise the redemption within the period prescribed by law, its rights, if any, to the properties in question has become forfeited. PHIL. NATIONAL BANK *v.* LUZON SURETY CO., G.R. No. L-11112, May 28, 1958.

CIVIL LAW — SALE — THE JUDGMENT EFFECTING THE EVICTION NEED NOT BE RENDERED IN A LAND REGISTRATION CASE, PROVIDED IT IS A FINAL JUDGMENT AND THE VENDEE NEED NOT APPEAL THEREFROM IN ORDER THAT THE VENDOR MAY BECOME LIABLE FOR EVICTION. — On October 6, 1948, Cesario Fabri-

cante and the Bureau of Hospitals executed the deed of purchase and sale whereby the former sold to the latter a parcel of land of about 423.5790 hectares, situated in Cabusao, Camarines Sur, for the sum of ₱42,350.00, with express warranty against eviction and promise of a bond in the sum of ₱80,000.00, to back up the warranty. The conditions of said bond as regards the liability of the surety, Alto Surety & Insurance Company were:

"The Bureau of Hospitals, will commence registration proceedings within one (1) year from the date of the bond.

"In case a third party succeeds in claiming a portion of the property, the Principal and consequently the Surety will respond proportionally at the maximum rate of ₱100.00 per hectare."

On July 22, 1952, the Republic of the Philippines filed an action against Sulpicio Roco, to quiet title to the land in view of the fact that Roco claimed about 55 hectares thereof. The CFI decided in favor of Roco. The Government did not appeal but instead, demanded payment from the surety. The latter refused on the ground that the surety could be liable only for judgment of eviction rendered in a land registration proceeding. **Held,** the judgment effecting the eviction need not be rendered in a land registration case, provided it is a final judgment and the vendee need not appeal therefrom in order that that the vendor may become liable for eviction. Therefore, the defendant surety is liable under the bond. REPUBLIC OF THE PHILIPPINES *v.* ALTO SURETY & INSURANCE CO., G.R. No. L-12375, May 21, 1958.

CIVIL LAW — CREDIT TRANSACTIONS — THE PROVISIONS OF THE CHATTEL MORTGAGE LAW, WITH REGARD TO THE EFFECTS OF THE FORECLOSURE OF A CHATTEL MORTGAGE ALLOW THE RECOVERY OF DEFICIENCY AFTER FORECLOSURE. THE PROVISIONS OF THE NEW CIVIL CODE ON PLEDGE WHICH PROHIBIT THE RECOVERY OF DEFICIENCY DOES NOT APPLY. — The defendant executed a chattel mortgage in favor of the plaintiff on an Oldsmobile car to secure a loan of ₱2,250, payable after 60 days, with interest. Upon failure to pay the debt at maturity, the plaintiff proceeded to foreclose the mortgage extrajudicially. The mortgaged chattel was sold at public auction for ₱700. Deducting this amount from the total obligation, in addition to the interest and liquidated damages agreed upon, there was a balance of ₱2,675. To collect this balance, the plaintiff instituted this present action for deficiency arising from the foreclosure. The lower court denied the recovery of deficiency, applying the provisions of the new Civil Code on pledge which prohibit the recovery of deficiency. **Held,** the provisions of the Chattel Mortgage Law with regard to the effects of the foreclosure of a chattel mortgage allow the recovery of deficiency after foreclosure. The provisions of the New Civil Code on pledge which prohibit the reocvery of deficiency do not apply. ABLAZA *v.* IGNACIO, G.R. No. L-11460, May 23, 1958.

COMMERCIAL LAW — INSURANCE — A GOVERNMENT EMPLOYEE LAID OFF UNDER THE REORGANIZATION LAW, R.A. No. 422, WHO APPLIED FOR RETIREMENT INSURANCE BENEFITS UNDER R.A. No. 660, LOSES HIS RIGHT TO GRATUITY UNDER THE FORMER LAW. — Petitioner Marcelino Gabriel was laid-off as Public Schools District Supervisor when his position was abolished by Executive Order No. 392 in pursuance to the Reorganization Law, R.A. No. 422. He received a gratuity equivalent to his one year salary. Subsequently, he applied with the respondent G.S.I.S. for retirement insurance under R.A. No. 660, electing monthly joint annuity without a definite period but payable during the lifetime of his wife, subject to reduction upon death of either spouse, to 1/2 of the amount in favor of the survivor. The application having been approved, Gabriel was given an annuity fixed at ₱62.15 monthly. He was to have received ₱79.63 monthly but respondent deducted, without refund, certain amounts for the gratuity he previously received under R.A. No. 422. Alleging that the deductions were unlawful, Gabriel filed a petition for mandamus with the CFI of Manila, to restrain the respondent from making such deductions, which petition was denied. The issue is whether the gratuity received by Gabriel under Executive Order No. 392, pursuant to the Reorganization Law, R.A. 422, is deductible from his annuity under R.A. 660. **Held,** one separated from the service under R.A. No. 422 is given in R.A. No. 660 the option to avail of the retirement insurance provided by the latter subject to condition that 'any gratuity or retirement benefits already received by him should be refunded to the system." Petitioner necessarily accepted this condition, and voluntarily divested himself of his right to gratuity, when he applied for benefits under R.A. No. 660. GABRIEL *v.* G.S.I.S., G.R. No. L-11580, May 9, 1958.

COMMERCIAL LAW — PRIVATE CORPORATIONS — OFFICERS OF A CORPORATION ARE THOSE WHO ARE GIVEN THAT CHARACTER EITHER BY THE CORPORATION LAW OR BY ITS BY-LAWS. — The plaintiff instituted a complaint in the CFI of Iloilo to have Resolution No. 65 of the Board of Directors of the La Paz Ice Plant and Cold Storage Co., Inc., removing him from his position as manager of said corporation declared null and void and to recover damages incident thereto on the ground that said resolution was adopted in contravention of the provisions of the by-laws of the said corporation, of the Corporation Law and of the understanding, intention and agreement reached among its stockholders. The defendants answered the complaint, setting up as a defense that the plaintiff had been removed by virtue of a valid resolution. By agreement of the parties and without any trial on the merits, the case was submitted for judgment on the sole legal question of whether the plaintiff could be legally removed as manager merely by resolution of the Board of Directors or whether the affirmative vote of two-thirds of the paid shares of stock was necessary for that purpose. **Held,** officers of a corporation are those who are given that character either by the Corporation Law or by its by-laws. The manager of a corporation, appointed by the Board of Directors, is not an officer, and may be removed thru resolution of the Board. GURREA *v.* LEZAMA, G.R. No. L-10556, April 30, 1958.

COMMERCIAL LAW — PRIVATE CORPORATIONS — A PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF A CORPORATION WHICH HAS NO VALID EXISTENCE ASSUMES SUCH PRIVILEGES AND OBLIGATIONS AND BECOMES PERSONALLY LIABLE FOR CONTRACTS ENTERED INTO OR OTHER ACTS PERFORMED AS SUCH AGENT. — Upon failure to comply with the obligation of the lease contract, Salvatierra, on April 5, 1955, filed with the CFI a complaint against the Philippine Fibers Producers Co., allegedly a corporation duly registered, and Refuerzo, president of said corporation, for accounting, rescission, and damages. Judgment was rendered against the corporation and its president. No appeal having been perfected within the reglamentary period, the court, upon plaintiff's motion, issued a writ of execution, as a result of which

three parcels of land registered in Refuerzo's name were attached by the sheriff. No property of the corporation was available for attachment. On January 31, 1956, defendant Refuerzo filed a motion claiming that the decision was null and void with respect to him, there being no allegation in the complaint pointing to his personal liability, for while it was stated therein that he was a signatory to the lease contract, he did so in his capacity as president of the corporation. **Held,** a person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent. SALVATIERRA *v.* GARLITOS, G.R. No. L-11442, May 23, 1958.

CRIMINAL LAW — LIBEL — THE OBNOXIOUS WRITING IN CASE OF LIBEL NEED NOT MENTION THE LIBELED PARTY BY NAME, THE PROSECUTION BEING PERMITTED TO PROVE BY EVIDENCE THAT A VAGUE OR GENERAL IMPUTATION OF DISHONORABLE CONDUCT REFERS TO THE COMPLAINANT. — Ernesto Silvela was charged with libel in the CFI of Iloilo. It was alleged that the accused signed, sent and addressed 2 unsealed letters to the complainant, Miss Rosalia Bermejo Paluar, branding and imputing the latter as "pompom," "naga business," "naga prostitute," "prostitute." The two letters were dated September 21 and 25, 1955, respectively. The following appeared in the letter of September 21: "My dear Miss Rosalia Paluar: xx xx You don't know about the very word, libel, and yet you have the nerve to frighten my brother-in-law of its consequences xx xx the great fine and long imprisonment. However, before bringing it to Court, may I advise you to change the word naga business to naga prostitute. xx xx You know, the most appropriate English term for "pompom" is prostitute, xx xx." While in the letter of September 25 the following appeared: "Dear Miss Rosalia B. Palauar: I am afraid xx xx your mind is exceedingly polluted xx xx. I was only advising you to change the word, "naga business" to "naga prostitute" since the equivalent English word for "pompom" is prostitute xx xx. I cannot acquiesce to your kind request. I have been trained in my profession to be exact to the smallest fraction; hence, I always call a spade, a spade, and a shovel, a shovel. xx xx At any rate, I mean every word I say and I'm conscious of its consequences." Before arraignment, Silvela moved to quash the information on the ground that the facts alleged did not constitute an offense. The trial judge sustained the motion reasoning that "nowhere in the quoted letters does it appear that defendant has defamed or insulted the complainant and if there is any imputation of immoral character in the letters, still the imputation is impersonal and does not point to the complainant as the person alluded to." **Held,** the obnoxious writing need not mention the libeled party by name, the prosecution being permitted to prove by evidence that a vague or general imputation of dishonorable conduct referred to the complainant. As regards publication, it was held that where the accused signed and sent to offended party a letter "not shown to be sealed," there was publication. Sending of an "unsealed letter" as in this case, should be a **fortiori** held to be publication. PEOPLE *v.* SILVELA, G.R. No. L-10610, May 26, 1958.

CRIMINAL LAW — LIGHT THREATS HARM WAS ORAL AND MADE IN THE HEAT THAT THE THREAT TO INFLICT BODILY — THE ALLEGATIONS IN THE COMPLAINT

OF ANGER AND THAT THE ACCUSED DID NOT, BY HIS POSTERIOR ACTS, SHOW THAT HE PERSISTED IN HIS THREATS, ARE DESCRIPTIVE MERELY OF LIGHT THREATS. — On September 27, 1955 the following information was filed against Eduardo Ramirez in the Manila Municipal Court — that on July 28, 1955 accused, "in a heat of anger, xx xx did xx xx unlawfully and orally threaten to do some bodily harm on the persons of xx xx without, however, showing by his posterior acts that he persisted in the idea signified by his threat." Ramirez moved to quash the information on the ground of prescription as it was filed 61 days after the alleged act was committed. The motion was granted and was sustained by the Manila Court of First Instance upon appeal by the government. The prosecution appealed, contending that the charge constituted grave threats under par. 2, Art. 282, of the R.P.C. **Held,** the allegations in the complaint that the threat to inflict bodily harm was oral and made in the heat of anger and that the accused did not, by his posterior acts, show that he persisted in his threats, are descriptive merely of light threats and the dismissal thereof by the trial court on the ground of prescription, as it was filed 61 days after the alleged act was committed, was correct. PEOPLE *v.* RAMIREZ, G.R. No. L-10085, May 23, 1958.

CRIMINAL LAW — MALICIOUS MISCHIEF — CAUSING DAMAGE TO THE PROPERTY OF ANOTHER, WITH THE INTENT TO CAUSE INJURY, DUE TO ANGER AND RESENTMENT, CONSTITUTES THE CRIME OF MALICIOUS MISCHIEF. — An information for malicious mischief was filed against the accused in the Municipal Court to which he pleaded not guilty. After the prosecution had presented its evidence, he moved to quash the information on the ground that the prosecution failed to prove all the elements of the crime charged. The motion was denied. After the accused presented his evidence, the court found him guilty of malicious mischief. He appealed to the Court of First Instance where again he was charged with the same offense. He reiterated his motion to quash which was sustained by the court. Hence this appeal. **Held,** causing damage to the property of another, with the intent to cause injury, due to anger and resentment, constitutes the crime of malicious mischief. PEOPLE *v.* SEGOVIA, G.R. No. L-11748, May 28, 1958.

CRIMINAL LAW — MITIGATING CIRCUMSTANCES — THE TEST FOR THE MITIGATING CIRCUMSTANCE OF INSTRUCTION IS NOT ILLITERACY ALONE, BUT ALSO INTELLIGENCE. VOLUNTARY SURRENDER CANNOT BE CLAIMED WHEN THE ACCUSED SURRENDERED, NOT ON ACCOUNT OF THE CRIME COMMITTED BUT FOR BEING A Huk. — Felix Semañada was accused of robbery with homicide. It was proved at the trial that the accused, with two other companions, killed, violated and ransacked the victim's house. They were at that time members of the Huk organization. Later on, he surrendered to the Armed Forces of the Philippines, upon realizing the evils of communism and the beauty of democracy. The accused was found guilty as charged and was sentenced to die in the electric chair. **Held,** the test for the mitigating circumstance of lack of instruction is not illiteracy alone, but also intelligence. Although he only reached Grade II, the accused was able to distinguish between implications and innuendoes. Voluntary surrender cannot be claimed,

when the accused surrendered not on account of the crime committed, but for being a Huk. PEOPLE *v.* SEMAÑADA, G.R. No. L-11361, May 26, 1958.

CRIMINAL LAW — PRESCRIPTION OF CRIMES — IN ACCORDANCE WITH SEC. 1 OF ACT NO. 3585 WHICH AMENDED ACT NO. 3326, ALL OFFENSES AGAINST ANY LAW OR PART OF LAW ADMINISTERED BY THE COLLECTOR OF INTERNAL REVENUE PRESCRIBE IN 5 YEARS. — On or about the 17th day of Feb. 1948, in the City of Manila, the accused willfully and unlawfully failed and refused to pay, and continued refusing to do so, the war profits taxes due from him in favor of the Republic of the Philippines amounting to ₱33,643.65, Philippine currency. On March 31, 1954, the herein defendant was charged for violation of Sec. 5 (b) in connection with Sec. 8 of Rep. Act No. 55. Defendant entered a plea of not guilty and presented a motion to quash on ground that the criminal liability charged therein had been extinguished by prescription. The lower court sustained the motion of the defendant and dismissed the complaint. The plaintiff herein appealed contending among others that the law applicable to the present case are Article 90 and 91 of the Revised Penal Code. **Held,** Article 90 of the Revised Penal Code providing for prescription of crimes does not apply to prescription of violations of Special laws or part of laws administered by the Bureau of Internal Revenue as provided under Sec. 9 of Rep. Act No. 55. In accordance with Sec. 1 of Act No. 3585 which amended Act No. 3326, all offenses against any law or part of law administered by the collector of Internal Revenue prescribe in 5 years. PEOPLE *v.* CHING LAK, G.R. No. L-10609, May 23, 1958.

CRIMINAL LAW — REPUBLIC ACT NO. 602 — FAILURE TO PAY WAGES COMES WITHIN THE PURVIEW OF BOTH COMMONWEALTH ACT NO. 303 AND REPUBLIC ACT NO. 602, SECTION 15. — On February 8, 1952, in Muelle de la Industria, San Nicolas, Manila, appellant Venancio Manangco contracted the services of several laborers to do the loading and unloading of cement sacks that were to be undertaken in Marivelos, Bataan. The shipment of cement belonged to the National Steel and Shipyard Company, and the Pan-Philippine Shipping Co. was the entity that had entered into contract with several companies or persons for such loading and unloading. The loading and unloading was finished on February 6, 1952, and notwithstanding the laborers' repeated demands on appellant to pay them the wages due, he refused, and failed to pay them up to the present. Appellant admitted failure to pay but claimed that he was erroneously prosecuted under Commonwealth Act No. 303 instead of under Republic Act No. 602, the latter having repealed the former. **Held,** the failure to pay wages comes under the purview of both Commonwealth Act No. 303 and Republic Act No. 602, section 15. As under the facts of the case, defendant cannot be convicted under both Acts, we have to conclude that the latter Act, at least in so far as the issues herein involved are concerned, covers and repeals the provisions of the former Act on the point. and although the appellant has been prosecuted under Commonwealth Act No. 303 in connection with Article 315 of the Revised Penal Code. since the elements constituting a violation of Section 15 of Republic Act No. 602 are fully averred in the information, we would find no obstacle in declaring the defendant-appellant guilty of a violation of this law, if the evidence on record would show, as it does, his guilt

of a violation thereof, although the penalty to be imposed would have to be in accordance with the latter law. PEOPLE *v.* MANANGCO, G.R. No. L-11526, April 30, 1958.

LABOR LAW — CERTIFICATION ELECTIONS — ONLY MEMBERS OF WATCHMEN AGENCIES WHO ARE ACTUALLY EMPLOYED AND PAID FOR AS WATCHMEN MAY PARTICIPATE IN CERTIFICATION ELECTIONS. — The watchmen agencies petitioners were intervenors in the Court of Industrial Relations Certification Cases. The Court of Industrial Relations ordered that only members of the watchmen agencies who were actually employed and paid for as watchmen could participate in certification elections. The petitioners appealed the decision of the CIR contending that they were independent contractors, so much so that the watchmen employed by them could not become the laborers of the shipping lines for which the watchmen guarded their ships and their cargo. **Held,** only members of watchmen agencies who are actually employed and paid for as watchmen may participate in certification elections. The watchmen agencies are never the employees of the shipping lines in so far as the guarding of their ships and their cargo is concerned. MALIGAYA SHIP WATCHMEN AGENCY *v.* ASSOCIATED WATCHMEN AND SECURITY UNION, G.R. No. L-12214-17, May 28, 1958.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE PROVISIONS OF REPUBLIC ACT NO. 875 DO NOT APPLY TO NON-INDUSTRIAL INSTITUTIONS ESTABLISHED NOT FOR PROFIT OR GAIN BUT DESIGNED EXCLUSIVELY FOR EDUCATIONAL PURPOSES. CONSEQUENTLY, THE COURT OF INDUSTRIAL RELATIONS HAS NO JURISDICTION OVER COMPLAINTS BROUGHT AGAINST SUCH INSTITUTIONS. — The herein petitioner, is an educational institution conducted and managed by a religious non-stock corporation duly organized under Philippine laws. It was organized not for profit or gain or division of the dividends among its stockholders, but solely for religious and educational purposes. The respondent Philippine Association of College and University Professors is a non-stock association composed of professors and teachers of different colleges and universities. Since its organization, the University has adopted a hostile attitude to its formation and tried to discriminate, harass and intimidate its members. The organization filed a complaint for unfair labor practice against the University of San Augustin. The University filed an answer denying the charge of unfair labor practice and disputed the jurisdiction of the CIR over the case. In the course of the trial the University raised the legal point that the court could not go on with the trial for lack of previous preliminary investigation required by law. The trial continued and the case was submitted to the CIR for decision. The CIR held that while the court could not hold trial without preliminary investigation, it had, however, jurisdiction over the controversy because the industrial employment was not a basic criterion in determining jurisdiction in an unfair labor practice charge. The CIR ordered the case to be endorsed to its prosecution division for such preliminary investigation. Hence this present petition for review. **Held,** the provisions of Republic Act No. 875 do not apply to non-industrial institutions established not for profit or gain but designed exclusively for educational purposes. The CIR, therefore, has no jurisdiction to entertain the complaint for unfair labor practice lodged by

the respondent association against the petitioner. UNIVERSITY OF SAN AGUSTIN *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-12222, May 28, 1958.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE C.I.R. HAS NO JURISDICTION OVER MONEY CLAIMS WHICH DO NOT GIVE RISE TO A LABOR DISPUTE CAUSING OR LIKELY TO CAUSE A STRIKE. — The respondent here filed a petition in the C.I.R. praying that petitioner be ordered to pay the bonuses as promised. Has the C.I.R. jurisdiction over the motion? **Held,** there is no allegation in the motion of a labor dispute causing or likely to cause a strike, or imminent possibility thereof. Respondent, therefore, only seeks to assert money claims. The motion does not fall within the jurisdiction of the C.I.R. HEACOCK CO. *v.* NLU, G.R. No. L-11135, April 30, 1958.

LABOR LAW — EJECTMENT OF TENANTS — CONVICTION FOR A CRIME OF LIGHT THREAT AGAINST A LANDHOLDER'S FARM MANAGER IS NOT WITHIN THE PURVIEW OF PARAGRAPH (g), SEC. 50, REPUBLIC ACT NO. 1199, SPECIFYING AS GROUND FOR EJECTMENT THE TENANT'S CONVICTION OF A CRIME "AGAINST THE LANDHOLDER OR A MEMBER OF HIS IMMEDIATE FAMILY"; AND WHERE A TENANT IS GUILTY OF DELIBERATE, MALICIOUS ACT OF MISCHIEF AGAINST THE LAND UNDER HIS CULTIVATION AND POSSESSION, THE EXTENT OF THE DAMAGE CAUSED BY HIS ACT IS IMMATERIAL, HE BECOMES UNFIT TO CONTINUE IN HIS LANDHOLDING AND MAY BE DISPOSSESSED. — Respondents Domingo Gacelian and Jose Butardo were tenants in the landholding of petitioner Lao Oh Kim in Anao, Tarlac. On July 11, 1955, Gacelian was convicted by the Justice of the Peace of Anao, Tarlac of the crime of light threat for having threatened to harm or kill with a bolo Gulanico Oasin, the petitioner's farm manager, and was sentenced to pay fine and cost. On Aug. 8, 1955, Jose Butardo was convicted by the same Court of the crime of malicious mischief for having caused damage to petitioner's estate by deliberately and willfully opening the earthen dike of its water deposit without any need for it. As a consequence of the above convictions, the herein petitioner filed a complaint before the Court of Agrarian Relations for the ejectment of both respondents from their landholdings. The CAR dismissed the complaint, holding that the crime of Gacelian does not fall within purview of Paragraph (g), Section 50, Rep. Act No. 1199, it not appearing that the petitioner's farm manager was a member of his "immediate family"; and that the conviction of Butardo for malicious mischief does not come under Sec. 50, par. (f) of the same Act, making a tenant liable for ejectment when he, "through negligence, permits serious injury to the land which will impair its productive capacity," there being no showing of the nature and extent of the damage caused. Petitioner moved for the reconsideration of the order of dismissal which was denied. Hence this appeal. **Held,** the conviction for a crime of light threat against a landholder's farm manager is not within the purview of paragraph (g), Sec. 50, Rep. Act No. 1199, specifying as ground for ejectment the tenant's conviction of a crime "against the landholder or a member of his immediate family," and section 50 (f) of Rep. Act No. 1199 refers only to acts of negligence of tenants and has no application to malicious, wilfull acts of mischief. Consequently where a tenant is guilty of deliberate, malicious act of mischief against the land under his cultivation and possession, the extent of the damage caused by his acts is immaterial, he becomes unfit to continue in his landholding and maybe dispossessed. LAO OH KIM *v.* REYES, G.R. No. L-11391, May 14, 1958.

LABOR LAW — EJECTMENT OF TENANTS — UNDER SECTION 50 OF THE AGRICULTURAL TENANCY ACT, A TENANT CANNOT BE DISPOSSESSED EXCEPT FOR CAUSES ENUMERATED THEREIN. — Lucia vda. de Tinio was the owner of an hacienda with 8 tenants. The hacienda having been leased by her to one of the petitioners herein, Eduardo Joson, then Mayor of the municipality of Quezon, Nueva Ecija, the latter, some time in 1950, acting through his overseer Candido Cruz, a lieutenant of his civilian guards, ejected the old tenants from the land and put in their stead his co-petitioners herein, who were then members of his civilian guards. For fear of Mayor Joson and his civilian guards, the ousted tenants did not then report the matter to the authorities. But in 1954, having heard Judge Roldan of the CIR declare in conferences held in that province, that tenants who had been unlawfully ejected from their landholdings had the right to the reinstated, the old tenants filed a petition in the CIR asking that they be reinstated. The petitioners answered that the old tenants were ejected for cause. The case was transferred to the Court of Agrarian Relations which ordered the reinstatement of the old tenants. **Held,** under section 50 of the Agricultural Tenancy Act, a tenant cannot be dispossessed except for causes enumerated therein. With the exception of abandonment none of those causes is invoked, and wilfull abandonment is not to be deduced from the way the old tenants were ejected in this case. JOSON *v.* LAPUZ, G.R. No. L-10739, May 30, 1958.

LABOR LAW — EMPLOYER-EMPLOYEE RELATIONSHIP — WATCHMEN AGENCIES ARE NOT INDEPENDENT CONTRACTORS, BUT ARE MERE AGENTS OF COMPANIES THAT ENGAGE THE SERVICES OF THEIR WATCHMEN; THUS, THERE IS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN WATCHMEN AND THE COMPANIES THAT ENGAGE THEIR SERVICES. — The Associated Watchmen and Security Union filed petitions for certification before the CIR with several shipping companies, the petitioners herein. During the pendency of certification cases, the members of said union together with members of another union picketed the vessels of the shipping companies, resulting in the paralization of the loading and unloading of cargoes to and from the foreign vessels. Several watchmen agencies were allowed to intervene as respondents. The petitioners contended that the CIR had no jurisdiction over the subject matter and that the petitions stated no cause of action. The CIR ruled that it had jurisdiction over the cases because they involved a labor dispute and that there was an employer-employee relationship between the different companies and the watchmen and, consequently, ordered a certification election. Hence this petition for review. **Held,** watchmen agencies are not independent contractors, but are mere agents of companies that engage the services of their watchmen; thus, there is an employer-employee relationship between watchmen and the companies that engage their services. UNITED STATES LINES *v.* ASSOCIATED WATCHMEN AND SECURITY UNION, G.R. No. L-12208-11, May 21, 1958.

LABOR LAW — JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS — THE COURT OF FIRST INSTANCE HAS NO JURISDICTION OVER CASES WHERE THE QUESTIONS INVOLVE THE RIGHTS AND CONDITIONS OF MEMBERSHIP IN A LABOR UNION. WHERE THE RIGHTS OF THE MEMBERS OF A LABOR UNION, AS INDIVIDUALS, ARE AFFECTED, THE TEN PER CENT REQUIREMENT OF SEC. 17 OF R.A. No. 875 IS NOT NECESSARY. — On Oct. 6, 1955, Batangcos filed in the CFI an action for mandamus against the officers of the PLASLU, a legitimate labor union, to compel them to issue receipts for all his payments to the union as well as other assessments and to render an accounting of union funds and to make all the records of financial activities available for inspection to all the members thereof. Subsequently, Batangcos filed another action in the same court for the annulment of the election of officers because he and several others were not allowed to vote, in violation of the constitution and by-laws of the union. The defendants argued that the CFI had no jurisdiction. The court held that it had jurisdiction because the suit was merely an intramural dispute between members and officers of the union and because the required ten per cent minimum of the members of a union necessary to give the CIR jurisdiction over disputes involving internal labor organizational procedure was not present. **Held,** the CFI has no jurisdiction over cases where the questions involve the rights and conditions of membership in a labor union. Where the rights of members of labor unions, as individuals, are affected, the ten per cent requirement of Sec. 17 of R.A. No. 875 is not necessary. PLASLU *v.* ORTIZ, G.R. No. L-11185, April 23, 1958.

LABOR LAW — JURISDICTION OF THE CIR — THE JURISDICTION TO ENTERTAIN A PETITION TO ENJOIN PICKETING AND TO ISSUE THE CORRRESPONDING WRIT OF INJUNCTION IS VESTED EXCLUSIVELY IN THE CIR, IF CHARGES OF UNFAIR LABOR PRACTICE ARE PENDING BEFORE SUCH COURT AT THE TIME OF THE FILING OF SAID PETITION. — Several officers of the Consolidated Labor Association who were employees of the La Campana Food Products were dismissed by the latter for union activities on July 3, 1957. On July 9, 1957, said Association instituted an action in the CIR against the respondent employers for unfair labor practices, and for violations of the Eight-Hour Labor Law and the Minimum Wage Law. On July 10, 1957, a formal complaint for unfair labor practices was filed by a prosecutor of the CIR against the respondents. In the meantime, the members of the Association went on strike and picketted the factories of the respondents. Also on July 10, 1957, the respondents filed an action in the CFI praying for the issuance of a writ of preliminary injunction to restrain the defendants (the petitioners herein) from further picketting the factories of the respondents. The CFI granted the petition. Hence this petition for certiorari and prohibition. **Held,** the jurisdiction to entertain a petition to enjoin picketing and to issue the corresponding writ of injunction is vested exclusively in the CIR, if charges of unfair labor practice are pending before such court prior to the filing of said petition. CONSOLIDATED LABOR ASSOCIATION OF THE PHILIPPINES *v.* CALAUAG, G.R. No. L-12530, May 30, 1958.

LABOR LAW — JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS — WHEN THE PETITION OR CASE IS SIMPLY FOR THE COLLECTION OF UNPAID SALARIES AND WAGES ALLEGED TO BE DUE FOR SERVICES RENDERED YEARS AGO, THE COURT OF INDUSTRIAL RELATION HAS JURISDICTION OVER IT. — On April 6, 1954, Graciano Diaresco and 32 other persons filed a petition against the Roman Catholic Archbishop, the Philippine Milling Co., and the Elizalde & Co. for the recovery of alleged unpaid salaries and wages for various periods between 1942 and 1947, amounting to ₱102,186.50, plus interests, damages, and costs. After preliminary hearing, the Philippine Milling Co. was dropped from the case on the ground that it was not the employer of the petitioners. The Roman Catholic Archbishop and the Elizalde & Co., Inc. each filed a motion to dismiss on the ground, among others, of lack of jurisdiction over the case. The motions were denied and the denial affirmed by the CIR **in banc**. Hence, the present petition for annulment of the order of the Court of Industrial Relations denying petitioners' motions to dismiss the case, and for the issuance of a writ of prohibition. **Held,** under Republic Act No. 875, the jurisdiction of the Court of Industrial Relations is confined to the following cases: (a) labor disputes affecting an industry indispensable to the national interest and so certified by the President to the Industrial Court; (b) controversy referring to minimum wage under the Minimum Wage Law; (c) cases involving hours of employment under the Eight-Hour Labor Law; (d) cases involving unfair labor practice. The above case does not fall under any of the above-mentioned instances since it is merely for the collection of unpaid salaries and wages alleged to be due for services rendered years ago. ROMAN CATHOLIC ARCHBISHOP OF MANILA *v.* JIMENEZ YANSON, ET AL., G.R. No. L-12341, April 30, 1958.

LABOR LAW — JURISDICTION OF THE WORKMEN'S COMPENSATION COMMISSION — REPUBLIC ACT NO. 772 IS VERY CLEAR THAT ON OR AFTER JUNE 20, 1952 ALL CLAIMS FOR COMPENSATION SHALL BE DECIDED EXCLUSIVELY BY THE WORKMEN'S COMPENSATION COMMISSIONER, SUBJECT TO APPEAL TO THE SUPREME COURT. — This is an ordinary civil action for the recovery of the aggregate sum of ₱36,667.81 consisting of the following items: overtime pay, sick and vacation leave with pay, medical treatment, actual and compensatory damages, and attorney's fees. This compensation is allegedly due to plaintiff Francisco Pelaez, who contracted pulmonary tuberculosis and later died, first as laborer and then as watchman and driver of the defendant Luzon Lumber Company from Dec. 7, 1946 to May 7, 1952. The CFI of Manila, where the complaint was filed, declared that it had no jurisdiction to entertain plaintiff's claim. The plaintiff appealed to the Court of Appeals which forwarded the records of the case to the Supreme Court since the jurisdiction of the court **a quo** was involved. **Held,** this claim was formulated in August, 1952. Republic Act No. 772 states, in effect, that on or after June 20, 1952 all claims for compensation shall be decided exclusively by the Workmen's Compensation Commissioner, subject to appeal to the Supreme Court. PELAEZ *v.* LUZON LUMBER COMPANY, G.R. No. L-8564, April 23, 1958.

LABOR LAW — MESADA — IN CASE OF EMPLOYMENT WITHOUT A DEFINITE PERIOD THE RELATION OF EMPLOYER AND EMPLOYEE MAY BE TERMINATED BY SERVING NOTICE AT LEAST ONE MONTH IN ADVANCE, OR IN LIEU THEREOF, BY PAY-

ING AN AMOUNT EQUIVALENT TO ONE MONTH SALARY. — Plaintiff was employed by the defendant as waiter-pinboy and had been working as such from October, 1951 to February, 1955 with a monthly salary of ₱127.00. On the latter date, the plaintiff was dismissed on the strength of a written statement by the plaintiff's co-worker that he saw utensils belonging to the defendant in the house of the plaintiff. The plaintiff filed a claim with the Bureau of Labor praying that he be paid his back wages and separation pay. After proper investigation, the Bureau of Labor ordered payment to the plaintiff of a sum equivalent to one month salary in lieu of one month notice in advance. The defendant deposited with the Bureau the necessary amount pursuant to the order. Four months later, the plaintiff commenced an action in the CFI of Manila praying for his reinstatement with back wages. The complaint was dismissed. Hence this appeal. **Held,** in case of employment without a definite period the relation of employer and employee may be terminated by serving notice at least one month in advance, or in lieu thereof, by paying an amount equivalent to one month salary. MONTEVERDE *v.* CASINO ESPAÑOL, G.R. No. L-11365, April 18, 1958.

LABOR LAW — WAGE ADMINISTRATION SERVICE — A JUDGMENT RENDERED BY A WAGE ADMINISTRATION SERVICE INVESTIGATOR WITHOUT TPE PARTIES HAVING ARRIVED AT AN AMICABLE SETTLEMENT OR HAVING SUBMITTED THE CASE FOR ARBITRATION IS IMPROPER AND COULD NOT BE ENFORCED THROUGH A WRIT OF EXECUTION. — Sometime in 1955, appellant Isidoro Cabrero filed a claim with the Wage Administration Service against respondent, a proprietor of a restaurant where the former was working, for underpayment, overtime pay and additional compensation for services rendered on Sundays and holidays and for separation pay. The parties were summoned to a conference. No amicable settlement resulted, nor did the parties agree to submit the case for arbitration. Despite the absence of such agreement, the regional investigator heard evidence for the claimant and questioned the respondent unassisted by counsel and rendered judgment for ₱2,240. Respondent filed a motion for reconsideration which was denied. Meanwhile, petitioner, claiming that the judgment of the WAS investigator had already become final since there was no appeal, petitioned the CFI to order its execution. The lower court dismissed the petition. Petitioner moved for reconsideration but it was denied. Hence this appeal. **Held,** a judgment rendered by an investigator of the Wage Administration Service without the parties having arrived at an amicable settlement or submitted the case for arbitration is improper and could not be enforced through a writ of execution. CEBRERO *v.* TALAMAN, G.R. No. L-11924, May 16, 1958.

LABOR LAW — WORKMEN'S COMPENSATION ACT — PURSUANT TO SEC. 27 OF THE WORKMEN'S COMPENSATION ACT, A VERBAL OR BELATED NOTICE OF SICKNESS OR INJURY BY AN EMPLOYEE IS SUFFICIENT IF THE EMPLOYER HAS NOT BEEN ACTUALLY MISINFORMED. — The respondent Montoya worked as conductor of the Saulog Transit, a common carrier engaged in land transportation by buses, owned and operated by Eliseo Saulog, the herein petitioner. On or about the end of January, 1950, as a result of a sudden application of the brakes by the driver, Montoya bumped his chest against one of the seats. He experienced no untoward consequences however, and continued working

for 2 weeks. On Feb. 1950, he began spitting blood and suffered chest pains resulting in his hospitalization from April to November of 1950. Subsequently, he resigned due to physical inability. On Sept. 12, 1950, respondent filed with the Workmen's Compensation Commission the corresponding notice of injury or sickness and claim for compensation. The WCC rendered decision in favor of respondent and required Saulog to furnish the former with medical and hospital service; pay ₱5,200.00 and regular official fees. Saulog appealed from the decision of the WCC contending that there was no written notice given by Montoya, in violation of Sec. 25 of the Workmen's Compensation Act. He further alleged that respondent failed to give notice of sickness or injury and to claim for compensation within 2 months as provided by in Sec. 24 of same Act. **Held,** pursuant to Sec. 27 of the Workmen's Compensation Act, a verbal notice or a belated notice of sickness or injury by an employee might be good if the employer has not been actually misinformed, it appearing here that a notification of injury or sickness was given by respondent to Medina, assistant manager of the company, and Mrs. Saulog after Feb. 1950 when respondent began spitting blood. As regards the second contention, it is improper to count the 2 month period from the day claimant Montoya bumped his chest because he experienced no untoward consequences then. The said period should be counted from the end of Feb. 1950, the time claimant felt sick, to the notification of Medina, the assistant manager, and Mrs. Saulog, which is not over 2 months. The Workmen's Compensation Commission erred however in requiring petitioner Saulog to furnish Montoya with medical and hospital services and supplies until his sickness is declared cured since Montoya had already resigned from the petitioner's service before starting these proceedings. SAULOG *v.* DEL ROSARIO, G.R. No. L-11504, May 23, 1958.

LABOR LAW — WORKMEN'S COMPENSATION ACT — UNDER SECTION 51 OF ACT NO. 3428, AS AMENDED BY REPUBLIC ACT NO. 722, WHEN A PARTY IN INTEREST HAS FILED IN THE PROPER COURT A CERTIFIED COPY OF THE DECISION OF THE COMMISSIONER WHICH HAS BECOME FINAL, THE FUNCTION OF SUCH COURT IS MERELY MINISTERIAL AND ITS DECREE IN THE CASE IS UNAPPEALABLE. — On December 20, 1955 Pacita Salaboria Vda. de Suataron filed a petition before the CFI of Negros Occidental praying that a writ of execution be issued to enforce an award made by the Workmen's Compensation Commission in their favor which was affirmed by the Supreme Court. The herein respondent prayed for the dismissal of the case contending that while the claim was pending before the Workmen's Compensation Commission and the Supreme Court, the petitioner had been drawing various amounts from the respondent. The lower court issued an order denying the motion for dismissal and the issuance of the proper writ of execution prayed for by the petitioner. Hence this appeal by respondent contending that the lower court erred in denying its motion for reconsideration wherein it asserted that a full payment of the award had already been made, the petitioner having made various withdrawals from herein respondent while the claim was still pending. **Held,** under Sec. 51 of Act No. 3428, as amended by Rep. Act No. 772, when a party in interest has filed in the proper court a certified copy of the decision of a referee or commissioner which has become final, "the court shall render a decree or judgment in accordance therewith and notify the parties thereof," and shall be unappealable. SUATARON *v.* HAWAIIAN-PHIL. CO., G.R. No. L-11219, May 7, 1958.

LAND TITLES — CANCELLATION OF LIEN OR ENCUMBRANCES — PURSUANT TO SECTION 112 OF ACT 496, CANCELLATION OF AN ATTACHMENT AND LEVY MAY BE HAD, ESPECIALLY IF THE PROPERTY ATTACHED IS NOT SUBJECT TO ATTACHMENT AND IS EXEMPT FROM EXECUTION. — The lots in question were formerly covered by Transfer Certificate of Title in the name of the spouses Robles and Mondejar. In 1949, these spouses borrowed money from the Agricultural and Industrial Bank, later from the Rehabilitation and Finance Corporation. To guarantee the payment of the indebtedness a real estate mortgage in favor of the bank was constituted on the lots above-described. The owner's Duplicate Certificate of Title was held by the Bank. Sometime in 1954, respondent Hodges secured a writ of Attachment in the Municipal Court of Iloilo and the lots in question were levied upon. The Register of Deeds made the entry on the Original Transfer Certificate of Title. On June 22, 1955, herein petitioners, Geonanza and Gotera, paid the RFC the obligation of Robles and Mondejar, and bought the lots from them. Consequently, the Register of Deeds cancelled Transfer Certificate of Title No. 3016, and issued to Geonanza and Gotera Transfer Certificate of Title No. 8981, with the corresponding memorandum of the attachment and levy in favor of Hodges. Hence, this petition for cancellation of the encumbrance. **Held,** at the time of the attachment and levy, the properties were not subject to attachment according to Section 26 of Commonwealth Act 459. That being the case, the entry of the encumbrance made by the Register of Deeds was an error or mistake so clear and patent that not even Hodges denied it. Therefore, in pursuance to Sections 112 of Act No. 496, such cancellation may rightfully be asked. GEONANZA *v.* HODGES, G.R. No. L-11323, April 21, 1958.

LAND TITLES — CADASTRAL COURT — THE CADASTRAL COURT CANNOT DETERMINE WHETHER OR NOT THE INSTRUMENT, PURPORTING TO BE A DEED OF SALE, REFLECTS THE TRUE AGREEMENT BETWEEN THE PARTIES THERETO OR WHETHER THE EXECUTION THEREOF IS TAINTED WITH FRAUD. — On Jan. 11 1938, after the decision of CFI in cadastral case No. 25, adjudicating a specific portion of lot No. 382 to Molino and two other portions to Maximiano and Anselmo Molino became final and before the issuance of the corresponding decree, Anselmo and Aquino executed an instrument purporting to be a deed of sale of the portion adjudicated to Anselmo for the sum of ₱1,400 of which ₱800 was to be paid and the balance of ₱600 to be paid in installments at the rate of ₱10 a month beginning March 1, 1938. On August 21, 1941, lot No. 382 was subdivided, but owing to the outbreak of the war and the occupation of the Philippines by the Japanese, the subdivision plan was not approved by the Director of Lands until Dec. 29, 1948. On August 7, 1951, Aquino filed in said cadastral case No. 25 a petition alleging that he had already paid in full the price of lot No. 382-C which he acquired from Anselmo and praying that a decree as regards this portion be issued in his favor. The heirs of Anselmo who died 1939 objected on the ground that the true agreement of the parties was one of mortgage to guarantee the payment of Anselmo's debt which debt had been fully paid. After due hearing, the CFI as a cadastral court held that it had no authority to pass upon the issues. Hence this appeal. **Held,** the Cadastral Court cannot determine whether or not the instrument purporting to be a deed of sale reflects the true agreement between the parties thereto or whether the execution thereof is tainted with fraud. AQUINO *v.* MOLINO, G.R. No. L-8317, May 23, 1958.

LAND TITLES — LIS PENDENS AND ADVERSE CLAIM — THE COURT HAS THE INHERENT POWER TO CANCEL A LIS PENDENS CLAIM, WHILE AN ADVERSE CLAIM MAY BE CANCELLED ONLY IN ONE INSTANCE, AFTER THE CLAIM IS ADJUDGED INVALID OR UNMERITORIOUS BY THE COURT. — Transfer Certificate of Title No. 58652 was registered in the name of Sin Tei. Appellant Dy Piao in connection with civil case no. 14697 wherein he was intervenor, caused the annotation of an adverse claim on said certificate of title on August 22, 1951 and, without said notation having been cancelled, a notice of **lis pendens** was also inscribed on the same title on March 21, 1955, upon the institution of civil case no. 25736 based on the same ground as his adverse claim. So Sin Tei protested against the existence of two notices in her title and sought the cancellation of the adverse claim on the allegation that one invalidated the other. **Held,** the court has the inherent power to cancel a **lis pendens** claim, while an adverse claim may be cancelled only in one instance, after the claim is adjudged invalid or unmeritorious by the court. SIN TEI *v.* DY PIAO, G.R. No. L-11271, May 28, 1958.

LAND TITLES — RECONVEYANCE — THE DUTY TO RECONVEY ARISES NOT ONLY FROM A PREVIOUSLY EXISTING FIDUCIARY RELATIONSHIP; IT ALSO ARISES WHEN ONE MAN'S TITLE HAPPENS TO INCLUDE THROUGH ERROR LAND OWNED BY ANOTHER; BUT IT IS ESSENTIAL THAT THE TITLE HAS NOT BEEN CONVEYED TO INNOCENT PURCHASERS FOR VALUE. — This suit concerns the ownership of a small parcel of land covered by Original Certificate of Title No. 20578 in the name of the plaintiff's parents. The defendant and his predecessors have been in possession of 6,000 square meters of land since time immemorial, paying taxes thereon consistently. The plaintiffs discovered the defendant's possession over the 6,000 square meters only in 1953 when they went to the premises assisted by a government surveyor who pointed out the meter and bounds of the land covered by OCT No. 20578 and the defendant came to know that the land occupied by him was covered by said OCT only on July 3, 1955 when said land was relocated by the surveyor. During the lifetime of the plaintiffs' father, he never disturbed the possession of the defendant and that of the latter's predecessors, thereby allowing the defendant and his predecessors to have exclusive benefit of all the products planted and gathered therefrom. The lower court found for the defendant. Accordingly, the defendant was declared owner of the lot in question and the plaintiffs were ordered to segregate it from the parcel described in their OCT No. 20578. The plaintiffs appealed. **Held,** the duty to reconvey arises not only from a previously existing fiduciary relationship; it also arises when one man's title happens to include through error land owned by another; but it is essential that the title has not been conveyed to innocent purchasers for value. ABAN *v.* CENDAÑA, G.R. No. L-11989, May 23, 1958.

LEGAL ETHICS — MALPRACTICE — THE ABANDONMENT OF A CLIENT IN VIOLATION OF THE ATTORNEY'S CONTRACT CONSTITUTES GROSS MALPRACTICE. —

Complainant Royo was the owner of an orchestra whose services were engaged by the people of Mobo, Masbate. For reasons not disclosed, the Mayor of Mobo, and his men, seized the musical instruments of the orchestra and damaged and destroyed the same. For this reason, Royo contracted the legal services of respondent, Celso Oliva, who undertook to prosecute the mayor and his men for a fee of ₱300.00. Knowing that the case was one of malicious mischief, Oliva, instead of filing the criminal complaint himself, suggested that Royo file a complaint with the Presidential Complaint And Action Committee. This was done, and the PCAC indorsed the complaint to the Philippine Constabulary in Masbate. After investigation, the PC filed with the Justice of the Peace of Mobo, a complaint for malicious mischief. It was agreed that Oliva would appear as private prosecutor. Oliva, however, intentionally absented himself from his house and other places wherein he might have been found or contacted by his client so as to take him to court for trial on May 5, 1955, when the case was set for trial. As a result, the case was dismissed with costs **de oficio.** Hence this administrative complaint for malpractice. **Held,** this is a serious case of failure to properly attend to a client's case on two occasions thus resulting in prejudice to the interest of the client. The abandonment of a client in violation of the attorney's contract ignores the most elementary principle of professional ethics. Respondent is ordered disbarred. ROYO *v.* OLIVA, Adm. Case No. 228, April 16, 1958.

LEGAL ETHICS—NOTARY PUBLIC—AN ATTORNEY SHOULD BE MORE CAREFUL IN THE PERFORMANCE OF HIS DUTIES AS LAWYER AND NOTARY PUBLIC TO THE END THAT HE MAY NOT, EVEN THOUGH UNWITTINGLY, MAKE HIMSELF AN EASY TOOL FOR ILLEGAL PURPOSES. — In 1950, the complainant bought a piece of land from her brother-in-law, Jose Balicao. The deed of sale was never executed, because Balicao hurriedly left for Mindanao. In 1955, the complainant wanted to sell the land, but she had no documentary proof of the sale. The complainant and Bonilla, a municipal councilor approached the respondent attorney to have him prepare the necessary deed of sale. Since Balicao, the vendor, was not present, the respondent refused to make the deed. Subsequently, the complainant brought along a person who posed to be Balicao. The respondent prepared and notarized the instrument. The deed was discovered to be forged by a prospective vendee, because he knew that Balicao, was in Mindanao and could not have signed the instrument. Unable to sell the land, the complainant filed this complaint for disbarment. **Held**, the respondent is admonished to be more careful in the performance of his duties as lawyer and notary public to the end that he may not, even though unwittingly, make himself an easy tool for illegal purposes. CAILING *v.* ESPINOSA, Adm. Case No. 238, May 30, 1958.

LEGAL ETHICS — RECEIPT OF MONEY BY COUNSEL — AN ATTORNEY MUST BE SCRUPULOUSLY CAREFUL IN THE HANDLING OF MONEY ENTRUSTED TO HIM IN HIS PROFESSIONAL CAPACITY. — Attv. Fernando Gerona was engaged by the complainant Alindogan in a civil case. The case ended in a compromise whereby Alindogan would pay ₱350 to the other party de Mesa. The complainant delivered the said sum to the respondent attorney for delivery to de Mesa. The respondent became seriously ill and underwent a major operation spending the money for that purpose. He executed a promissory

note in favor of the complainant for the amount, but failed to pay upon repeated demands. Hence this administrative complaint for malpractice was instituted. In the meantime, the respondent was able to deliver the sum to de Mesa. In his answer to the charge, he alleged delivery of the sum to de Mesa as evidenced by the latter's affidavit. **Held,** there is no need for disciplinary action. An attorney must be scrupulously careful in the handling of money entrusted to him in his professional capacity. ALINDOGAN *v.* GERONA, Administrative Case No. 221, May 21, 1958.

POLITICAL LAW — ADMINISTRATIVE LAW — A TEMPORARY APPOINTMENT CAN BE TERMINATED AT PLEASURE BY THE APPOINTING POWER, THERE BEING NO NEED TO SHOW THAT THE TERMINATION IS FOR CAUSE. — This is a petition for mandamus filed before the CFI of Negros Occidental seeking petitioner's reinstatement as a policeman of Bacolod City and the payment of the corresponding back salaries. The case was submitted on an agreed stipulation of facts. The petitioner was not a civil service eligible. His appointment as a policeman was of a temporary nature, and the position to which he was appointed was a newly created one. **Held,** the dismissal was proper because the appointment being temporary in nature, could be terminated at pleasure by the appointing power, and there is no need to show the cause for such termination. CUADRA *v.* CORDOVA, G.R. No. L-11602, April 21, 1958.

POLITICAL LAW — ADMINISTRATIVE LAW — AN ORDINANCE INVOLVING AN ABOLITION OF POSITIONS IN ORDER TO CLOAK A DEVISE TO REMOVE THEIR INCUMBENTS AND TO CIRCUMVENT THE CONSTITUTIONAL AND STATUTORY PROVISIONS TENDING TO PROTECT THEIR TENURE OF OFFICE IS INOPERATIVE. — The petitioners were detectives in the Police Department of the City of Cebu. An ordinance was passed transferring the detectives to the patrolman division. The respondent City Mayor wrote to the petitioners advising them that their position as detectives had been abolished and at the same time enclosing their appointments as patrolmen. The petitioners refused to accept these appointments. The corresponding action to compel reinstatement of the petitioners to their positions as detectives was filed. The respondent argued that the City of Cebu could validly abolish old positions and create new ones and that by the petitioners' failure to accept said new appointments, they had forfeited and lost their new positions in the uniformed division. **Held,** an ordinance involving an abolition of positions in order to cloak a devise to remove their incumbents and to circumvent the constitutional and statutory provisions tending to protect their tenure of office is inoperative. GACHO *v.* OSMEÑA, G.R. No. L-10989, May 28, 1958.

POLITICAL LAW — CONSTITUTIONAL LAW — THE FUNDAMENTAL PROTECTION AFFORDED TO CIVIL SERVICE EMPLOYEES AGAINST REMOVAL "EXCEPT FOR CAUSE AS PROVIDED BY LAW" IS NOT VIOLATED WHEN THERE IS NEITHER A REMOVAL NOR A SUSPENSION OF THE PERSON BUT AN ABOLITION OF HIS OFFICE. — Petitioner Carmen Castillo was appointed clerk in the office of the Provincial Fiscal of Bohol by the Governor of said province. She rendered service until June, 1954, when she stopped working by reason of the fact that her position was abolished upon resolution of the provincial board. She protested

her separation and having obtained no relief from the corresponding authorities, she instituted proceedings to compel reinstatement, payment of back salaries, damages and attorney's fees. Her action rested on the proposition that her separation was unlawful in view of her civil service eligibility and the corresponding constitutional security against removal or suspension "except for cause as provided by law." **Held,** the constitutional provision securing protection for employees with civil service eligibility does not refer to abolition of governmental position. Moreover, the power to appoint necessarily includes the power to remove. CASTILLO *v.* PAJO ET AL., G.R. No. L-11262, April 28, 1958.

POLITICAL LAW — CONSTITUTIONAL LAW — AS THE CONSTITUTION IS SILENT AS TO THE EFFECTS OR CONSEQUENCES OF A SALE BY A CITIZEN OF HIS LAND TO AN ALIEN, AND AS BOTH THE CITIZEN AND THE ALIEN HAVE VIOLATED THE LAW, NONE OF THEM SHOULD HAVE A RECOURSE AGAINST THE OTHER. — On November 29, 1943, Florencia Soriano and her brother Teodoro were the registered co-owners, and their father Ramon, the registered usufructuary, of parcels of land covered by TCT No. 6147. On such date, the co-owners and usufructuary sold the land to Ong Hoo. On January 17, 1944, Ong Hoo registered the deed of sale and TCT No. 70030 was issued in his name. On January 16, 1946, Ong Hoo sold the land to defendants Chung Te, Ching Leng and Ching Tan. The sale was registered and the corresponding transfer certificate of title was issued in their name. An action was instituted by the plaintiff to annul the original and subsequent transfers on the ground that the transferees were Chinese citizens, disqualified to acquire private agricultural land. The lower court held that the sale could not be annulled at the instance of the vendor. The plaintiff appealed contending that the principle of **in pari delicto** was not applicable, because the provision of law supposed to have been violated was not a very clear provision but was a doubtful one, and its interpretation could have been the subject of mistake on the part of any of the parties. **Held,** as the Constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, none of them should have a recourse against the other. SORIANO *v.* ONG HOO, G.R. No. L-10931, May 28, 1958.

POLITICAL LAW — CONSTITUTIONAL LAW — A LICENSE IS NEITHER PROPERTY NOR A PROPERTY RIGHT. AND THEREFORE IT MAY BE REVOKED BY THE PROPER AUTHORITIES. — Ong Tin, a citizen of the Republic of China, was granted by the office of the mayor of Quezon City a permit and license to operate a sari-sari store at Kamuning street. On Aug. 8, 1954 Pedro Bolano, chief of the Licenses-taxes division, informed Ong Tin to surrender his license because of the passage of R.A. No. 1180, entitled "An Act to Regulate the Retail Business". Despite repeated demands and a subpoena by the First Assistant City Attorney, Ong Tin refused to give up his license and continued to operate the store. Hence, he was charged with the violation of Sec. 1 in relation to Sec. 6 of R.A. No. 1180 and was found guilty by the lower court. On appeal, Ong Tin contended that the lower court erred among others, in not declaring the statute unconstitutional; and that the law did not apply to him because he obtained his license before the effectivity of the law. **Held,** the statute in question is constitutional because it is within

the police power of legislature to remedy a real, actual threat and danger to the national economy posed by alien domination and control of the retail business. The law is not an **ex post facto** law because the acts which constituted the crime were committed after the effectivity of the law. Neither does the law deprive Ong Tin of a vested right because a license is not property, nor is it a property right, and therefore it may be revoked by the proper authorities. PEOPLE *v.* ONG TIN, G.R. No. L-97791, April 28, 1958.

POLITICAL LAW—ELECTION LAW—IN ORDER TO BE QUALIFIED TO RUN FOR AN ELECTIVE MUNICIPAL OFFICE, OR IN ORDER TO BE A QUALIFIED VOTER WITHIN THE MEANING OF THE LAW, THE CANDIDATE NEED NOT BE A REGISTERED VOTER IN SAID MUNICIPALITY. — Rocha and Cordis, together with Alarcon, were candidates for the office of Mayor of Caramoan, Camarines Sur in the election held on November 8, 1955. In an incident concerning the Register of Voters, the right of the respondent to vote in precinct 9 of Caramoan was contested by Obias and after proper hearing the court ordered the board of inspectors to strike out the name of the respondent from the list of qualified voters. Because of this ruling, it was contended in the petition for quo warranto that the respondent was not a qualified voter within the purview of the law and consequently ineligible to the office for which he was elected and proclaimed. The court a quo, however, sustained the respondent's contention that to be qualified to run for office of mayor of a municipality, it was not necessary that he be a registered voter therein. Hence, this appeal. **Held,** in order to be qualified to run for an elective municipal office, or in order to be a qualified voter within the meaning of the law, the candidate need not be a registered voter in said municipality. ROCHA *v.* CORDIS, G.R. No. L-10783, April 16, 1958.

POLITICAL LAW — ELECTION LAW — A PLURALITY OR A MAJORITY OF VOTES CAST FOR AN INDIVIDUAL CANDIDATE AT A PROPER ELECTION DOES NOT ENTITLE THE CANDIDATE RECEIVING THE NEXT HIGHEST NUMBER OF VOTES TO BE DECLARED ELECTED. — In the general election held on Nov. 8, 1955, Luison and Garcia were the only candidates for mayor of Tubay, Agusan. Because of a fatally defective certificate of candidacy, the Commission on Election declared Garcia ineligible to run for the office of mayor. Notwithstanding this, Garcia continued his candidacy and the board of inspectors, inspite of the ruling of the Commission, counted all the votes cast for Garcia as valid and credited him with 869 votes against 675 votes in favor of Luison. Consequently, the municipal board of canvassers proclaimed Garcia as mayor-elect. Luison, believing that Garcia was ineligible to hold office, filed a petition for quo warranto in the CFI which was dismissed for lack of merit. An appeal was taken and the case was docketed in the Supreme Court as G.R. No. L-10916. Luison also filed a protest in the same court on the same ground. The court dismissed the protests and hence this appeal. While this appeal was pending, the quo warranto was passed upon. The question of sufficiency of the certificate of candidacy being moot since no appeal was taken from the resolution of the Commission, this Court held in G.R. No. L-10916 that the said resolution constitutes res judicata and is binding upon the protestee. **Held,** a plurality or a majority of votes cast for an individual candidate at a proper election does not entitle the

candidate receiving the next highest number of votes to be declared elected. LUISON *v.* GARCIA, G.R. No. L-10981, April 25, 1958.

POLITICAL LAW — NATURALIZATION — THE ACT OF PETITIONER IN CAUSING THE CORRECTION OF AN ERRONEOUS INFORMATION APPEARING IN HIS CEDULA, CORRECTION THAT HE CAUSED TO BE MADE BY THE AUTHORITY OF THE PERSON HAVING CUSTODY OF THE ORIGINAL OF THE SAME, CANNOT REFLECT UNFAVORABLY ON THE PETITIONER'S MORAL CONDUCT AND IRREPROACHABLE CHARACTER. — Luis F. Arriola filed a petition to be admitted as a citizen of the Philippines. From the court decree granting the petition, the government appealed alleging that the court erred in finding that the petitioner "is of good moral character and that he has conducted himself in a proper and irreproachable manner with the constituted government." The appeal was predicated on an incident at the trial during which, when the petitioner was asked to exhibit his Residence Certificate, he was made to explain why he appeared therein as "Filipino" instead of "Chinese", to which he replied that he did not know as the certificate was procured by him thru an agent. When the trial was continued, however, instead of presenting the persons who procured for him his cedula, Arriola presented the same cedula wherein the word "Chinese" appeared instead of "Filipino" and on the back of which, appeared the following explanation: "Duplicate hereof changed as Chinese citizenship as ACR-22083, dtd. 7/17/50, Manila" followed by initials "R.C. 8/17/55." The initials were those of Rufino Cervantes, Chief of Residence Tax Section, Office of City Treasurer of Manila, who acknowledged at the trial to have made the change. The government argued that this act of petitioner of changing his nationality in his cedula did not constitute "proper and irreproachable conduct" which is required by law. **Held,** the act of petitioner in causing correction of an erroneous information appearing in his cedula, after his attention thereto was called at the trial of the case, which information passed him unnoticed, correction that he caused to be made by the authority of the person having custody of the original of the same, cannot reflect unfavorably on petitioner's moral character and irreproachable conduct. REPUBLIC *v.* ARRIOLA, G.R. No. L-10286, May 23, 1958.

POLITICAL LAW — NATURALIZATION — A MINOR TRANSGRESSION WHICH DOES NOT INVOLVE MORAL TURPITUDE OR WILLFUL CRIMINALITY WILL NOT CONSTITUTE "IMPROPER AND REPROACHABLE CONDUCT." — The application for citizenship of Daniel Ng Peng alias Daniel Huang was denied for failure to comply with the "proper and irreproachable conduct" requirement of the Naturalization Law. The court based its findings on four grounds, namely: (1) On March 12, 1951 the petitioner was charged with serious physical injuries, but the charge was provisionally dismissed. (2) On Jan. 30, 1950, he was charged for speeding, but the case was dismissed with costs, (3) The petitioner admitted that once he paid a fine for speeding. (4) He used two different names. **Held,** a minor transgression which does not involve moral turpitude or willful criminality will not constitute improper and reproachable conduct. The Bureau of Immigration permitted the petitioner to use two different names because Ng is in the Fookien dialect while Huang is the equivalent

of Ng in the Mandarin dialect. NG TENG *v.* REPUBLIC, G.R. No. L-10214, April 28, 1958.

POLITICAL LAW — TAXATION — THE EXEMPTION FROM INTERNAL REVENUE TAXES OF THE MATERIALS USED EXCLUSIVELY IN THE CONSTRUCTION OF BUILDINGS AND STRUCTURES — PROVIDED THAT THESE BUILDINGS ARE USED EXCLUSIVELY FOR THE PROMOTION OF NEW AND NECESSARY INDUSTRIES AND PROVIDED FURTHER THAT THE TAXES ARE OTHERWISE DIRECTLY PAYABLE BY THE PERSON, PARTNERSHIP, COMPANY OR CORPORATION ENGAGED IN SAID NEW AND NECESSARY INDUSTRY, AND IN RESPECT OF THE SAME — IS CLEARLY WITHIN THE PURVIEW OF R.A. No. 35. — On March 26, 1952, respondent Itemco was granted a certificate of tax exemption by the Sec. of Finance, pursuant to R.A. No. 35, for a period of 4 yars, on the ground that it was engaged in a new and necessary industry, which was the manufacture of jute and burlap bags. During the period of exemption the Itemco imported 50,000 bags of cement from Japan. The Collector of Internal Revenue required the Itemco to pay ₱13,195.76 as compensating tax, which amount was duly paid. On June 4, 1952, Itemco requested the refund of the amount on the ground that it was granted exemption from the payment of internal revenue tax pursuant to R.A. No. 35. Itemco claimed that the aforesaid cement were used in the construction of buildings, offices, clinics, and in the paving of its yards and drive ways. Request for refund having been denied, action was instituted. **Held,** the exemption from the payment of all internal revenue taxes by a person or corporation engaged in a new and necessary industry carries with it the exemption from internal revenue taxes of the materials used exclusively in the construction of buildings and structures which are exclusively used for the promotion of such new and necessary industry. COLLECTOR OF INTERNAL REVENUE *v.* INDUSTRIAL TEXTILES COMPANY OF THE PHILIPPINES, G.R. No. L-10936, April 25, 1958.

POLITICAL LAW—TAXATION—UNDER SECTION 7 OF R.A. No. 1125, DISPUTED ASSESSMENTS OR OTHER MATTERS ARISING UNDER THE INTERNAL REVENUE CODE OR OTHER LAW OR PART OF THE LAW ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE ARE WITHIN THE JURISDICTION OF THE COURT OF TAX APPEALS. THE FACT THAT CERTAIN CONSEQUENTIAL OR MORAL DAMAGES ARE DEMANDED DOES NOT PLACE THE CASE BEYOND THE JURISDICTION OF THAT COURT, WHEN THEY ARE BUT INCIDENTAL TO THE MAIN CASE. — The Cebu Olympian Company was assessed by the Collector of Internal Revenue for deficiency percentage taxes amounting to ₱10,518.75. Despite its allegation of payment, the Collector threatened to levy upon the former's business and goodwill and because of the Collector's act in levying upon the properties of the company for the purpose of compelling it to pay taxes which had already been paid, the plaintiff company brought an action in the CFI of Cebu to enjoin the Collector from collecting certain deficiency taxes and, incidentally, to recover consequential damages and moral damages in the amount of ₱8,000.00. The writ of preliminary injunction was granted ex parte upon a bond filed by the company. The Collector moved to dismiss the complaint on the ground of lack of jurisdiction, it being his contention that such a case was within the exclusive jurisdiction of the Court of Tax Appeals, in accordance with R.A. No. 1125. Motion was denied and hence

this petition for certiorari. **Held,** under section 7 of R.A. No. 1125, disputed assessments or other matters arising under the Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue are within the jurisdiction of the Court of Tax Appeals. The fact that certain consequential or moral damages are demanded does not place the case beyond the jurisdiction of that court, when they are but incidental to the main case. BLAQUERA *v.* RODRIGUEZ, G.R. No. L-11192, April 16, 1958.

POLITICAL LAW — TAXATION — THE MILITARY BASES AGREEMENT BETWEEN THE PHILIPPINES AND THE UNITED STATES GRANTS EXEMPTION FROM INCOME TAXES ONLY TO MEMBERS OF THE UNITED STATES ARMED FORCES, NATIONALS OF SAID COUNTRY, AND THEIR DEPENDENTS AND FAMILIES, TO THE EXCLUSION OF FILIPINO CITIZENS. — The Manila Pencil Company with Dominador Canlas for its president and general manager, was the successor in interest of the Philippine Consolidated Freight Lines which ran a bus and trucking business within the compound of the Clark Field Air Base. Its income taxes for the years 1947 to 1951 were only partially paid. The corresponding complaint was filed for the recovery of the unpaid income taxes. The petitioners contended that income taxes could not be levied against them, because the Military Bases Agreement between the Philippines and the United States granted exemption to the income received exclusively from the operation of freight and passenger service within the Clark Field Air Base. Judgment was rendered against the petitioners. **Held,** the Military Bases Agreement between the Philippines and the United States grants exemption from income taxes only to the members of the United States Armed Forces, nationals of said country, and their dependents and families, to the exclusion of Filipino citizens. CANLAS *v.* REPUBLIC, G.R. No. L-111305, May 21, 1958.

POLITICAL LAW — TAXATION — LOSSES, INVESTMENTS, AND INDEBTEDNESS DO NOT AFFECT THE VALUE OF THE LANDS SUBJECTED TO REASSESSMENT, IN THE ABSENCE OF PROOF THAT THE LOSSES WERE DUE TO DETERIORATION OF THE LAND THEMSELVES. — The Provincial Assessor of Tarlac notified the manager of the Hacienda Luisita that the assessment of its portions covered by Tax Declaration Nos. 25473 to 25477 in the municipality of La paz and Nos. 7065 to 7067 in the municipality of Concepcion, would be increased by 40% on the average, in accordance with the new schedule of values approved by the Secretary of Finance. The manager of the hacienda contended that in assessing the value of the lands the losses and indebtedness should be taken into account. **Held,** losses, investments and indebtedness do not affect the value of the lands subjects to reassessment, in the absence of proof that the losses were due to deterioration of the lands themselves. HACIENDA LUISITA *v.* BOARD OF TAX APPEALS, G.R. No. L-7451, May 26, 1958.

POLITICAL LAW — TAXATION — BALLET PERFORMANCE, BESIDES BEING TRULY AN ART, AN ART PAR EXCELLENCE, IS IN FACT INCLUDED IN THE TERMS "CONCERT, OPERA OR RECITAL" AND THEREFORE EXEMPTED FROM THE PAYMENT OF THE AMUSEMENT TAX. — This is a petition for review of the decision of the Court of Tax Appeals holding that ballet performances sponsored by the respondent come within section 1 of Republic Act No. 722 which provides

that the holding of operas, concerts, recitals, dramas, painting and art exhibition, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of any national or municipal amusement tax on the receipts therefrom. The petitioner maintains that ballet performance is not expressly exempted and under the principle of **expressio unius est exclusio alterius**, the enumeration in R.A. No. 722 should be considered exclusive. **Held,** a ballet performance, besides being truly an art, an art par excellence, is in fact included in the terms "concert, opera or recital" and therefore exempted from the payment of the amusement tax. COLLECTOR OF INTERNAL REVENUE *v.* OTEYZA, G.R. No. L-10290, May 28, 1958.

POLITICAL LAW — TAXATION — FRANCHISE TAX IS AN INTERNAL REVENUE TAX WITHIN THE MEANING OF THE TAX CODE. — The Panay Electric Company, Inc. is a grantee of a legislative franchise to operate and maintain an electric light, heat and power system for a period of 50 years. The franchise requires payment of a franchise tax equal to 1-1/2% of its gross earnings, during the first 20 years, and 2% during the remaining 30 years. By virtue of Rep. Act No. 39, the electric company was required to pay a franchise tax of 5% instead of 2% of its gross earnings. The company paid under protest. Then the Supreme Court promulgated its decision in the case of Philippine Railway vs. Collector of Internal Revenue, G.R. No. L-3859, holding that Rep. Act No. 39 was not applicable to holders of franchises which fixed a specific rate of franchise tax. The company claimed a refund of the amount paid in excess of 2% of its gross income upon the basis of such decision. It contended that a franchise tax was not an internal revenue tax and thus, Section 306 of the Tax Code, providing for refund of overpayment for a period of two years only, was not applicable to it. **Held,** a franchise tax is an internal revenue tax within the meaning of the Tax Code. PANAY ELECTRIC CO., INC. *v.* COURT OF TAX APPEALS, G.R. No. L-10574, May 28, 1958.

POLITICAL LAW—TAXATION—SECTION 38 OF THE NATIONAL INTERNAL REVENUE CODE AUTHORIZES THE APPLICATION OF THE NET WORTH METHOD IN THIS JURISDICTION. — Petitioner Perez filed his income tax returns for 1947, 1948 and 1950 on March 1, 1948, May 10, 1959, February 23, 1950 and February 28, 1951 respectively, and paid taxes thereon. On September 3, 1952, the respondent Collector of Internal Revenue assessed against the petitioner the sum of ₱369,-708.27 as deficiency income taxes and 50% surcharge from 1945 to 1950, but which amount was later reducted to ₱186,170.43 upon the petitioner's request for reconsideration. Subsequently, however, the said amount was increased. Upon the refusal of the Collector to consider further requests for reinvestigation and reexamination of the case, the petitioner appealed to the then Board of Tax Appeals. The collector answered the petition. Subsequently, the case was transferred to the Court of Tax Appeals. In making the deficiency assessments, the Collector employed the "net worth" technique. The Court of Tax Appeals declared that the "net worth" method of determining understated income have been validly and properly applied; that the consistent underdeclaration of income, unexplained acquisition of properties, and the fact of the petitioner's having claimed fictitious losses

evidence fraudulent intent, and ordered him to pay deficiency income taxes and surcharges in the amount of ₱41,547.77. Hence this petition for review. **Held,** Section 38 of the National Internal Revenue Code authorizes the application of the Net Worth Method in this jurisdiction. PEREZ *v.* COURT OF TAX APPEALS, G.R. No. L-10507, May 30, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — THE RELIEF FROM A JUDGMENT BY DEFAULT, UNDER RULE 38, WOULD BE A MOCKERY AND A DELUSION IF IT COULD BE DENIED ON THE GROUND THAT THE APPLICANT HAS AS YET NO STANDING IN THE CASE AS THE ORDER OF DEFAULT HAD NOT BEEN LIFTED. — In an action for the recovery of a sum of money, the defendant Filomeno Dizon was declared in default for failure to file an answer, and after proof was received in support of the complaint, judgment for the sum claimed was rendered against him. Learning of the judgment, dependant filed a petition for relief, asking that the order of default be lifted, the judgment set aside, and the case allowed to proceed to trial. However, the petition was denied on the ground that "up to the present such order of default has not as yet been lifted and therefore defendant has no personality in this case yet." Several petitions, motions and appeal all having been denied, the present petition for certiorari was instituted. **Held,** a person in default has no standing in court. And it is for the purpose of regaining personality in the case or standing in court that Rule 38 was included, providing thereby a method of relief from the default. It would therefore be plain mockery and a delusion if the petition for relief from default could be denied on the ground that the applicant has as yet no standing in the case as the order of default has not been lifted. DIZON *v.* YATCO, G.R. No. L-12202, April 28, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — ACTIONS FOR DAMAGES WHICH ARE IN THE NATURE OF A COUNTERCLAIM NECESSARILY CONNECTED WITH THE MAIN CAUSES OF ACTION MUST BE FILED IN THE SAME CASE, OTHERWISE, IT WILL BE BARRED IN A SEPARATE ACTION. — Alto Surety and Insurance Co., filed an action for collection of money based on an indemnity agreement against Guariño, Estioco and Siapno. Pending determination of the case, the defendants filed a separate action against the surety for the annulment of the indemnity agreement alleging that the surety has taken advantage of the ignorance of the defendants. The court absolved the defendants and declared the agreement null and void. Then the present action was filed to recover from the counsels of the surety damages suffered by the defendants due to the litigations. The defendants herein set up the defense that the causes of action are already barred for failure of the plaintiffs to set them up as counterclaim in the former case. **Held,** the actions for damages in all the causes of action are in the nature of a counterclaim necessarily connected with the main causes of action. The failure to set them up in said cases bars their being brought up in a separate action. To hold otherwise, would be to pass on the same issues in two separate cases, a situation which our rules seek to avoid. ESTIOCO ET AL.,*v.* HAMADA ET AL., G.R. No. L-11079, May 21, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — THERE IS NO PROHIBITION AGAINST A JUDGMENT DEBTOR, WHOSE PROPERTY IS LEVIED ON EXECUTION, TO TRANSFER HIS RIGHT OF REDEMPTION TO ANYONE WHOM HE MAY DESIRE. — Cesar acquired by redemption lot No. 655 which belonged to his parents and was covered by Transfer Certificate of Title No. 8112, from the sheriff on Dec. 9, 1954, the sheriff having attached the same in civil case No. 2627 of the CFI of Iloilo and sold it at public auction to the judgment creditor Jocson on Dec. 9, 1953. On Jan. 26, 1955, Cesar sold said lot to the petitioner Evidente. The sale was registered on Feb. 7, 1955 and on the same date, the corresponding transfer certificate of title was issued in the name of Evidente. Evidente, on Feb. 25, 1955, moved for the cancellation of the notice of levy appearing on the back of TCT No. 8712 which was opposed by Lagniton. the special administratrix of the late Jocson, on the ground, among others, that the exercise of the right of redemption by Cesar was not valid because Cesar was not a successor in interest within the meaning of Section 25, Rule 39 of the Rules of Court. **Held,** there is no prohibition against a judgment debtor. whose property is levied on execution, to transfer his right of redemption to anyone whom he may desire. EVIDENTE *v.* LAGNITON, G.R. No. L-11491, May 28, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — IF THE COURT OF APPEALS HAS NO APPELLATE JURISDICTION OVER THE JUDGMENT IN THE MAIN CASE, IT HAS NO JURISDICTION TO ISSUE A WRIT OF PRELIMINARY INJUNCTION TO ENJOIN EXECUTION THEREOF PENDING APPEAL. OTHERWISE, ISSUANCE THEREOF BY SAID COURT WOULD BE IN AID OF AN APPELLATE JURISDICTION THAT DOES NOT EXIST. — The Manila Court of First Instance rendered a judgment against the defendants in the present case, ordering the latter to pay Miailhe the sum of ₱3,100.00 as monthly rentals for the occupation of a lot from Dec. 1, 1953 to November 30, 1955 and to pay the costs. Halili appealed to the Court of Appeals, but because the amount involved was ₱77,400, excluding damages and interests, the appeal was certified to the Supreme Court. During the pendency of the appeal, Miailhe applied for a writ of execution which appeal, upon Halili's failure to furnish the needed bond, was granted. Halili and his wife filed a petition for certiorari with prohibition and preliminary injunction with the Court of Appeals, which petition was given due course. Miailhe asked for the dismissal of the petition on the ground that the Court of Appeals had no jurisdiction. The Court of Appeals refused to dismiss the petition on the ground that, although the main case was beyond its jurisdiction, the petition was within its jurisdiction. **Held,** if the Court of Appeals has no appellate jurisdiction over the judgment in the main case, it has no jurisdiction to issue a writ of preliminary injunction to enjoin execution thereof pending appeal. Otherwise, issuance thereof by said court would be in aid of an appellate jurisdiction that does not exist. MIAILHE *v.* HALILI, G.R. No. L-12646, April 30, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — IN AN ACTION FOR THE RECOVERY OF INSPECTION FEES UNLAWFULLY COLLECTED, THE REFUND OF WHICH IS INCLUDED IN AN APPROPRIATION ORDINANCE DULY APPROVED THE REAL PARTIES IN INTEREST ARE THE OFFICERS OR OFFICIALS OF THE CITY WHO REFUSE TO PERFORM THEIR MINISTERIAL DUTIES TO PAY THE CLAIMS. — The petitioners, duly li-

censed meat vendors, submitted lists of claims for the refund of meat inspection fees unlawfully collected under Ordinance 2991 of the City of Manila. Ordinance 3558, an appropriation ordinance, included the total amount to be refunded to the petitioners. Some of the claims were already paid, but the mayor suspended the payment of the remaining claims. The payment of the claims could not be obtained. An action for mandamus was instituted against the City Auditor and the City Treasurer to pass in audit and pay the claims of the petitioners. The City Mayor was joined as defendant because he ordered the City Auditor and the City Treasurer to suspend the payment and it was sought to prohibit him from enforcing said order. The trial court ruled that the City was the real party in interest, because any judgment that could be rendered against said officials for refund of fees unlawfully collected and levied would be unenforceable against the City and the funds of the latter in the possession or custody of said officials could not be paid or disposed by them to satisfy any judgment. Hence this appeal. **Held,** in an action for the recovery of inspection fees unlawfully collected, the refund of which is included in an appropriation ordinance duly approved, the real parties in interest are the officers or officials of the City who refuse to perform their ministerial duties to pay the claims. SUBIDO *v.* LACSON, G.R. No. L-9957, April 25, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — THE FORM OF DENIAL, AVERRING THAT THE DEFENDANTS ARE WITHOUT KNOWLEDGE OR INFORMATION SUFFICIENT TO FORM A BELIEF AS TO THE TRUTH OF THE MATERIAL AVERMENTS OF THE COMPLAINT, ALTHOUGH ALLOWED BY THE RULES OF COURT, MUST BE AVAILED OF WITH SINCERITY AND IN GOOD FAITH. — The Plaintiff filed an action against the defendant for the foreclosure of mortgage. The deed of mortgage sued upon was attached to the complaint. The defendants answered that they were without knowledge or information sufficient to form a belief as to the truth of the material allegation of the complaint. The plaintiff moved for judgment on the pleadings because the answer failed to tender an issue. The motion was granted and judgment was rendered in favor of the plaintiff. Hence this appeal. **Held,** the answer is a general denial. The form of denial, averring that the defendants are without knowledge or information sufficient to form a belief as to the truth of the material averments of the complaint, although allowed by the Rules of Court, must be availed of with sincerity and in good faith. WARNER BARNES CO., LTD. *v.* REYES, G.R. No. L-9531, May 14, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — AN ORDER REFUSING CANCELLATION OF THE NOTICE OF LIS PENDENS IS INTERLOCUTORY AND CANNOT BE THE SUBJECT OF APPEAL UNTIL FINAL JUDGMENT IS RENDERED. — Roberta Diaz is an old woman, 33 years of age, residing in Pasay City, possessing real and personal properties roughly estimated at half a million pesos. On August 18, 1956, several of her legitimate children filed a petition in the CFI of Rizal to declare her incompetent to take care of herself and manage her properties and to appoint a guardian of her properties. While the special proceeding was pending hearing before the respondent judge, Roberta Diaz received from the Register of Deeds a letter advising her that by reason of said proceedings, a notice of **lis pendens** had been annotated on her TCT

No. 32872. She filed a petition to cancel the **lis pendens,** which petition was denied by the respondent. Her motion for reconsideration having failed, Roberta Diaz filed a notice of appeal, record on appeal, and appeal bond. Hence this petition for mandamus and certiorari. **Held,** an order refusing cancellation of the notice of **lis pendens** is interlocutory and cannot be the subject of appeal until final judgment is rendered. DIAZ *v.* PEREZ, G.R. No. L-12053, May 30, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — EVERY ACTION MUST BE PROSECUTED IN THE NAME OF THE REAL PARTY IN INTEREST. A LAWYER IS PRESUMED TO BE PROPERLY AUTHORIZED TO REPRESENT ANY CAUSE IN WHICH HE APPEARS, BUT SUCH PRESUMPTION MAY BE REBUTTED BY EVIDENCE ADDUCED DURING THE TRIAL. — An action to recover damages was filed in the Court of First Instance of Laguna. The damages were claimed by reason of the death of Chua Pua Lun as a result of a collision suffered by the jeepney in which he was a passenger. The plaintiffs, heirs of the deceased, were all residents and citizens of the community. During the trial, evidence was adduced to show that the plaintiffs, although informed of the death, have not authorized anyone to file the complaints nor communicated with anyone in the Philippines in connection with the filing of the complaint for damages. The trial court dismissed the complaint. Hence this appeal. **Held,** every action must be prosecuted in the name of the real party in interest. A lawyer is presumed to be properly authorized to represent any cause in which he appears, but such presumption may be rebutted by evidence adduced during the trial. LIM SIOK HUEY *v.* LAPIZ, G.R. No. L-12289, May 28, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — A GUARDIAN AD LITEM HAS NO AUTHORITY TO ACT OR BIND A MINOR IN ANY TRANSACTION WITH REGARD TO THE LATTER'S ESTATE, BUT HE CAN, HOWEVER, DO SO WITH THE APPROVAL OF THE COURT. — Raymundo Sto. Domingo contracted two marriages, the first producing Urbana and the second producing Leoncia as the issue. Days before the Death of Raymundo on May 1, 1935, he executed a deed of donation of certain properties in favor of Urbana, which donation was duly accepted and the properties were placed in the possession of the donee. On March 10, 1936, Urbana sold the donated properties to Deogracias Matias. The sale was duly registered and the corresponding certificate of title issued in the vendee's favor. Subsequent to the sale, there followed a series of litigation involving the annulment of the deed of donation and of the deed of sale. The first, instituted by Pilar Evangelista, the widow of Raymundo, in her behalf and as guardian ad litem of her minor daughter Leoncia Sto. Domingo, was amicably settled, with the plaintiff receiving ₱1,000.00 by way of compromise. This was approved by the court. The second, instituted by the same widow, was again dismissed on petition of the plaintiff. The third, instituted by the administrator of the estate of Raymundo Sto. Domingo, was dismissed on the ground of lack of capacity to sue. The present action was brought by the widow, seeking the same relief. **Held,** considering that the present case involves the same parties and the same issues as those involved and raised in the first case, the present case is barred by a prior judgment. Moreover, although ordinarily a guardian **ad litem** has no authority to act or bind a minor in any transaction involving

the latter's estate, nevertheless, he can do so with the approval of the court. SANTO DOMINGO *v.* SANTO DOMINGO, G.R. No L-10886, April 18, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — AN ACTION SEEKING THE FORECLOSURE OF THE CHATTEL MORTGAGE EXECUTED OVER PERSONAL PROPERTIES WORTH P8,500.00, IN DEFAULT OF PAYMENT OF THE PRINCIPAL OBLIGATION, IS WELL WITHIN THE JURISDICTION OF THE COURT OF FIRST INSTANCE, EVEN THOUGH THE PRINCIPAL OBLIGATION IS FOR AN AMOUNT LESS THAN P2,000. — Plaintiff brought this action before the CFI of Cebu in order to recover from defendant Pestolante the sum of P600.00, plus interest, and the sum of P250.00 as attorney's fees and, in default of payment thereof, to order the foreclosure of the chattel mortgage executed by said defendant covering personal properties valued at P2,500. Barimbao was made a party defendant for the reason that he was in possession of the mortgaged property and had a refused to surrender the same to the plaintiff. Barimbao claimed that he had purchased the property from co-defendant Pestolante who, on the other hand, filed a motion to dismiss the action on the ground of lack of jurisdiction of the CFI. The lower court sustained the motion. Hence, this appeal. **Held,** although the principal obligation was only for an amount less than P2,000.00, nevertheless the CFI had jurisdiction over the case inasmuch as it appeared that the complaint asked, in default of payment of the obligation, for the foreclosure of the mortgage over personal properties valued at P2,500.00. SENO *v.* PESTOLANTE ET AL., G.R. No. L-11755, April 23, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN IT WAS CLAIMED THAT THERE WAS NO SHOWING AS TO THE ALLEGED SERVICE RENDERED BY THE COMMISSIONER, THAT THE COMPENSATION SOUGHT WAS EXCESSIVE, AND THAT THE APPROVAL AND PAYMENT OF THE COMMISSIONER'S FEES WERE PREMATURE, A HEARING BECAME INDISPENSABLE. — Plaintiff Froilan filed a complaint against the defendant Pan Oriental Shipping Co. a complaint for the delivery of a ship. The Compañia Maritima intervened, alleging that it is in possession of and the one operating the ship, having purchased it from the plaintiff. On April 7, 1954, defendant filed a motion for reference to a commissioner of the issues of fact involved in the counterclaims. Motion for reference was denied. Upon **ex parte** motion of the defendant, however, the lower court appointed Enrique Caguiat as commissioner to examine the accounts involved in the counterclaims. On Dec. 1, 1954, the commissioner filed a motion for approval of his fees to which the plaintiff and intervenor filed their answer alleging that there was no showing whatsoever as to the time, place, nature and extent of his services; that the amount charged was excessive; that since the compensation of the commissioner, according to Rule 34, Sec. 13, of the Rules of Court, should be taxed as costs against the defeated party, the motion was therefore premature. The motion was accordingly held in abeyance. Motion for reconsideration was filed without notice of hearing to the plaintiff and the intervenor. The court granted **ex parte** the aforesaid motion and ordered the payment of P4,670 by the plaintiff and intervenor in equal shares, The plaintiff appealed from the order. **Held,** the lower court acted irregularly in granting, without notice and hearing, appellee commissioner's motion for reconsideration and ordering the appellant and intervenor to pay P4,670.00 in equal shares. A hearing became indispensable inasmuch as both appellant and intervenor had previously registered their stant that there was no showing as to the alleged service rendered by the appellee; that the compensation sought was excessive; and that the approval of the fees were premature. FROILAN *v.* PAN ORIENTAL SHIPPING CO., ET AL., G.R. No. L-9791, April 28, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — THE APPEAL BY THE PROSECUTION MUST NECESSARILY BE DISMISSED IF SUCH APPEAL PLACES THE DEFENDANT TWICE IN JEOPARDY OF PUNISHMENT FOR THE SAME OFFENSE. — Defendant Flores was charged with grave oral defamation. After the prosecution presented its evidence, the defense moved for the dismissal of the case, whereupon decision was rendered acquitting the accused on the ground that, although he had made the slanderous imputations quoted in the information, it had not been established that the action was instituted upon complaint filed by the offended party. Hence, the appeal by the prosecution upon the proposition that a complaint by the offended party is not indispensable to the prosecution of the crime of oral defamation, when the defamatory words uttered by the accused constitute an imputation, either of a crime that may be prosecuted de officio or of a vice or defect, not constituting a crime but tending to cast dishonor upon the offended party. **Held,** although there is merit in this appeal, nonetheless the appeal will not prosper because it places the defendant twice in jeopardy of punishment for the same offense, in violation of the Constitution. PEOPLE *v.* FLORES, G.R. No. L-11022, April 28, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — AN AFFIDAVIT OF THE OFFENDED PARTY TO THE EFFECT THAT THE OFFENSE CHARGED WAS COMMITTED BY ONLY ONE PERSON, WITHOUT THE ASSISTANCE OF APPELLANT, IS NOT "NEWLY DISCOVERED EVIDENCE," ESPECIALLY IF SUCH INFORMATION WAS ONLY GIVEN TO AFFIANT. — On Feb. 1, 1951, an information was filed with the CFI of Camarines Sur, charging Alfredo Pasa, Isidoro Villareal and Irineo Villareal with the crime of robbery of P407.50 worth of articles. Upon arraignment, the defendants pleaded not guilty. Subsequently, however, counsel for Pasa and Isidoro Villareal secured permission to withdraw their pleas and to plead guilty of theft. On April 19, 1952, however, both filed a petition praying for permission to reinstate their pleas of not guilty in place of guilty, for the reason that the latter was entered upon the suggestion of the attorney de officio. The court promulgation its decision sentencing both, but dismissing the case, on motion of the prosecution, as regards Irineo Villareal, for insufficiency of evidence. Their petitions for reconsideration having been denied, the accused filed the present appeal. **Held,** the lower court acted right and lawfully in not permitting the withdrawal of the plea of guilty, and the entry, in lieu thereof, of the plea of not guilty, because such a plea of guilty was voluntarily entered. And an affidavit based on hearsay evidence to the effect that the offense charged was committed only by Villareal, without the assistance of appellant Pasa, is not "newly discovered evidence." PEOPLE *v.* PASA, G.R. No. L-11516, April 18, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — IF THE ACCUSED IS A MINOR BETWEEN THE AGES OF 9 AND 15, ALLEGATION THAT THE ACCUSED ACTED WITH DISCERN-

MENT IS REQUIRED, BUT SUCH REQUIREMENT SHOULD BE DEEMED AMPLY MET IF THE FACT OF DISCERNMENT COULD BE IMPLIED OR INFERRED FROM THE AVERMENTS IN THE INFORMATION. — An information for homicide was filed against Gloria Nieto, alleging that on or about May 7, 1956, in Peñaranda, Nueva Ecija, she "with the intent to kill, did then and there wilfully, criminally and feloniously push one Lolita Padilla, a child 8-1/2 years old, into a deep place of the Peñaranda River, and, as a consequence thereof, Lolita Padilla got drowned." Upon arraignment, the accused pleaded guilty. Nonetheless, the trial judge acquitted her of the crime charged on the ground that she was a minor over nine and under fifteen years old and the information failed to allege that she acted with discernment. The prosecution thereafter filed another information for the same offense, this time alleging in express terms that the accused acted with discernment. But the defense filed a motion to quash on the ground of double jeopardy, and the court, now presided by another judge, granted the motion. Appeal by the prosecution. **Held,** appeal is without merit. Double jeopardy applies because the accused could, on her unqualified plea of guilty to the first information, be rightly held answerable for the offense therein charged. PEOPLE *v.* NIETO, G.R. L-11965, No. April 30, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — WHEN ADMISSION TO BAIL IS A MATTER OF DISCRETION THE COURT MUST REQUIRE THAT REASONABLE NOTICE OF THE HEARING OF THE APPLICATION FOR BAIL BE GIVEN TO THE FISCAL, AND SUCH NOTICE IS NECESSARY BECAUSE THE BURDEN OF SHOWING THAT EVIDENCE OF GUILT IS STRONG IS ON THE PROSECUTION. — Clemente Talantor and Melquiades Raba were charged with murder before the CFI of Antique and the bail for each was fixed by the court at ₱30,000, as recommended by the provincial fiscal. On April 26, 1956, Talantor, after pleading not guilty, filed with the court in urgent motion praying for the reduction of his bond from ₱30,000 to ₱14,000. Notice of such application for reduction of bail was given to the fiscal in the morning of the same day. Despite the lack of due notice the court promptly granted the motion for reduction of bail one hour later. A motion for reconsideration having been denied by the trial court, the fiscal interposed the present appeal. **Held,** the appropriate remedy is **certiorari** and not appeal inasmuch as the oders herein involved are interlocutory in nature. However, the orders of the trial court, reducing the bond to ₱14,000 and appoving the bail bond as thus reduced, should be set aside because of lack of reasonable notice to the fiscal, thus depriving the latter of the opportunity to be heard and to show that the evidence of guilt is strong. PEOPLE *v.* RABA ET AL., G.R. No. L-10724, April 21, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — INSTITUTION OF CRIMINAL ACTION INTERRUPTED THE RUNNING OF THE PERIOD OF PRESCRIPTION DURING THE TIME THAT THE CASE WAS PENDING IN COURT. — Plaintiff was an employee of Chua Leh. On Sept. 29, 1949, plaintiff with Leh and Legaspina were riding in Leh's delivery truck to deliver soap to customers. On the way, while they were stopping on the correct side of the road in Carcar, Cebu, the defendant's driver bumped the plaintiff's truck which fell on a precipice and was destroyed and injured the plaintiffs. On Dec. 13, 1949 the driver

was charged of physical injuries thru reckless imprudence but the criminal case was, after several postponements, dismissed without prejudice on Feb. 16, 1954. On May 14, 1955, a civil case for damages was filed against the employer of the driver. The defendant filed a motion to dismiss on the ground of prescription. **Held,** inasmuch as the offended party in the criminal case neither expressly waived the civil action nor reserved the right to file it separately, in accordance with Rule 107 par (a), the civil action is impliedly instituted with the criminal case. Under art. 1155 of the New Civil Code, the institution of said criminal action interrupted the running of the period of prescription during the time that the case was pending in court. The period again continued to run when the said criminal action was dismissed on Feb. 16, 1954. Therefore, the action for damages has not yet expired. DEGOLLACION *v.* LI CHUI, G.R. No. L-11640, May 28, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — SECTION 9, RULE 119 AND SECTION 12, RULE 118 OF THE RULES OF COURT REGULATE THE RIGHT OF THE ACCUSED TO WITHDRAW HIS APPEAL. THESE PROVISIONS DO NOT CONTROL THE AUTHORITY OF THE COURT TO DISMISS THE APPEAL OR DECLARE IT ABANDONED, REGARDLESS OF THE WILL OF THE ACCUSED. — The petitioner was, on January 19, 1956, convicted by the Municipal Court of Manila of the crime of estafa and sentenced accordingly. On appeal taken by the petitioner, the case was docketed as Criminal Case No. 34136 of the CFI. Sometime later, the trial of the case began but it was not completed. The following facts are not denied by the petitioner: that he was personally served with notice of the hearing, in which he signed; that the bonding company had to ask for several extensions of time within which to arrest him and produce his person; that when the case was called for trial on October 11, 1956, said bonding company was unable to present him and his counsel moved that he be allowed to withdraw his appearance on the ground that he could not contact his client; that it was only after much efforts that the Plaridel Suretv and Insurance Co. was able to turn him over to the MPD on November 6, 1956. The CFI declared that by the accused's conduct, he has abandoned his appeal. Hence the present petition to set aside the order and to reinstate his appeal on the ground that from the provisions of Section 9, Rule 119 and Section 12 of Rule 118 of the Rules of Court, once the trial of the case, on appeal to the CFI, has started therein, the appeal may no longer be withdrawn by the appellant and that the CFI has no authority to revive the decision appealed from and remand the case to the court of origin for execution of the decision thereof, even if the accused had, by his behavior, shown no interest in the appeal and the intent to abandon it. **Held,** Section 9, Rule 119 and Section 12, Rule 118 of the Rules of Court regulate the right of the accused to withdraw his appeal. These provisions do not control the authority of the Court to dismiss the appeal or declare it abandoned, regardless of the will of the accused. ESCUDERO *v.* LUCERO, G.R. No. L-11629, May 14, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — IT IS NOT NECESSARY FOR THE FISCAL TO NOTIFY THE PRIVATE PROSECUTOR OF HIS MOTION FOR DISMISSAL BEFORE ACTION CAN BE TAKEN THEREON. WHEN THE CASE AGAINST THE ACCUSED IS DISMISSED, THEY MAY BE REQUIRED TO FILE NEW BAIL BONDS ONLY WHEN

A NEW COMPLAINT IS FILED AND THE REQUIRED PRELIMINARY EXAMINATION CONDUCTED AS REQUIRED BY LAW. — Gloria Lagman filed a complaint for forcible abduction against Alberto Pañgan, Arsenio Pabalan, Jr. and Teofilo Dizon in the Justice of the Peace Court. After the required preliminary examination, the court issued a warrant for the arrest of the accused who filed bail bonds for their provisional release. After the necessary preliminary investigation, the Justice of the Peace forwarded the case to the Court of First Instance. Before filing a formal complaint, the fiscal conducted a reinvestigation of the case wherein both complainant and the three accused were present assisted by counsel. The fical found the evidence insufficient to hold Pañgan and Pabalan criminally liable and moved for the dismissal of the case against them. The motion was granted. Subsequently, the complainant moved to set aside the order of dismissal against the two accused on the ground that no notice of the motion for dismissal was given to her counsel by the fiscal. The court set aside the order and ordered the two accused to reinstate their bail bonds. Hence this petition for certiorari. **Held,** it is not necessary for the fiscal to notify the private prosecutor of his motion for dismissal before action can be taken thereon. When the case against the accused is dismissed, they may be required to file new bail bonds only when a new complaint is filed and the required preliminary examination conducted as required by law. PAÑGAN *v.* PASICOLAN, G.R. No. L-12517, May 19, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — WHERE THE PERIOD GIVEN TO THE BONDSMEN TO PRODUCE THE ACCUSED HAD ELAPSED AND THE ACCUSED HAD NOT BEEN BROUGHT BEFORE THE COURT, THE SURETIES CANNOT BE COMPLETELY DISCHARGED, DESPITE THE SUBSEQUENT SURRENDER OF THE ACCUSED. — Florentino Tolentino was accused of the crime of murder, and to secure his provisional release, a bail bond in the amount of ₱25,000 was posted in his favor by several persons. When the criminal case was called for trial, he failed to appear. The lower court issued an order giving the bondsmen five days to explain why their bond should not be confiscated. Subsequently, the court ordered the confiscation of the bail bond, giving the bondsmen thirty days within which to produce the body of the accused. A year later, the fiscal moved for the execution of the bond and the court ordered its execution. Two months after the order of execution, the bondsmen filed a motion for the reconsideration of the order to execute the bond because the accused had died. The motion was denied and the writ of execution was subsequently issued and the properties were advertised for sale of public auction. Before the sale could take place, the accused was apprehended and brought before the court by his bondsmen, who all prayed for the lifting of the orders of confiscation and execution of their bail bond. The motion was denied. **Held,** where the period given to the bondsmen to produce the accused had elapsed and the accused had not been brought before the court, the sureties cannot be completely discharged, despite the subsequent surrender of the accused. PEOPLE *v.* TOLENTINO, G.R. No. L-11036, May 23, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — WHEN A PRELIMINARY INVESTIGATION HAD BEEN CONDUCTED BY THE JUSTICE OF THE PEACE, AND AFTER THE CASE WAS ELEVATED TO THE COURT OF FIRST INSTANCE, THE OFFENDED PARTIES AND PROSECUTION WITNESSES REFUSE TO GIVE ANY TESTIMONY TO THE FISCAL, THE REMEDY OF THE FISCAL IS TO ASK THE JUDGE TO ORDER OFFENDED PARTIES TO SUBMIT TO HIS INVESTIGATION FOR THE PURPOSE OF CONVINCING HIM OF THE MERITS OF THE CASE. — Several persons were charged with offending the religious feeling of some devotees of the Iglesia ni Cristo. The Justice of the Peace conducted the preliminary investigation, and elevated the case to the Court of First Instance upon being convinced that the crime had been committed and that the accused were probably guilty thereof. Upon receiving the record of the case, the Assistant Provincial Fiscal summoned the offended parties and their witnesses. The latter refused to give any testimony. The fiscal filed a motion for dismissal of the case which was denied by the court and the fiscal was ordered to file the corresponding information. The motion for reconsideration was denied. Hence this petition for certiorari. **Held,** when a preliminary investigation has been conducted by the Justice of the Peace, and after the case was elevated to the Court of First Instance, the offended parties and prosecution witnesses refused to give any testimony to the fiscal, the remedy of the fiscal is to ask the judge to order offended parties to submit to his investigation for the purpose of convincing him of the merits of the case. ASSISTANT PROVINCIAL FISCAL *v.* DOLLETE, G.R. No. L-12196, May 28, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — SECTION 1 (c), RULE 107 OF THE RULES OF COURT, REFERRING TO THE SUSPENSION OF THE CIVIL ACTION, DOES NOT OPERATE IN CASE OF THE MERE FILING OF A COMPLAINT WITH THE FISCAL. — An action was brought by the parents of two minor children on behalf of the latter to recover damages for food poisoning which said minors were alleged to have contracted by eating ice cream bought from the restaurant of one of the defendants but manufactured by the other defendants. The case was set for hearing on May 17, 1955. Actual trial, however was not held until the 16th of the following month and the trial was not finished because the plaintiffs' counsel, after presenting five witnesses asked for a continuance. The continuance was granted and at said attorney's request the next hearing was set for June 20. When that day came, the counsel asked for another postponement, alleging that he was sick. The court granted the motion and reset the hearing for June 24. But on June 21, the attorney filed a motion to be allowed to withdraw from the case because of illness and because of alleged conflict of opinion between him and his clients. The plaintiffs gave their conformity to this motion and on the same day lodged a complaint with the city fiscal against the defendants for a violation of the Foods and Drugs Act, and then invoking section 1 (c), Rule 107 of the Rules of Court, petitioned the court to suspend the proceedings in the civil case until final judgment in the criminal case. The petition was filed on June 23 and set for hearing on the following day, June 24, which was also the date set for the continuance of the trial. But the court denied the petition, holding that the rule cited requiring the suspension of the civil case after the criminal action has been commenced, referred to the commencement of the criminal action in court and not to the mere filing of a complaint with the fiscal. The civil case was dismissed for failure of the plaintiffs to appear at the continuation of the hearing. Hence, this appeal. **Held,** Section 1 (c), Rule 107 of the Rules of Court, referring to the sus-

pension of the civil action, does not operate in case of the mere filing of a complaint with fiscal. COQUIA *v.* CHEONG, G.R. No. L-12288, May 30, 1958.

REMEDIAL LAW—CRIMINAL PROCEDURE — FAILURE TO URGE DOUBLE JEOPARDY IN THE APPEAL MAY BE REGARDED AS A WAIVER OF SAID DEFENSE. — Absalon Bignay, Diosocro Pinnila and Conrado Daiz were charged in the Court of First Instance of Negros Occidental with murder. At the trial, the Government presented its evidence and after it had rested its case, the counsel for the accused filed a motion for dismissal on the ground of lack of jurisdiction. The motion was sustained by the court and dismissed the case. The order of dismissal was appealed by the Government to the Supreme Court over the objection of the defense which invoked the principle of double jeopardy. The Supreme Court in a decision promulgated on March 28, 1952, found that the jurisdiction of the trial court had been proven, and that the appeal did not involve double jeopardy, and so remanded the case for further proceedings. The trial found the crime committed to the murder qualified by evident premeditation. The case was appealed to the Supreme Court. In the course of the discussion of the case and before it was actually submitted to a vote, Chief Justice Paras raised the question of double jeopardy, and claimed that the appellant has once been placed in jeopardy and, therefore, he should be acquitted. It was signed that the decision of the Supreme Court on the appeal prosecuted by the Government from the order of dismissal of the trial court on the ground of lack of jurisdiction, was based on the case of People vs. Salico, 47 O.G. 1765, which held that an appeal by the Government from an order of dismissal for lack of jurisdiction, when such jurisdiction really existed, which order of dismissal was based on and prompted by a motion to dismiss filed by the accused himself, did not place him in jeopardy, and that the doctrine laid down in said case of Salico has recently been overruled by the Supreme Court in more than one case. **Held,** although the argument of the Chief Justice is correct, the decision of the Supreme Court on that appeal by the Government from the order of dismissal, holding that there was no jeopardy, promulgated in 1952, has long become final and conclusive and has become the law of the case. Besides, failure to urge double jeopardy in the appeal may be regarded as a waiver of said defense. PEOPLE *v.* PINVILA, G.R. No. L-11374, May 30, 1938.

REMEDIAL LAW — COURT OF AGRARIAN RELATIONS — THE COURT OF AGRARIAN RELATIONS CANNOT RESERVE TO A PARTY THE RIGHT TO FILE A NEW AND SEPARATE ACTION FOR DAMAGES, THERE BEING NO SUFFICIENT EVIDENCE IN THE ORIGINAL CASE TO SUSTAIN AN AWARD THEREOF, FOR OTHERWISE THERE WOULD BE SPLITTING OF A SINGLE CAUSE OF ACTION. — This case for reinstatement was originally filed in the Court of Industrial Relations, but was later transferred and tried in the Court of Agrarian Relations when the latter was created and acquired jurisdiction over the case. The CAR rendered judgment ordering the reinstatement of petitioners and reserving to them the right to file a new action for the recovery of losses and damages because the evidence of record does not contain enough data upon which to base a fair adjudication of damages in favor of petitioners. The respondent Maria David appealed, questioning the legality and propriety of such reservation.

Held, the CAR has no authority to make such reservation because the two claims or remedies — reinstatement and damages — arise from the same cause of action and therefore should be alleged, as in fact they were alleged, in a single complaint. And it was the duty of the original petitioners, De la Cruz and Calma, to prove both claims satisfactorily. They failed to prove the damages allegedly suffered by them. Therefore, such claim for damages should have been dismissed. The reservation by the CAR would not only result in multiplicity of suits but would also be sanctioning and allowing the filing of another action between the same parties for a claim that has already been fully tried and adjudicated. DAVID *v.* DE LA CRUZ & CALMA, G.R. No. L-11656, April 18, 1958.

REMEDIAL LAW — DIRECT CONTEMPT — A MISBEHAVIOR, IN ORDER TO CONSTITUTE DIRECT CONTEMPT, MUST BE COMMITTED EITHER IN THE PRESENCE OF OR SO NEAR A COURT, WHILE IN SESSION, OR IN THE PRESENCE OF THE JUDGE, EVEN IF NOT IN SESSION, IN CONNECTION WITH THE ADMINISTRATION OF JUSTICE. — The petitioner Bengzon was appearing for the defendant in a civil case before the respondent judge. The judge ordered a recess and during that period the petitioner quarreled with the attorney for the plaintiff resulting in the breaking of one or two chairs of the court. When the judge came out of his room, he ordered the parties to stop. Because of this misbehavior, the respondent judge found the petitioner and the other attorney guilty of direct contempt and imposed upon each a penalty of five days imprisonment and a fine of ₱200. However, because the petitioner was then a Congressman and raised his parliamentary immunity from arrest, the respondent judge suspended the effects of his order so as to give him an opportunity to raise the issue in a proper case before the Supreme Court. Hence this petition for certiorari. **Held,** a misbehavior, in order to constitute direct contempt, must be committed either in the presence of or so near a court, while in session, or in the presence of the judge, even if not in session, in connection with the administration of justice. BENGZON *v.* TAN, G.R. No. L-12043, May 23, 1958.

REMEDIAL LAW — EVIDENCE — THE STATUTE OF FRAUDS DOES NOT APPLY TO ORAL CONTRACTS PARTIALLY EXECUTED. — The plaintiff entered into an oral contract with the defendant, whereby the defendant agreed to sell a parcel of land, when he succeeded in acquiring title thereto, provided the plaintiff would pay the expenses for the survey and subdivision of the lot, and provided further that after the defendant acquired title, the plaintiff could continue holding the lot as tenant by paying a monthly rental of ₱10.00 until the purchase price has been fully paid. In pursuant to the agreement, the plaintiff incurred the expenses for the survey and subdivision and regularly paid the monthly rentals constructing a house on the lot, the plaintiff tendered the purchase price which the defendant refused to accept. During the trial, the action was dismissed upon the ground that the Statute of Frauds precludes enforcement of oral contracts for the sale of land. The court further ruled that the exception would not apply because there was no partial performance. **Held,** the Statute of Frauds does not apply to oral contracts partially executed. The combination of continued pos-

session, building of improvements and tender of payment amounts to partial performance. ORTEGA *v.* LEONARDO, G.R. No. L-11311, May 28, 1958.

REMEDIAL LAW — EVIDENCE — IT IS WELL SETTLED IN THIS JURISDICTION THAT THE STATUTE OF FRAUDS IS APPLICABLE ONLY TO EXECUTORY CONTRACTS, THAT ARE TOTALLY OR PARTIALLY PERFORMED. — Plaintiff Rosario Carbonel alleged that she purchased a parcel of land from Jose Poncio, advancing part of the price and the balance to be payable upon the execution of the deed of conveyance. One of the conditions of the sale was that the defendant would continue staying in said land for one year, as evidenced by a document signed by the latter. Poncio refused to execute the deed of sale and conveyed the the parcel of land to the other defendants. During the trial, the plaintiff introduced oral evidence to prove the sale. The defendant moved to dismiss the case upon the ground that the cause of action was unenforceable under the Statute of Frauds. The lower court granted the motion. Hence this appeal. **Held,** it is well settled in this jurisdiction that the Statute of Frauds is applicable only to executory contracts, not to contracts that are totally or partially performed. CARBONNEL *v.* PONCIO, G.R. No. L-11231 May 12, 1958.

REMEDIAL LAW — EVIDENCE — ALIBI IS AT BEST A WEAK DEFENSE AND CANNOT PREVAIL OVER THE TESTIMONY OF TRUTHFUL WITNESSES. — Ruben Rodriguez, Leonardo Alvarez, Ernesto Desiderio and Felipe Tan were charged in the CFI of Manila with the crime of murder. During the trial it was established that Eulogio Tagle was murdered by the accused. Upon Desiderio's surrender to the authorities, he gave an extrajudicial confession which was subsequently reduced to writing. At the trial, Desiderio was utilized as Government witness and his testimony was in substance the same as his extrajudicial confession. His testimony was corroborated. The other accused alleged the defense of alibi. To establish this defense, they presented relatives who testified that they were not at the scene of the crime. The counsel for the defendants submitted a motion for new trial based on newly discovered evidence consisting of an affidavit of Ernesto Desiderio retracting the testimony he had given on the trial. The resolution of the motion was deferred until the consideration of the case on the merits. The defendants appealed. **Held,** alibi is at best a weak defense and cannot prevail over the testimony of truthful witnesses. The motion for new trial is denied. The retraction should not be given any consideration. PEOPLE *v.* RODRIGUEZ, G.R. No. L-11498, May 30, 1958.

REMEDIAL — LAW — SPECIAL PROCEEDINGS — THE PROBATE COURT HAS JURISDICTION TO ORDER THE CONFISCATION AND EXECUTION OF THE BOND OF THE EXECUTOR OR ADMINISTRATOR WITHOUT FIRST DETERMINING THE LIABILTY OF THE EXECUTOR OR ADMINISTRATOR AND THAT OF THE SURETY IN A SEPARATE ACTION. —In a special proceeding pending before the respondent Judge, the petitioner posted an executor's bond in favor of Executor Tagakotta Sotto. On April 1955, Sotto was relieved of his trust for failure to perform his duties as such executor. On August 20, 1955, the court ordered the confiscation of Sotto's bond for failure to render an accounting as ordered by the Court. The court granted an extension within which to render an accounting, but the petitioner failed to cause the submission of the accounting. On October 31, 1955, the court issued a writ of execution of the bond. The petitioner instead of filing a notice of appeal asked for another extension, which was denied. Subsequently, the petitioner moved to annul the order of confiscation and executing on the ground that the court was without jurisdiction to issue such order, for the liability of the executor and that of the surety must first be determined in a separate action. **Held,** the probate court has jurisdiction to order the confiscation and execution of the bond of the executor or administrator without first determining the liability of the executor or administrator and that of the surety in a separate action. PACIFIC UNION INSURANCE CO. *v.* NARVASA, G.R. No. L-10696, May 28, 1958.

COURT OF APPEALS

CIVIL LAW — LEASE — UNDER ARTICLE 1687 OF THE CIVIL CODE, AFTER THE EXPIRATION OF THE LEASE, THE COURT IS GRANTED DISCRETION WHETHER TO FIX A LONGER TERM OR NOT. — The plaintiff company was the owner of an old building. By virtue of a verbal contract with the defendants, the latter were permitted in 1947 to occupy it with a monthly rental of ₱300. The rental was subsequently increased, because the defendants occupied additional space. No fixed duration was agreed upon by the parties. In the oral contract, there was a prohibition against the introduction of repairs and improvements on the building and the subleasing of the same without the knowledge and consent of the plaintiff. During the lease, the defendants violated this prohibition. The plaintiff, upon discovery of the acts of the defendants, notified the latter in writing to vacate the premises and declared the lease terminated as of October 31, 1954. The defendants refused to vacate the premises. An action for unlawful detainer was commenced in the Municipal Court. The defendants claimed that the lease was without a definite period and that it was agreed that the building would remain leased for such length of time as the defendants would have need of the property. The Municipal Court rendered judgment for the plaintiff. The defendants appealed to the Court of First Instance, which judgment rendered also for the plaintiff. The defendants appealed, contending among other things, that under Article 1687 of the Civil Code, the court must mix a longer term for the lease after the same has expired. **Held,** under Article 1687 of the Civil Code, after the expiration of the lease, the court is granted discretion whether to fix a longer term or not. In the exercise of this discretion, the court takes into consideration the peculiar circumstances of the case, such as the length of time of occupancy after the demand by the lessor, the availability of housing facilities, the manner the lessee has complied with his obligations, and the like. The defendants openly disregarded the prohibition, and therefore, should not be entitled to the period of grace granted under Article 1687. SUSANA REALTY INC. *v.* DE GUZMAN, (CA) G.R. No. 16738-R, December 11, 1957.

CIVIL LAW — PARTNERSHIP — IN DETERMINING WHETHER OR NOT A PARTICULAR TRANSACTION CONSTITUTES A PARTNERSHIP AS BETWEEN THE PARTIES,