Bench before that date, his decision had no binding effect. PEOPLE *v.* COURT OF APPEALS, G.R. No. L-9111, Aug. 28, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN APPEAL BY THE STATE WITH A VIEW TO INCREASING THE PENALTY IMPOSED ON THE ACCUSED PLACES THE LATTER IN DOUBLE JEOPARDY. — Kamad Arinso was accused in the court of first instance of Cotabato of illegal possession of a hand grenade. He pleaded guilty and the court, applying the provisions of section 106 of the Administrative Code for Mindanao and Sulu, and considering the mitigating circumstances of plea of guilty and lack of sufficient instruction, sentenced him to six months of imprisonment. The prosecution moved for a reconsideration of this sentence, upon the ground that section 106 of said Code should not have been applied, but this was denied. Hence, the present appeal by the Government. *Held*, the Government maintains that the penalty meted out to the defendant is too light, inasmuch as said hand grenade had been used by him to commit the crime of robbery in band with homicide, with which he is charged in another case. However, under the provisions of section 106 of said Administrative Code, the lower court had discretion to impose said penalty, which, accordingly, cannot be assailed as erroneous, from the legal point of view. More important still, the lower court admittedly had jurisdiction to render the decision appealed from, as well as over the subject matter of the case and over the parties. Likewise, it is not disputed that the information against the accused is sufficient in form and substance, and that he had been arraigned and had entered his plea prior to the rendition of said decision. In other words, he has already been placed in jeopardy of punishment for the offense charged in the lower court, and the appeal of the prosection, with a view to urging an increase of his penalty, places him twice in jeopardy of punishment for said offense. PEOPLE *v.* ARINSO, G.R. No. L-6990, July 20, 1956.

REMEDIAL LAW — EVIDENCE — THE MERE EXISTENCE OF A VALID DEFENSE WHICH MAY DESTROY A PARTY'S RIGHT OR TITLE DOES NOT MAKE THE DOCUMENTS PROBATIVE OF SAID RIGHT OR TITLE INADMISSIBLE. — On January 10, 1945, plaintiff Barreto bought the property of defendant Arevalo for ₱12,000 but assuming a mortgage thereon in favor of Pedro Reyes for ₱30,000. On the same date, the property was leased to Arevalo and an option to repurchase the property was granted in the contract of lease. Later, Arevalo secured a loan from Barreto for ₱4,000. The contracts of sale and lease were duly registered, but defendant Arevalo nonetheless sold the same property to defendants Padilla. Subsequently, Arevalo filed an action against Barreto for a judicial declaration that the contract between them was only an equitable mortgage but the Supreme Court decided that the contract was a sale with a right to repurchase, and that if she wanted to redeem the property, she could do so only for ₱16,000. Barreto thus filed an action against Arevalo on the ground that Arevalo's failure to redeem the property in accordance with the Supreme Court decision resulted in the consolidation of plaintiff's title thereto. The lower court held that the Padillas had no knowledge of the previous sale by Arevalo to Barreto and dismissed the case. Barreto appealed, assigning as one of the errors the refusal of the trial court to admit in evidence the deed of sale and the contract of lease between Barreto and Arevalo, the promissory note in favor of Barreto, and the Supreme Court decision in the case between

Barreto and Arevalo. The trial court held that the Padillas were not parties to these documents and cannot be affected by them. *Held*, the above ruling is clearly erroneous. The deeds were executed by Arevalo prior to the sale by her in favor of the Padillas. As the latter succeeded to the rights and interests of Arevalo, they were bound by the acts of Arevalo prior to the sale in their favor (RULE 123 § 13). The Padillas are privies in so far as Arevalo is concerned, as they obtained their title from the latter; hence what is admissible against Arevalo before the sale in their favor is admissible against them. The documents prove the alleged purchase made by plaintiff from Arevalo; they are therefore material and relevant to the issues raised in the plaintiff's complaint and denied in defendant's answer. The fact that in point of law they may not be of any avail against the Padillas who are alleged to be purchasers in good faith, for value and without notice, does not in any way affect or destroy their materiality or relevancy or admissibility. The claim that the Padillas are purchasers in good faith is a special defense; the mere fact that this is a valid defense which may destroy plaintiff's right or title does not make the documents indicative or probative of said title or right immaterial or irrelevant and inadmissible. BARRETO *v.* AREVALO, G.R. No. L-7748, Aug. 27, 1956.

COURT OF APPEALS

CIVIL LAW — OBLIGATIONS — IN OBLIGATIONS WITH A TERM OR PERIOD, THE OBLIGEE NEED NOT FILE TWO DIFFERENT AND SEPARATE ACTIONS. — Plaintiff Calleja loaned defendant Domingo the sum of ₱2,336 which the latter promised to pay back as soon as he has the money. This promise was evidenced by a promissory note executed by defendant in favor of the plaintiff. Later, plaintiff brought an action to recover from the defendant the sum of money stated in the promissory note. After trial upon the issues, the court held that, considering the terms of the promissory note, the obligation created was governed by article 1180 of the New Civil Code and that pursuant to the provisions of article 1197 of the same Code the court may fix the period of payment. In that connection and for that purpose, it did fix the period to be 90 days from the date of its decision. Defendant appealed, claiming that if an obligation is one with a term or period that may be fixed by the courts in accordance with article 1197 of the New Civil Code, the creditor or obligee must perforce file two different and separate actions: the first should be strictly one asking the court to fix the term or duration of the period, and the second should be one for collection or to enforce the obligation and must be filed only after the debtor or obligor has failed to comply with the obligation within the term or period previously fixed by the competent court. *Held*, we cannot agree with this interpretation of the law which would inevitably lead firstly, to an unnecessary, cumbersome and expensive multiplication of lawsuits, to the detriment of the administration of justice, and secondly, to giving a clearly unfair and undue advantage to the debtor or obligor. Undoubtedly, the first suit alone would imply a litigation of many months, if not years, the same only to end with a judgment fixing the term or period for the payment of the obligation. The second litigation would most likely be as prolonged as the first, the debtor or obligor being naturally interested in delaying performance. All these proceedings will inevitably result in what we have said heretofore. CALLEJA *v.* DOMINGO, (CA) G.R. No. 15161-R, April 27, 1956.

CIVIL LAW — CONTRACTS — THE FAILURE TO OBSERVE THE FORM REQUIRED UNDER ART. 1358 OF THE CIVIL CODE DOES NOT RENDER THE CONTRACT INVALID OR UNENFORCEABLE. — Both plaintiff Ng Hoc and defendant Tang Ho are Chinese merchants in the city of Cebu who used to have business transactions with each other. On December 22, 1950, defendant brought 5 U.S. postal money orders for $100 each to the store of plaintiff and asked him to change them with ₱1,000 in Philippine currency. Plaintiff was reluctant at first but finally acquiesced upon defendant's insistence and his assurance that the money orders were genuine. Defendant therefore received the ₱1,000. When asked for a written acknowledgment that the money orders had come from him, he demurred and suggested that the serial numbers thereof be merely added to the list of local checks which he had previously negotiated to plaintiff. Plaintiff did so accordingly and in defendant's presence added the new numbers to the list which already had his signature. It turned out, however, that the money orders were spurious and attempts by the plaintiff to deposit them with the bank or negotiate them elsewhere proved futile. Defendant refused to pay back the ₱1,000 so plaintiff brought suit for recovery of the amount. The lower court sentenced him to pay the amount. He appealed, contending that the action cannot be maintained since his undertaking is not evidenced by a written instrument, contrary to article 1358 of the Civil Code, which provides that "all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one." *Held*, this contention is without merit. In the first place, this action is not to enforce a contract but to recover a sum of money wrongfully received by defendant from plaintiff; and in the second place, the requirement under article 1358 of certain forms in relation to specified classes of contracts is neither for purposes of validity nor of enforceability but only for efficacy, or as sometimes stated, for convenience. In other words, the failure to observe such forms does not render the contract invalid or unenforceable. Indeed the parties, according to article 1357, may compel each other to observe that form, once the contract has been perfected. NG HOC *v.* TANG HO, (CA) G.R. No. 15355-R, March 27, 1956.

CIVIL LAW — COMMON CARRIERS — THE DRIVER HAS A RIGHT TO PROVE HIS PRUDENCE AND CARE TO ABSOLVE HIMSELF AND HIS EMPLOYER FROM ANY LIABILITY. — On April 27, 1953, Justa Macawili boarded a bus of the Panay Autobus Co. for Ibajay, Capiz. While the vehicle, driven by Crisanto Molino, was passing the bridge at Tañgalan, Capiz, the stringers of the bridge broke and the truck fell, causing the death of Justa Macawili. A criminal case against the driver was dismissed on the ground that the mishap was not due to his negligence, carelessness or recklessness. A civil action was subsequently brought against the driver and his employer but this was also dismissed. Plaintiffs thus appealed, contending that there was a breach of the contract of carriage and damages should be awarded. *Held*, while it is true that it is not incumbent upon the passenger to show the negligence of the driver of a vehicle that fell into a mishap, it is nevertheless axiomatic that the driver has the right to prove his prudence and care to absolve himself and his employer from any liability. To deny him his right to do so is tantamount to denying them of their day in court. Even the law itself, — which says that "A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regards for all the circumstance." — impliedly gives a transportation firm the right to show that it has taken every human care to carry its passengers safely to their place of destination, plus the use of diligence called for by the nature of its business. In this case, it had been discovered upon investigation that the mishap was attributed to defective construction materials used in the stringers of the bridge. The strength of these stringers could not have been determined by the driver, much less by his employer. Neither could they have foreseen the precise moment when those stringers would give way to the load that might pass. Only an omnipotent vision could have foreseen that fatal moment, but not the human foresight of a driver. It is thus obvious that when a breach of contract of carriage supervenes by reason of a fortuitous event, which is considered a good defense against all forms of liability, no liability attaches to the operator of an engine as well as his employer. MACAWILI *v.* PANAY AUTOBUS CO., (CA) G.R. No. 14782-R, March 1, 1956.

CIVIL LAW — CHATTEL MORTGAGE — FOR THE VALIDITY OF A CHATTEL MORTGAGE, RECORDING OF THE MORTGAGE DEED IN THE CHATTEL MORTGAGE REGISTRY IS INDISPENSABLE, A MERE INSCRIPTION IN THE DAY BOOK NOT BEING SUFFICIENT. — For an indebtedness of ₱7,200 to the Philippine Bank of Commerce, defendant Jose Lim Ang, as principal debtor, and plaintiff Associated Insurance & Surety Co., as solidary guarantor, executed a promissory note in favor of the Philippine Bank of Commerce. As a counter-guaranty, defendant Lim Ang executed in plaintiff's favor a chattel mortgage over a Chrysler sedan. The said chattel mortgage was presented for registration in the Office of the Register of Deeds but it was finally recorded only on November 23, 1951. Before this, or on November 18, 1951, defendant Lim Ang sold the same sedan to defendant Pua Tian Chu who retained possession thereof since that date. In the bill of sale, the car was represented as "free from any lien or encumbrance." Due to the failure of Lim Ang to pay the promissory note, plaintiff had to pay the said obligation to the Philippine Bank of Commerce. And on March 27, 1953, plaintiff brought a replevin suit to procure the possession of the car for the purpose of foreclosing the chattel mortgage thereon. The trial court declared that defendant Pua Tian Chu was the owner thereof, so the plaintiff appealed. *Held*, when defendant Pua Tian Chu purchased the automobile in question, he was assured that defendant Lim Ang was the owner thereof and that it was free from any lien or encumbrance. Being without knowledge of any infirmity in the title of his vendor, he was a purchaser in good faith since he took possession of it on November 18, 1951. Plaintiff contends that the chattel mortgage must be deemed registered when it was entered in the Day Book. On the contrary, article 2140 of the New Civil Code requires that for a chattel mortgage to be considered as such, the deed of mortgage must be recorded in the Chattel Mortgage Register. Mere inscription in the Day Book is not sufficient. By section 15 of Act 1508, the record of chattel mortgages must be entered in the Chattel Mortgage Register. Thus, plaintiff's mortgage was recorded only on November 28, 1951. In this state of facts, Pua Tian Chu has a better right to the automobile. ASSOCIATED INSURANCE & SURETY CO. *v.* LIM ANG, (CA) G.R. No. 13828-R, May 15, 1956.

CIVIL LAW — DAMAGES — IN THE ABSENCE OF MALICE OR BAD FAITH, CITIZENS SHOULD NOT BE HELD TO ACCOUNT FOR THEIR COMPLAINTS AGAINST PUB-

LIC OFFICIALS. — Following an investigation, defendant Assistant Fiscal Reyes recommended the filing of an information for unjust vexation against plaintiff Tiangko. This recommendation was approved by the City Fiscal and the corresponding information was filed. Plaintiff went to the Supreme Court on prohibition proceedings but the petition was dismissed. The unjust vexation case was subsequently dismissed for lack of a prima facie case. Thus plaintiff brought suit for damages against the defendant, and the latter countered with a claim for damages also. The trial court dismissed plaintiff's claim and awarded damages to the defendant for ₱5,000. Plaintiff appealed. *Held*, plaintiff went to court in search of redress from what she believed was an unfounded information for unjust vexation against her. The portals of the courts should not be closed to litigants who ask for the protection of their rights. They may be wrong, it is true. But, not simply because a complaint is found unmeritorious by the court, damages should be clamped upon them. After all, good faith is presumed. It must be conceded that the publication of the present complaint against defendant Reyes caused him embarrassment and that plaintiff's complaint with the Secretary of Justice and her attempt to block defendant's appointment as Assistant Fiscal in the Commission on Appointments, both unsuccessful, have caused said defendant concern and anxiety. But these facts and the constitutional guaranty of freedom of speech which, of course, includes the right to criticize the conduct of public officials, should be balanced in one equation. If one cannot, in a complaint, bring to a test before the courts of justice the conduct of a public official, on pain of moral damages if unsuccessful, we are afraid that public opinion will be effectively muzzled. For then, the sword of Damocles will ever be present over the heads of those who dare assert their prerogatives, if not their rights, as citizens, and stand up bravely before any official. Such citizens will be seized by temerity with the result that the wrongful acts of public officers will not be brought to light and abuses committed with impunity. They could only speak of the conduct of their officials in whispers or with bated breath. Therefore, in the absence of malice or bad faith, they should not be held to account for their complaint against public officials. TIANGCO *v.* REYES, (CA) G.R. No. 8948-R, Jan. 10, 1956.

COMMERCIAL LAW — CORPORATIONS — AN OFFICER OF A CORPORATION IS NOT LIABLE CRIMINALLY FOR CORPORATE ACTS OF OTHER OFFICERS OR AGENTS THEREOF. — Under a resolution of the municipal council of Buenavista, Agusan, the partnership of the Montilla brothers, Mateo, Armando and Alejandro, was granted a franchise to operate an electric plant in the said town. Mateo's wife, Abdona Montilla, the herein accused, was the manager of the business. Mateo and his son started installing electric wires in the houses of their customers. Unfortunately, the 16-year old son of Fernando Ganzo happened to hold an uninsulated portion of an electric wire of the electric plant managed by the accused. As the wire was charged with electricity, the boy was electrocuted and died. Prosecuted for homicide thru reckless imprudence, the accused was found guilty so she appealed, claiming that although she is the manager of the partnership, she is not liable for the negligent act of Mateo and his son of having left uninsulated a portion of an electric wire of their plant. *Held*, as a general rule, a director or other officer of a corporation is criminally liable for his acts, though in his official capacity, if he participates in the unlawful act either directly or as an aider, abettor or accessory, but is not

liable criminally for the corporate acts performed by other officers or agents thereof. [3 Fletcher, Cyclopedia of Corporations, Ch. 11, sec. 1348, p. 877 (Per. Ed.)] It is the *particeps criminis* of a corporate officer in a certain act punishable by law that makes him liable as such officer. In the instant case, the evidence shows, and the trial court did so find, that it was Mateo Montilla and his son who installed and left uncovered with insulation a portion of the electric wire connected to their plant. There is no evidence at all that the accused directly took part or aided in the careless installation of the wire that caused the death of the son of Fernando Ganzo. The accused cannot be held liable for a death caused by the electric wire installed, not by her but by another officer of the enterprise she was managing and owned by the Montilla brothers. PEOPLE *v.* MONTILLA, (CA) G.R. No. 14863-R, April 4, 1956.

CRIMINAL LAW — MALVERSATION — EMPLOYEES OF THE METROPOLITAN WATER DISTRICT ARE PUBLIC OFFICERS AND ITS FUNDS ARE PUBLIC FUNDS. — Defendant Bustillo was a collector of the Metropolitan Water District with the duty of going from house to house and collecting water fees and charges from customers of the entity. Water bills amounting to ₱2,009.20 were entrusted to him for collection but upon a cash examination of his accounts on June 7, 1952, he was found to have a shortage of ₱1,528.24. He wrote in his own handwriting a promise to pay the shortage but upon his failure to do so, a prosecution for malversation of public funds was commenced against him. Convicted, he appealed, claiming that he was not a public officer and the funds supposedly misappropriated by him were not public funds. *Held*, the Metropolitan Water District is a creation of the Philippine Legislature. The law creating this entity classifies it as a public corporation, for the purpose of furnishing an adequate water supply and sewerage service to the inhabitants of Manila and suburbs (sec. 1, Act No. 2832, amended by Act No. 4079). It cannot be questioned that the legislature may validly create special instrumentalities or districts to aid the State in, or to take charge of, some public or State work for the general welfare. Such agencies are *quasi-corporations* or public corporations for narrow or limited purposes. Since we hold that the Metropolitan Water District is a public or government entity, it follows that its officers and employees, like herein appellant, are public officers as that phrase is used under article 203 of the Revised Penal Code, and it is of no moment whether appellant's position is a minor one. It also follows that, even assuming that the funds of the Metropolitan Water District are not strictly public funds, said funds became impressed with the character of public funds when they were received by a public officer with the obligation to account for them. PEOPLE *v.* BUSTILLO, (CA) G.R. No. 13874-R, March 12, 1956.

CRIMINAL LAW — MALVERSATION — A PRIVATE PERSON WHO INDUCES OR BY NECESSARY ACTS AIDS A PUBLIC OFFICER IN PERMITTING PUBLIC FUNDS TO BE SWINDLED IS GUILTY OF MALVERSATION AS A PRINCIPAL. — Bonifacio Longara was a Travelling Deputy in the office of the Provincial Treasurer of Samar and Francisco Cinco was a mailing clerk. On Dec. 28, 1953, Longara received a cash advance of ₱30,000 as salaries for the teachers in certain municipalities of Samar. He paid only about ₱8,000 and deposited the rest with the Assistant Provincial Treasurer because he could not secure any constabulary escort. The next day, however, Longara said that Cinco was ordered as his escort and was able to get the money from the Assistant Provincial Treasurer. In Tacloban, they

went to a hotel and there started to counterfeit the money with Henry Dan, who had previously assured them that the government money can be copied without being lost. After applying medicine on the money, Henry Dan left with two paper bags and told them to wait 36 hours before the copies will be finished. When Henry Dan never showed up, they opened the contraption and found that they contained only coupon bond paper inside. All the money was gone. In Longara's account, there was a shortage of ₱22,491. Prosecuted for malversation of public funds, they were convicted but Cinco appealed claiming that he was mere mailing clerk and not on accountable officer. *Held*, under article 217 of the Revised Penal Code an accountable officer is liable for malversation not only when he appropriates, takes or misappropriates public funds or property but also when he consents, or through abandonment or negligence permits any other person to take such public funds or property. Bonifacio Longara has been charged and convicted of this other form of malversation and we find his co-accused Francisco Cinco guilty likewise. Between the two accused there was a perfect unity. Francisco Cinco did not act independently of Bonifacio Longara. Appellant knew that the money bills he wanted to have counterfeited through the proferred services of Henry Dan were in the custody of Bonifacio Longara. He knew Bonifacio Longara to be a public officer just as he knew the public character of the funds. It is true that neither of them intended to appropriate, take or misappropriate such public funds but the law also penalizes as malversation the act of a public officer in consenting or permitting, through abandonment or negligence, any other person to take such public funds. And when a private person induces a public officer or by necessary acts aids a public officer in consenting or permitting such public funds to fall into the hands of a swindler, as in this case, he must be held equally liable with such public officer for malversation, for "when the law clearly defines a crime, as it has here defined the crime of malversation, those who in any way participate therein must be principals, accomplices or abettors thereof." It is evident that appellant is guilty of the crime of malversation not as an accomplice but as a principal. PEOPLE *v.* LONGARA, (CA) G.R. No. 14468-R, March 16, 1956.

CRIMINAL LAW — ESTAFA — CRIMINAL LIABILITY FOR ESTAFA IS NOT AFFECTED BY COMPROMISE OR NOVATION OF THE CONTRACT. — Sometime before June 30, 1951, plaintiff doing business under the style of "La Suerte Cigar and Cigarette Factory" hired Cesar Imperial as advertising salesman charged with the task of propagandizing its products in the Bicol area. Imperial was required by plaintiff to post a bond of ₱2,000 to secure the faithful performance of his duties. Imperial furnished the required bond underwritten by defendant Luzon Surety Co. Subsequently, Imperial was entrusted with a panel delivery truck and a cash amount of ₱2,000 as contingent fund to be used by him in buying cigarettes from plaintiff's jobbers and wholesalers and then selling the same at retail prices in small stores. The money was to be turned over to plaintiff company at the end of each month, and he was to get a monthly salary of ₱200. Imperial's services were satisfactory until on November 26, 1951, when Imperial's accounts were found short by ₱1,238. On December 4, 1951, Imperial paid ₱520, thus leaving a balance of ₱718 unpaid. Plaintiff thus filed action against Imperial and the Luzon Surety Co. in the municipal court of Manila which found for the plaintiff. The Luzon Surety Co. appealed to the court of first instance but Imperial failed to appeal. The trial court found

for the defendant and dismissed plaintiff's complaint so it appealed. Defendant argues that the acceptance by plaintiff of Imperial's partial payment novated the contract and its obligation under the bond was extinguished, resulting further in the conversion of Imperial's criminal act to a mere civil obligation. *Held*, it is an elementary rule in our criminal law and procedure that criminal actions must be commenced either by complaint or by information in the name of the People and that the same are prosecuted under the direction and control of the fiscal. The offended party may intervene in the prosecution of a criminal action if he has an interest in the civil liability of the accused arising from the crime charged. But if he waives his right to the civil action or expressly reserves the right to institute it separately after the termination of the criminal case, he loses his right to intervene on the theory that he is deemed to have lost interest in the defendant's prosecution. In the strict and proper sense, therefore, there is no such thing as the subrogation of an aggrieved person's right to prosecute another in favor of another similarly aggrieved person because the right to prosecute a public offense such as estafa belongs exclusively to the State. The plaintiff's acceptance of Imperial's partial payment of the obligation did not constitute a novation let alone an extinguishment of such obligation, for well known is the rule that for a novation to exist, it must be so declared in unequivocal terms or that the old and the new obligations be on every point incompatible with each other. Moreover, the plaintiff's acceptance of partial payment by Imperial did not alter or change, much less erase the latter's criminal liability for estafa. It has been held in this jurisdiction that criminal liability for estafa is not affected by compromise or novation of the contract, for estafa is a public offense to be prosecuted and punished by the Government on its own motion, even though complete reparation should have been made of the damage suffered by the injured party. CHUN TE & CO. *v.* LUZON SURETY CO., (CA) G.R. No. 13805-R, March 28, 1956.

CRIMINAL LAW — ILLEGAL IMPORTATION — IMPORTATION IS PUNISHABLE ONLY IF THE TAX DUE THE GOVERNMENT IS DELIBERATELY EVADED OR INTENDED TO BE EVADED. — Oscar Borbon was apprehended in the afternoon of July 6, 1953, on board a motor launch when he was about to land at Pier No. 13 in the South Harbor, Port of Manila. He was found carrying 21 cartons of "Chesterfield" and 12 cartons of "Lucky Strike" cigarettes. He was immediately taken to the Customs Police Headquarters for investigation but he refused to give any statement. Prosecuted for unlawful importation of merchandise under section 2702 of the Revised Administrative Code, as amended by R.A. No. 455, he was found guilty, so he appealed. *Held*, there is a divergence of opinion as to when a merchandise is deemed imported. Some authorities maintain that, for legal purposes, goods are considered imported not only from the moment they are brought in but also after the importer shall have lost control of them. Others are to the effect that, where deliberate intent to import is present, it is sufficient that the merchandise be brought within the territorial limits of the country of destination. But by either principle, importation is punishable only if the tax due the government is deliberately evaded or intended to be evaded. It is not improbable that after importing, the bringer might declare the merchandise for taxation purposes. And we cannot possibly conclude that he had such intention in the absence of a sufficient showing therefor. It is, therefore, important to determine the circumstances surrounding the finding of the 33 cartons of American cigarettes in the possession of the herein appel-

lant. If, as claimed by the government, he had those cartons concealed in his body, his intention was no doubt to smuggle them. If he kept them in a *bayong*, as appellant had averred, it is a hasty conclusion to say that he wanted to smuggle them, the fact that a newspaper covered them from view, notwithstanding. It is indeed beyond the rational that the herein appellant could have the 33 cartons, some under his waistline, and others tied to his legs. for he could not have been unaware that what he precisely intended to conceal would have been easily revealed, considering the bulk of 33 filled up cartons. We believe, therefore, that the appellant carried the cigarettes in a *bayong*, and could not have imported them fraudulently to dodge the payment of customs duties thereon. PEOPLE *v.* BORBON, (CA) G.R. No. 14183-R, Feb. 20, 1956.

CRIMINAL LAW — ILLEGAL IMPORTATION — TO JUSTIFY CONVICTION OF THE POSSESSOR, HE MUST BE SHOWN TO HAVE HAD KNOWLEDGE THAT THE MERCHANDISE HAD BEEN ILLEGALLY IMPORTED. — Defendant Colmenares was an employee of his brother's Yarrow Beach Club in Cebu. Sometime in November 1, 1951, three Moros arrived at the club and offered him a quantity of cigarettes for sale. He was reluctant at first, but, in any case, the Moros delivered to him 35 boxes of "Herald" cigarettes, by way of deposit until they could come for the same later. Each of the 35 boxes contained 50 cartons of 10 packages each. However, according to an alleged statement by the defendant, the cigarettes were partly paid for by him in the sum of ₱300. On November 4, 1951, a number of constabulary officers came to the club with a search warrant for allegedly smuggled cigarettes. Defendant led them to the house where the cigarettes were deposited. Failing to show any invoices or permits for the cigarettes, defendant was prosecuted and convicted of violating section 2702 of the Revised Administrative Code. He appealed. *Held*, if there was any violation at all of this provision by the appellant, it must be in relation to the second part thereof, which refers to any person who "shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such merchandise *after* the importation, knowing the same to have been imported contrary to law." There is no suggestion whatsoever that appellant was himself the importer or had any hand in the supposed illegal importation, the finding of guilt made by the trial court being predicated on the possession of the cigarettes in question. In order that a person may be deemed guilty of smuggling or illegal importation under the foregoing statute, three requisites must concur: (1) that the merchandise must have been fraudulently or knowingly imported contrary to law; (2) that the defendant, if he is not the importer himself, must have received, concealed, bought, sold or in any manner facilitated the transportation, concealment or sale of the merchandise; and (3) that the defendant must be shown to have knowledge that the merchandise had been illegally imported. If the defendant, however, is shown to have had possession of the illegally imported merchandise without satisfactory explanation, such possession shall be deemed sufficient to authorize conviction. The first and most important question to be determined in this case is whether the cigarettes in question had been illegally imported into the Philippines. This is an element that must be established by the prosecution beyond reasonable doubt. as must be all elements constituting every criminal offense. The fact of illegal importation cannot be presumed from the fact of defendant's unexplained possession. Even assuming that the cigarettes found in the possession of the appellant came from the United States, still there is no sufficient evidence that they were imported illegally. PEOPLE *v.* COLMENARES, (CA) G.R. No. 14265-R, Feb. 29, 1956.

LAND REGISTRATION — TORRENS SYSTEM — A PRIVATE INSTRUMENT CANNOT BIND A TITLED PROPERTY UNDER THE TORRENS SYSTEM. — On March 29, 1952, a judgment was rendered in a case between Maape and Cainjog declaring that lot No. 8020 of the Cadastral Survey of Cagayan de Oro and covered by Original Certificate of Title No. 10134 of the Register of Deeds of Misamis Oriental belonged to both Cainjog and Maape in the proportion of one-half each. Maape was required to pay Cainjog ₱600 within 90 days. Unable to satisfy the judgment, an order of execution was issued against her. In order to raise the amount needed, she conveyed in a private instrument her half interest to said lot to defendant Salva. This instrument was superseded when Maape executed a deed of mortgage over the same portion of land to defendant Salva which was duly acknowledged before a notary public. Plaintiff claimed that defendant Salva had verbally agreed to allow him to redeem the said half portion but when he wanted to reduce this to a written agreement, Salva refused. So he filed an action praying that Salva be ordered to execute a deed of conveyance in his favor and that he be declared the owner of the half portion by virtue of redemption. The trial court dismissed the case on the ground that plaintiff cannot exercise his right of redemption because the property in question was not sold but only mortgaged to defendant. Not satisfied, he appealed. *Held*, the aforementioned lot is registered under Act 496, being covered by Original Certificate of Title No. 10134. Such being the case, it could not be bound or conveyed by any deed, mortgage or lease or other voluntary instruments, which only serve as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration (sec. 50, Act 496). True enough that Maape conveyed her interest in said lot to Salva in a private instrument, but such way of conveyance is not the required operative act of registration which is essential in order to bind a titled property under the Torrens system, and certainly a private instrument cannot be the basis of a legal conveyance. Over and above this circumstance, said private instrument was superseded or substituted by another one of mortgage which was duly acknowledged before a notary public. The property has not yet been purchased by Salva, nor its ownership transmitted to him by onerous title, it having been mortgaged to him only. Plaintiff had therefore acted quite prematurely in asserting his right of legal redemption thereto. CAINJOG *v.* SALVA, (CA) G.R. No. 14870-R, March 15, 1956.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — ATTORNEY'S FEES ARE RECOVERABLE AS DAMAGES IN EXPROPRIATION PROCEEDINGS EVEN BEFORE THE PROMULGATION OF THE NEW CIVIL CODE. — On July 26, 1940 expropriation proceedings were instituted in the court of first instance of Rizal for the expropriation of three lots owned by defendants. The Commonwealth was granted immediate possession of the property. On October 26, 1948, the court declared that the Commonwealth had the right to expropriate the lands in question. On appeal, the Court of Appeals reversed this decision and ordered the immediate restoration of the defendants to the possession of the property with the right to recover damages. An appeal from this latter order was dismissed by the Supreme

Court. After the return of the records to the court of origin for assessment of damages, the court ordered plaintiff to pay certain expenses incurred by the defendants by virtue of the proceedings. The plaintiff appealed, questioning the grant of attorney's fees as damages. *Held*, in this jurisdiction, prior to the promulgation of the New Civil Code, attorney's fees as an element of damages are recoverable in proceedings for the exercise of the right of eminent domain, for such a suit falls within the category of a special civil action. Expropriation proceedings "are so different from the ordinary legal proceedings as to justify the taxing of attorney's fees against one who abandons the proceeding after securing a favorable judgment." (18 Am. Jur. 1015). With greater reason should attorney's fees be allowed in the present case where the appellant did not merely abandon the proceeding but made it necessary in two appeals for appellees to incur expenses and attorney's fees. COMMONWEALTH *v.* SANTOS, (CA) G.R. No. 13179-R, May 15, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE OBJECT OF AN INTESTATE PROCEEDING IS NOT ONLY TO PAY DEBTS. — This is a special proceeding initiated by petitioners Demetria Initan and Dominico Etcuban in the court of first instance for the appointment of Dominico Etcuban as administrator of the intestate estate of Eleuterio Etcuban. The petition was opposed by Pedro, Vicenta and Felicitas Etcuban on the ground that Demetria Initan was not legally married to the late Eleuterio Etcuban and therefore her son, Dominico Etcuban, was not a legitimate offspring of the deceased. The lower court however, after proper hearing, declared that after becoming a widower upon the death of oppositors' mother, Eleuterio Etcuban took Demetria Initan as his common law wife and later married her. It therefore appointed Dominico Etcuban as a regular administrator of his estate. Pedro Etcuban, on the other hand, claimed that in 1945 he sold a parcel of land belonging to the deceased, and that he had also transferred another parcel of land of the inheritance to Te Hoaco because it was mortgaged by his father and he was sentenced to pay in a foreclosure suit instituted by Te Hoaca against him. He thus appealed from the order of the court appointing Dominico Etcuban as administrator on the ground that the obligations and debts of Eleuterio Etcuban were already paid by him and there is no need of placing the former's estate under administration. *Held*, it is elemental that the object of an intestate proceeding is not only to pay debts. In the case at bar, for example, the need of such proceeding is greater and pressing because the administrator might have to recover the parcels of land sold or transferred by appellant Pedro Etcuban, and there is absolute need to make a declaration of heirs in view of the conflicting pretensions of appellants and appellees regarding the marriage of Demetria Initan to the decedent and the legitimacy of the children they begot during their consortium. ETCUBAN *v.* ETCUBAN, (CA) G.R. No. 14273-R, April 11, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE COURT'S JURISDICTION IN THE FIRST INSTANCE IS DETERMINED BY THE FACTS ALLEGED IN THE COMPLAINT. — At a meeting of the Parents-Teachers Association of the barrio school of Tigbauan, Madalag, Capiz, presided over by the complainant Teresa Nalangan, head teacher of the school and adviser of the association, she informed those present that the accused, a tenant of the riceland portion of the school site, had failed to deliver the school's share of the produce. Taking offense, the

accused asked why he was being shamed in front of so many people, lunged at the complainant with his hands poised to strike, but was timely intercepted and held back by another school teacher. Thus restrained, the accused belligerently said: "I will change that teeth of yours to ivory like that of the carabao!" and added: "I will undress you so that the people will know who you are." At this juncture, the accused was pushed outside and told to go home. He was then prosecuted in the court of first instance for assault upon a person in authority but the lower court only found him guilty of slight slander. He thus appealed, questioning the jurisdiction of the court in convicting him of the crime of slight slander and in imposing a penalty which, under article 358 of the Revised Penal Code, makes the crime originally cognizable by the justice of the peace court. *Held*, the information in this case plainly discloses that the charge against the appellant is for assault upon a person in authority; in the body of the information, however, the defamatory words purportedly uttered by the appellant in the course of the alleged assault are clearly set forth. The instant case was initiated with a complaint duly signed by the aggrieved party, and in said complaint, aside from the allegations on assault, the defamatory words constitutive of slander are distinctly mentioned. Unquestionably, the facts alleged in the information relative to the assault fall within the jurisdiction of the court *a quo*. The mere fact that the prosecution failed to establish the assault as charged, and the court considered the crime as slight slander only, over which the justice of the peace court has original jurisdiction, did not and could not divest the court *a quo* of its jurisdiction. Well established is the rule that if upon the facts alleged in the information, the criminal act alleged therein is punishable with a penalty which pertains to the court of first instance, it falls within its jurisdiction, although the penalty it may impose after trial is below its jurisdiction. In other words, the court's jurisdiction in the first instance is determined by the facts alleged in the complaint. PEOPLE *v.* REMILLA, (CA) G.R. No. 14448-R, March 28, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — INDIRECT OR CONSTRUCTIVE CONTEMPT, BEING CRIMINAL IN NATURE, MUST BE INITIATED ONLY THROUGH A WRITTEN CHARGE AND THE ACCUSED CANNOT DISPENSE WITH THIS LEGAL REQUIREMENT. — Way back on January 25, 1954, Felicitas Galang filed a complaint for qualified seduction against her father, Alejandro Galang. When the case was called for trial on December 10, 1954, Special Prosecutor Balagot move for postponement on the ground that the complaining witness was not duly cited. Despite the objection of the counsels for the accused, Attorneys Gualberto, the motion was granted. Immediately thereafter, Special Prosecutor Balagot was informed that the complaining witness was being detained in the office of Attorneys Gualberto. The court immediately issued an order for the arrest of the complaining witness and ordered the immediate hearing of the case. The trial court then issued a decision wherein it stated that it was nearly persuaded to dismiss the case had it not known that the offended party was being cajoled not to appear and testify against her father. In view of these remarks, Special Prosecutor Balagot manifested that he would present a motion for contempt and the court directed him to file it the next morning. Immediately, Attorney Gualberto defiantly stated that the contempt proceeding be heard even without the filing of the contempt proceeding. The court thus cited them for contempt and found them guilty. They appealed. *Held*, constructive contempt is criminal in nature. This opinion is based on the doctrine laid down in *Lee Tick Hon v. Collector of Customs*, (41 Phil. 548), and on the Rules of Court which in

sections 3, 5, 6, 7, and 8 of Rule 64 invariably refers to the person committing the offense as an "accused." If, therefore, indirect or constructive contempt is criminal in nature, it follows as an inevitable corollary that such kind of offense must be prosecuted, tried and punished following the rules and proceedings provided for in the Criminal Procedure. Evidently because of this, section 3 of said rule impliedly ordains that the contempt proceedings must be initiated through a written charge, and that no person should be punished without such written charge. The accused, much less only one of them, cannot dispense with this legal or reglamentary requirement; because it affects the court's jurisdiction, it is the indispensable initial step to bring the offenders to the bar of justice. PEOPLE *v.* GUALBERTO, (CA) G.R. No. 14387-R, April 28, 1956.

REMEDIAL LAW — EVIDENCE — A WITNESS MAY BE CROSS-EXAMINED BY THE ADVERSE PARTY NOT ONLY AS TO MATTERS STATED IN THE DIRECT EXAMINATION BUT ALSO AS TO ANY MATTERS CONNECTED THEREWITH. — Plaintiffs commenced this action in the lower court to recover the sum of ₱2,000 due upon a promissory note. Their theory is that said amount was borrowed by the defendant but that the latter had not paid anything on account of his obligation up to the filing of the action. Defendant denied specifically and under oath the genuiness and due execution of the promissory note sued upon and alleged that, if he had borrowed the sum sought to be recovered, the same had already been paid. During the course of the trial, defendant in his direct examination denied that the signature on the promissory note was his. On cross-examination, he was asked to identify the signatures appearing on certain other documents which he did. By comparing the signatures on these documents with the signature on the promissory note, the court found that they are similar so defendant was ordered to pay the amount of the promissory note. He appealed, contending that it was improper for the lower court to allow plaintiffs' counsel to cross-examine him on those other documents, the same not having been the subject of his direct testimony. ***Held,*** there is no irregularity in the presentation and admission of the documents in question as part of plaintiffs' rebuttal evidence, considering particularly the purpose for which they were offered and admitted. Under the provisions of section 87 of Rule 123 of the Rules of Court, a witness may be cross-examined by the adverse party not only as to matters stated in the direct examination but also as to any matter connected therewith, and this he should be allowed to do with sufficient fullness and freedom to test the witness' accuracy, truthfulness and freedom from interest or bias, and also to elicit from him any important fact bearing upon the issue. It is true that according to the American Rule, cross-examination must be confined to the matters inquired about in the direct examination, but it is likewise true that according to the English Rule, a witness may be cross-examined not only upon matters testified to by him on his direct examination, but also on all matters relevant to the issue. It is obvious from the provisions of section 87 already mentioned that the rule obtaining in this jurisdiction on the subject is more in accord with the English Rule. GONZALES *v.* BAUTISTA, (CA) G.R. No. 14476-R, April 16, 1956.

REMEDIAL LAW — EVIDENCE — ALTHOUGH THE *CORPUS DELICTI* MUST BE ESTABLISHED BY EVIDENCE INDEPENDENT OF DEFENDANT'S CONFESSION, IT IS NOT NECESSARY THAT EVERY ELEMENT OF THE CRIME BE ESTABLISHED BY ORAL EVIDENCE INDEPENDENT OF THAT CONFESSION. — On November 28, 1953, accused Benjamin Yee appeared at the municipal building of Cadiz, Negros Occidental, and told police Sergeant Locsin that he was there to surrender because he had killed somebody. Asked where the gun was, the accused said it was in the care of his mother and this gun was recovered from her. At the scene of the crime, he found the victim dead with blood flowing from his face. In the course of the investigation by Sergeant Escares, in which the justice of the peace of Cadiz was present, the accused made a verbal confession in the dialect, which was typewritten by the clerk in the office of the chief of police of Cadiz. The accused however refused to sign this alleging that he wanted first to consult his lawyer. In the trial, this evidence of his oral confession was admitted and the accused was convicted of homicide. He appealed. *Held,* the admission in evidence of this statement was no error. It is not necessary that a confession of guilt, to be admissible in evidence, should always be in writing. A verbal confession is admission of guilt within the meaning of the law. And there is sufficient reason to believe that the statements contained in the above confession reflects the truth. It is true that appellant repudiated them and claimed that they did not tally with his verbal statements. But we do not see how such repudiation could be made to prevail against the positive statements of three public officials who have no interest in the matter except that of upholding the law which was their sworn duty as officials of the government. Furthermore, it is not true that this confession is not corroborated by evidence of the *corpus delicti.* The *corpus delicti,* in the modern sense of the term, means the actual commission of the crime charged. While this fact must be established by evidence independent of defendant's confession, it is not necessary that every element of the crime must be established by oral evidence independent of that confession. All that the rule requires is that there should be some evidence tending to show the commission of the crime apart from the confession itself. The verbal confession of guilt made by the appellant is therefore corroborated by evidence of the *corpus delicti* and is sufficient basis for his conviction. PEOPLE *v.* YEE, (CA) G.R. No. 12704-R, March 22, 1956.