SUPREME COURT CASE DIGEST

CIVIL LAW — OBLIGATIONS AND CONTRACTS — THE DEBTOR HAS THE RIGHT TO WITHDRAW WHAT HE HAS DEPOSITED IN CONSIGNATION BEFORE THE CREDITOR ACCEPTS IT. — In April 1960, Gamboa deposited with the CFI of Manila ₱16,450.00 even as he requested that Agustin Cancio be required to take it as full settlement of the latter's share or interest in the enterprise known as Gamboa's Manila Inc. Answering the petition, Cancio said that he had previously refused the money as full payment, because his share was worth ₱51,256.43, at least, and that Gamboa had agreed to pay said amount for such share. Nevertheless, Cancio expressed willingness to receive as partial payment the amount deposited. But before Cancio filed his answer, Gamboa asked the permission of the court to withdraw the sum deposited, and the court granted the same. After filing his answer, Cancio moved for the reconsideration of the order alleging that he was not notified of the motion. The court ordered Gamboa to redeposit the amount. *Held,* Art. 1260 of the New Civil Code says: "Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or sum deposited, allowing the obligation to remain in force." The article gives the depositor the right to withdraw the amount deposited at any time before the creditor accepts it (not to speak of the court's order declaring it to be proper). Such right is clear in this case, because the statement of the creditor came late, and what is more, the acceptance was partial. This last consideration renders it unnecessary to discuss the effect of failure to give the creditor any notice of the withdrawal, since Cancio's statement was practically a rejection of the offer of payment. Order revoked. GAMBOA *v.* HON. TAN AND CANCIO, G.R. No. L-17076, Jan. 29, 1962.

CIVIL LAW — PERSONS — AN ACTION COMPELLING THE DEFENDANTS TO DELIVER PLAINTIFF'S SHARE IN THE INHERITANCE, THERE BEING NO ALLEGATION THAT PLAINTIFF WAS ACKNOWLEDGED AS DAUGHTER OF THE DECEASED FATHER, BECOMES ONE TO COMPEL RECOGNITION WHICH CANNOT BE BROUGHT AFTER THE FATHER'S DEATH. — Plaintiff is a spurious child of Marcos Paulino and Catalan while the former was married to Hernandez. After the death of Marcos, his properties were partitioned by the heirs to the exclusion of the plaintiff. Plaintiff therefore commenced an action to compel the defendants to deliver her share, without alleging that she was acknowledged by the deceased as the latter's child. Defendants moved to dismiss for lack of cause of action. They contended that the action does not lie because it is to establish her filiation as illegitimate child of the deceased and brought after the latter's death, when plaintiff was already 35

years old. Plaintiff replied that all that is needed for her is to prove filiation in order to inherit. *Issue,* whether or not an illegitimate child without proving her filiation during the lifetime of the deceased father can participate in the inheritance. *Held,* allegation of acknowledgment by the putative father is essential for it is the basis of plaintiff's right to inherit. There being no allegation of such acknowledgment, the action becomes one to compel recognition which cannot be brought after the death of the putative father. PAULINO *v.* PAULINO, G.R. No. L-15091, Dec. 28, 1961.

CIVIL LAW — PERSONS—WHERE A NATURAL CHILD WISHES TO ADOPT THE SURNAME OF THE NATURAL FATHER, WHO RECOGNIZED THE FORMER WITHOUT JUDICIAL APPROVAL, PETITION FOR CHANGE OF NAME IS NOT THE PROPER REMEDY BUT AN ACTION FOR RECOGNITION. — Petitioner Amada Lourdes Lerma Garcia represented by her natural mother filed this petition for change of name to Amada Lourdes S. Lugue because she desires to adopt the surname of her recognizing natural father Amado Lugue. The Solicitor General opposed the petition and it was dismissed. Hence, this appeal. *Held,* where a natural child is recognized without judicial approval and wishes to adopt the surname of the recognizing father, the remedy of change of name under Rule 103 of the Rules of Court is not available. The appropriate remedy is to bring an action for recognition under Arts. 278 and 281 of the New Civil Code and once accomplished, she can avail of the rights granted by law to an acknowledged child, one of which is to bear the surname of her natural father. LERMA *v.* REPUBLIC, G.R. No. L-16085, Nov. 29, 1961.

CIVIL LAW — PRESCRIPTION — AN AGREEMENT PARTLY ORAL AND PARTLY WRITTEN IS NOT WITHIN THE PURVIEW OF THE LAW ON PRESCRIPTION LIMITING ACTIONS BASED UPON A WRITTEN CONTRACT TO TEN YEARS. — Buenaseda purchased lumber from the Phil. Lumber Distributing Agency Inc., in various transactions in 1947, amounting to ₱11,568.35. The last payment was made on July 13, 1949, leaving a balance of ₱4,024.85. These transactions were made through 21 sales orders and others by verbal orders, upon which 69 delivery receipts were issued to the herein defendant. In a civil case instituted by the PNB against the afore-mentioned lumber company, the former obtained a money judgment against the latter, which remains unsatisfied. On May 7, 1957, the PNB brought this instant action. *Issue,* whether or not this action is based on oral or written contracts and therefore covered by the law on prescription. *Held,* the action has prescribed. The agreement is partly oral and partly written and is not within the purview of the Statute limiting actions based on written contracts to ten years. A "writing" for the payment of money sued in an action within the meaning of the ten-year period, is one which contains either an express promise to pay or language from which a promise to pay arises out

of the facts by fair implication. If the cause of action arises out of facts collateral to the instrument, it does not fall within the provisions of the Statute of Limitations. PNB *v.* BUENASEDA, G.R. No. L-17078, Jan. 29, 1962.

CIVIL LAW — PRESCRIPTION — THE MORATORIUM LAW HAD THE EFFECT OF SUSPENDING THE STATUTE OF LIMITATIONS FROM NOV. 18, 1944 TO MAY 18, 1953. — On Sept. 3, 1943, Juan C. Ysmael obtained a loan of ₱12,500 in Japanese currency from Alfonso Abraham, Sr., executing a promissory note promising to pay the loan within 90 days with interest of 10% per annum. Upon maturity of the note, demand was made but the debtor failed to pay. On Feb. 9, 1945, Abraham Sr., died. On April 23, 1952, Ysmael died intestate leaving the note still unpaid. On Nov. 13, 1954, in a special proceedings for the settlement of the intestate estate of Ysmael, Florencia Vda. de Abraham, with her sons, filed a pleading demanding payment of the note. Lower court ordered the administratrix to pay. The Court of Appeals reversed the order on the ground that the claim has prescribed. *Held,* an action upon a written contract must be brought within ten years from the time the cause of action accrues. Here, the cause of action accrued on Dec. 3, 1943, when the note became due, and the petitioners filed their action only on Nov. 13, 1954. However, the provisions on Moratorium had the effect of suspending the Statute of Limitations from Nov. 18, 1944, when Exec. Order No. 25 was issued, to May 18, 1953, the date of promulgation of the decision in the case of Rutter v. Esteban, holding such provisions no longer applicable. Hence, the period of eight years and six months should be deducted. DE ABRAHAM *v.* INTESTATE ESTATE OF YSMAEL, G.R. No. L-16741, Jan. 31, 1962.

CIVIL LAW — PROPERTY — EVERY POSSESSOR DISTURBED IN HIS POSSESSION SHALL BE RESTORED THERETO BY THE MEANS ESTABLISHED BY LAW. — The Republic of the Philippines is the owner and in continuous possession of Lot 132 situated at the City of Legaspi, long before World War II up to March 26, 1960, when this complaint was filed. This lot was devoted for the use of the Albay Trade School, later converted into Bicol Regional School of Arts and Trades. Upon the creation of the City of Legaspi, this lot in question was reserved by Presidential Proclamation No. 404 for city hall purposes. Subsequently, the City of Legaspi was reconverted into a municipality. Then, it was reconverted into a city again. Thereupon, the City of Legaspi invoking Proclamation 404, ordered the school to vacate the premises and notwithstanding the latter's opposition, entered into possession of the lot and improvements. *Issue,* who has the better right to possession? *Held,* when R.A. No. 993 abolished the City of Legaspi, Proclamation 404 became inoperative although the city was later recreated. Hence, the Republic of the Philippines being a real party in interest and the owner and actual possessor of the same, must be respected and restored to its possession in accordance with Art. 539 of the Civil Code. CITY OF LEGASPI *v.* HON. MATEO ALCASID, G.R. No. L-17936, Jan. 30, 1962.

CIVIL LAW — SALES — IF THE VENDEE FAILS TO TAKE DELIVERY AND PAY THE PURCHASE PRICE, THE VENDOR, WITHOUT NEED OF FIRST RESCINDING THE CONTRACT JUDICIALLY, IS ENTITLED TO RESELL THE SUBJECT MATTER AND IF HE IS COMPELLED TO SELL IT FOR LESS THAN THE CONTRACT PRICE, THE VENDEE IS LIABLE FOR THE DIFFERENCE. — Katigbak and Evangelista (the owner), entered into a contract of purchase and sale of a winch for ₱12,000, the amount of ₱5,000 payable on delivery, and the balance of ₱7,000 payable within 60 days. Katigbak's refusal to carry out the contract compelled Evangelista to resell the winch to a third person for ₱10,000, suffering a loss of ₱2,000. Evangelista seeks to recover the loss he suffered. *Held,* if the vendee fails to take delivery and pay the purchase price of the subject matter of the contract, the vendor, without need of first rescinding the contract judicially, is entitled to resell the same and if he is obliged to sell it for less than the contract price, the vendee is liable for the difference. Katigbak failed to take delivery of the winch and the fault is attributable to him. Evangelista had the right to resell and Katigbak is liable for the difference between the contract price and the resale price. KATIGBAK *v.* COURT OF APPEALS, G.R. No. L-16480, Jan. 31, 1962.

CIVIL LAW — SPECIAL CONTRACTS — THE COURT MAY, IN ITS DISCRETION, FIX A LONGER PERIOD OF LEASE WHEN THE CONTRACT DOES NOT FIX THE PERIOD. — Divino purchased from Castro a house built on a lot pertaining to the Hacienda Fabie owned and administered by Ramona Fabie de Marcos and Ventura Marcos, respectively. Before buying said house, Divino was assured by the owner of the house and by the rental collector that the house will remain thereon as long as rental is paid. On Aug. 23, 1955, the defendants herein filed a complaint for ejectment against Divino for failure to pay the rent from Feb., 1954 to May, 1955, at ₱22.00 a month, and to compel Divino to pay an increase rental at ₱40.00 a month beginning Aug. 1, 1955. The same was dismissed by the municipal court and affirmed by the CFI on appeal. Thereafter, defendants informed plaintiff that the contract of lease would be terminated on April 30, 1956. There was no written agreement between the parties as to the manner of paying rentals. The trial court ordered the defendants to execute a contract of lease in favor of the plaintiff for a period of two years. *Held,* the trial court did not err in applying Art. 1687, in connection with Art. 1197, of the Civil Code, which provides that "when a period of lease is not fixed, x x x the courts may fix a longer period x x x." This power of the court is potestative or discretionary, to be exercised or not according to the particular circumstances of the case. DIVINO *v.* FABIE DE MARCOS, G.R. No. L-13929, Jan. 31, 1962.

COMMERCIAL LAW — NEGOTIABLE INSTRUMENTS LAW — A DEMAND DRAFT IS NOT A "CREDIT" OR "DEPOSIT" WITHIN THE PURVIEW OF ACT NO. 3936 AND MAY NOT, THEREFORE, BE ESCHEATED IF UNCLAIMED. — The Republic of the Philippines sought to escheat, pursuant to Act No. 3936, certain unclaimed bank deposits and credits which had remained dormant for 10 years or more with several banks, among them the First National City Bank of New York. The lower court dismissed the complaint with respect to the telegraphic transfer payment orders and the demand drafts, holding that they do not come within the purview of the Act. *Issue,* are demand drafts and telegraphic transfers within the meaning of the terms "credits" or "deposits" employed in the Act and therefore, may be escheated? *Held,* the term "credit" in its usual meaning, is a sum credited on the books of a company to a person who appears to be entitled to it; it presupposes a creditor-debtor relationship. The same is true with the term "deposit" in banks where the relationship created between the depositor and the bank is that of creditor and debtor. A demand draft being a bill of exchange, does not make a drawee liable to the payee until the drawee accepts it. The demand drafts herein involved have not been presented either for acceptance or payment. Hence, the banks never became the debtors of the payees and therefore, the said drafts cannot be considered as credits subject to escheat. In the case, however, of telegraphic transfers, if the payees demand payment at the time they were received by the bank, the latter would without question be liable to them; hence, the transfers fall within the purview of the Act. REPUBLIC *v.* P.N.B., G.R. No. L-16106, Dec. 30, 1961.

COMMERCIAL LAW — NEGOTIABLE INSTRUMENTS LAW — WHERE THERE ARE CIRCUMSTANCES WHICH SHOULD PUT A PAYEE TO INQUIRY AS TO THE NATURE OF THE TITLE OF THE HOLDER AND HE FAILS TO DO SO, HE IS NOT CONSIDERED A HOLDER IN DUE COURSE — Anita Gatchalian drew a check in favor of De Ocampo & Co. and delivered the same to Manuel Gonzales, who represented himself to be authorized to negotiate for and accomplish the sale of a car belonging to De Ocampo & Co., as proof of her intention to purchase said car. When Gonzales failed to bring the car and its registration papers as agreed upon, Gatchalian issued a "Stop Payment Order" on the check. Gonzales subsequently gave the check to De Ocampo & Co. in payment of hospitalization expenses of his wife in the plaintiff's hospital. Defendant took this appeal from a judgment of the lower court ordering her to pay the amount of the check, with legal interest thereon. *Held,* circumstances — like the fact that the appellants had no obligation to the De Ocampo Clinic; that the amount of the check did not correspond exactly with the obligation of Gonzales to Dr. de Ocampo — should have put the plaintiff-appellee to inquiry as to the nature of holder Gonzales' title to the check or the nature of his possession. Having failed to do this, the plaintiff-appellee is guilty of gross neglect amounting to legal absence of good faith and it may not be considered as a holder of the check in good faith. Decision appealed from reversed. DE OCAMPO & CO. *v.* GATCHALIAN, G.R. No. L-15126, Jan. 31, 1962.

COMMERCIAL LAW — PUBLIC SERVICE ACT — WHERE A PUBLIC SERVICE OPERATOR ABANDONS THE OPERATION OF SOME OF HER LINES OR FAILS TO COMPLETE THE NUMBER OF UNITS REQUIRED IN HER CERTIFICATE, HER APPLICATION FOR ADDITIONAL UNITS MAY BE DENIED. — Rosa Farinas filed an application for registration of five passenger trucks in addition to the four already registered. The Estate of Buan filed a petition to cancel some time schedules of Mrs. Farinas, for the latter failed to maintain the number of units required for her in the certificate. The Public Service Commission denied Mrs. Farinas' application for the latter abandoned the operation of her lines which was willful and deliberate and not due to any circumstance beyond her control. *Held,* the successive accidents and misfortunes of her trucks are not sufficient grounds to excuse her from completing the number of units required for her. The supervening cause must come from outside, not personal disturbance or feeling of the operator. Accidents are necessarily connected with the transportation business. The omission or inaction of petitioner-operator violated the rules of the Commission, which authorize it to suspend or revoke the certificates of petitioner under Sec. 16 (n) Act 146, as amended. DE FARINAS *v.* ESTATE OF BUAN, G.R. No. L-12306, Nov. 29, 1961.

COMMERCIAL LAW — TRANSPORTATION — A CARRIER IS LIABLE FOR THE LOSS OR DAMAGE CAUSED ON THE GOODS BY ITS NEGLIGENCE OR BY RECEIVING THEM, KNOWING OF THEIR INHERENT DEFECTS. — The City of Iloilo requisitioned for rice from the NARIC. So, 1,726 sacks of rice were shipped on board the "SS General Wright", owned by Southern Lines, Inc. The City of Iloilo received the shipment and paid the full amount of ₱63,115.50. However, it was noted at the foot of the bill of lading that the City of Iloilo, "received the above-mentioned merchandise apparently in the same condition as when shipped, save as noted below: actually received — 1,685 sacks with a gross weight of 116,131 kilos upon actual weighing." The total shortage ascertained was 13,319 kilos amounting to ₱6,486.35. To recover the amount of the shortage, the City of Iloilo sued NARIC and Southern Lines, Inc. *Held,* under Art. 362 of the Code of Commerce, the carrier is liable for the losses and damages on the goods shipped caused by its own negligence. It shall likewise be liable for having received the goods with knowledge of their inherent defects (Art 361). The defense that there was no claim filed within 24 hours after the receipt of the shipment cannot be invoked for the first time at the trial or appeal. SOUTHERN LINES, INC. *v.* COURT OF APPEALS, G.R. No. L-16629, Jan. 31, 1962.

CRIMINAL LAW — AGGRAVATING CIRCUMSTANCE — SHOOTING THE VICTIM AT THE BACK IS NOT TREACHERY IF DEFENDANT HAD NO INTENTION TO EMPLOY SUCH METHOD IN THE EXECUTION OF THE CRIME. — The defendant, while watching some prisoners, took time to light his cigarette. Pagarigan, defecating at this juncture, took this opportunity to escape. Upon seeing him run away, defendant fired a shot in the air, but the prisoner did not stop. The second shot was aimed at the prisoner's leg, where he was hit, but still he tried to jump. Tengyao fired a third shot and hit the prisoner at the back. Tengyao was charged with murder, it being alleged that the killing was done with treachery. *Held,* even though the victim was hit at the back, the qualifying circumstance of treachery cannot be considered because the shots were fired in succession, and the defendant had no intent to employ such means or method which tends directly to insure the execution of the crime without any risk to himself. PEOPLE *v.* TENGYAO, G.R. No. L-14675, Nov. 29, 1961.

CRIMINAL LAW — EXEMPTING CIRCUMSTANCES — A PERSON WHO COMMITS A CRIME IS PRESUMED TO BE IN HIS RIGHT MIND. — Fausto, a laborer earning ₱6.50 a day, suddenly found himself without work by his confinement in the National Mental Hospital at the instance of the deceased Dr. Casal. Several times after his release from the mental hospital, he requested the deceased to issue a certification that he was well in order to be re-employed. The deceased Dr. Casal, because of his refusal, was killed by the appellant with evident premeditation. Treachery was also proved in the trial. The defense was insanity. The lower court convicted the accused of murder. *Issue,* whether or not appellant was insane at the time of the commission of the crime charged. *Held,* the evidence was insufficient to prove appellant's insanity. When the defendant in a criminal case interposes the defense of mental incapacity, the burden of proof rests upon him who alleges that fact. The legal presumption is that a person who commits a crime is in his right mind because the law presumes all acts and omissions punishable by law to be voluntary. PEOPLE *v.* FAUSTO, G.R. No L-16381, Dec 30, 1961.

CRIMINAL LAW — ILLEGAL POSSESSION OF FORGED TREASURY NOTES — THE POSSESSION OF GENUINE TREASURY NOTES OF THE PHILIPPINES, ANY OF THE FIGURES OF WHICH HAD BEEN ALTERED, WITH KNOWLEDGE OF SUCH ALTERATION AND WITH THE INTENT TO USE SUCH NOTES, CONSTITUTES ILLEGAL POSSESSION OF FORGED TREASURY NOTES. — After showing to complainant Apolinario del Rosario the Philippine two peso bills, and inducing him to believe that the same were counterfeit paper money manufactured by them, although they were genuine treasury notes of the Philippines, one of the digits of each of which had been altered and changed, the defendants succeeded in obtaining ₱1,700.00 from said complainant for the purpose of financing the manufacture of more

counterfeit treasury notes of the Philippines. *Issue,* whether the possession of said bills constitutes violation of Art. 168, Revised Penal Code — illegal possession of forged treasury notes. *Held,* Art. 169 of the Revised Penal Code provides; "The forgery referred to in this section may be committed by any of the following means: 2. By erasing, substituting, counterfeiting or altering by any means the figures, letters, words or signs contained therein." It is clear that the possession of genuine treasury notes of the Philippines, any of the "figures, letters, words or signs contained" in which had been erased and/or altered, with knowledge of such erasure and alteration, and with the intent to use such notes, as they were used by the petitioner herein and his co-defendants, is punishable under said Art. 168, in relation to Art. 166, par. (1) of the Revised Penal Code. DEL ROSARIO *v.* PEOPLE, G.R. No. L-16806, Dec. 22, 1961.

CRIMINAL LAW — LESS SERIOUS PHYSICAL INJURIES — WHERE THE INFORMATION ALLEGES THAT LESS SERIOUS PHYSICAL INJURIES HAVE BEEN INFLICTED WITH THE MANIFEST INTENT TO INSULT OR OFFEND THE INJURED PERSON OR UNDER CIRCUMSTANCES ADDING IGNOMINY TO THE OFFENSE, THE CRIME CHARGED SHOULD BE THE SINGLE OFFENSE OF LESS SERIOUS PHYSICAL INJURIES WITH THE MANIFEST INTENT TO OFFEND AND INSULT THE COMPLAINANT AS PENALIZED AND DEFINED UNDER PAR. 2 OF ART. 265 OF THE REVISED PENAL CODE AND NOT THE COMPLEX CRIME OF SLANDER BY DEED WITH LESS SERIOUS PHYSICAL INJURIES. — The accused attacked Wenceslao Andanar, the incumbent Municipal Mayor of Sapao, Surigao with fist blows inflicting injuries on the body which required 14 days medical treatment and incapacitated him from the performance of his customary labor for 12 days. The assault was committed in the town cockpit in the presence of many people. Consequently, the accused was charged with the complex crime of slander by deed with less serious physical injuries. Before his arraignment, however, the accused filed a motion to quash on the ground that the act he has committed, if any, is not the complex crime charged but the single offense defined in Par. 2 of Art. 265 of the Revised Penal Code. The motion was granted despite the opposition of the prosecution. Hence, this appeal. *Held,* the court is of the opinion that the crime committed is less serious physical injuries with the manifest intent to insult and offend the complainant and the same acts cannot constitute the complex crime of slander by deed with less serious physical injuries because such complex crimes only exist in cases where the Code has no specific provision penalizing the same with a definite specific penalty. PEOPLE *v.* LASALA, G.R. No. L-12141, Jan. 30, 1962.

CRIMINAL LAW — ROBBERY — PALAY IS INCLUDED IN THE TERM "CEREALS" USED IN ARTICLE 303 OF THE REVISED PENAL CODE DEFINING THE CRIME OF ROBBERY OF CEREALS, FRUITS, OR FIREWOOD IN AN UNINHABITED PLACE OR PRIVATE BUILDING. — The defendants were charged

in the Court of First Instance with the crime of roberry in an uninhabited house, defined and penalized under Art. 302 of the Revised Penal Code. The information alleged that the accused, with intent to gain, entered the bodega owned by Isidro Bastida by forcibly removing the wooden sidings thereof for the purpose of making an opening and carried away 9 sacks of palay valued at ₱108, belonging to said Bastida. Defendants moved to quash the information on the ground that, admitting the commission of the robbery, the crime falls under Art. 303 (Robbery of cereals, fruits, or firewood in an uninhabited place or private building) because the property involved was palay, which is comprehended in the term "cereals" used in said article, and that the amount of the palay not being in excess of ₱250, the offense is punishable by *arresto mayor* in its minimum and medium periods only, and therefore within the original jurisdiction of the JP court and not of the CFI. Motion granted. Appeal. *Held,* palay (the local name for unhulled rice) is "cereal" and is included in the term "semilla alimenticia" used in the Spanish text of the Revised Penal Code, as it is grain in its original state, and, under proper condition, can and will germinate into the plant that produces it. Lower court decision affirmed. PEOPLE *v.* RADA, G.R. No. L-16988, Dec. 30, 1961.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE CIR HAS NO JURISDICTION OVER UNFAIR LABOR PRACTICES COMMITTED BY LANDLORDS OVER THEIR AGRICULTURAL WORKERS. — Complainants are agricultural workers of respondent. A complaint for unfair labor practice was filed against the latter with the CIR alleging that the complainants were separated from service for having affiliated themselves with the union. Respondent moved for its dismissal on the ground of lack of jurisdiction. The CIR held that it had jurisdiction and ordered the reinstatement of the complainants with the right to receive back wages. *Issue,* whether or not the CIR has jurisdiction over agricultural workers. *Held,* the word "employee" defined in Sec. 2 (d) of R.A. 875, does not include agricultural workers. Unfair labor practice arising between landlord-tenant relations does not fall within the jurisdiction of the Court of Industrial Relations but within the jurisdiction of the Court of Agrarian Relations. SANTOS *v.* COURT OF INDUSTRAL RELATIONS, G.R. No. L-17196, Dec. 28, 1961.

LABOR LAW — EIGHT-HOUR LABOR LAW — THE CRITERION IN DETERMINING WHETHER OR NOT SAILORS ARE ENTITLED TO OVERTIME PAY IS NOT WHETHER THEY ARE ON BOARD AND CANNOT LEAVE THE SHIP BEYOND THE REGULAR EIGHT WORKING HOURS A DAY BUT WHETHER THEY ACTUALLY RENDERED SERVICE IN EXCESS OF SAID NUMBER OF HOURS. — Petitioner NASSCO, is the owner of several barges and tugboats used in connection with its business of shipbuilding and repair. Its bargemen are required to stay in their respective barges in order that they could immediately be called whenever their services are needed. They are allowed to leave

only upon authorization when the barges are idle. Malondras, a bargeman asked for the computation and payment of his overtime compensation for the period from Jan. 1, 1954 to Dec. 31, 1956 and from Jan. to April, 1957. The CIR credited him an average of 16 overtime hours a day representing the hours in excess of the regular working hours that he was on board his barge each day, irrespective of whether or not he actually put in work during those hours. CIR ordered overtime pay for the said hours. Hence, this appeal. *Held,* the criterion in determining whether or not sailors are entitled to overtime pay is not whether they were on board and cannot leave the ship beyond the regular 8 working hours a day, but whether they actually rendered service in excess of said number of hours. It could not have been the purpose of our law to require employers to pay their employees overtime even when they are not actually working. NATIONAL SHIPYARD AND STEEL CORPORATION *v.* CIR & MALONDRAS, G.R. No. L-17068, Dec. 30, 1961.

LABOR LAW — INDUSTRIAL PEACE ACT — A FOREMAN SUPERVISOR IS INCLUDED IN THE DEFINITION OF EMPLOYEE IN SEC. 3 OF R.A. 875. — This is an appeal by certiorari from a decision of the Court of Industrial Relations adjudging petitioner guilty of unfair labor practice for having dismissed a foreman supervisor because of the latter's active participation in union activities. Petitioner contends that under Sec. 3 of R.A. 875, the respondent is not included in the term "employee" being a foreman supervisor and therefore, is not eligible for membership in a labor organization of employees under their supervision. Hence, he is not an officer and member of the respondent union and is not protected by law for his activities. *Issue,* whether or not a supervisor is included in the term employee as defined in Sec. 3 of R.A. 875. *Held,* Sec. 3 of R.A. explicitly provides that "employees" include supervisors and they may form separate organizations of their own. In relation to his employer, a foreman or supervisor is an employee within the meaning of the Act. For this reason, supervisors are entitled to engage in union activities and any discrimination against them by reason thereof constitutes unfair labor practice. ATLANTIC GULF & PACIFIC CO. *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-16991, Dec. 23, 1961.

LABOR LAW — INDUSTRIAL PEACE ACT — THE CERTIFICATION OF A DISPUTE INVOLVING AN INDUSTRY INDISPENSABLE TO NATIONAL INTEREST BY THE EXECUTIVE SECRETARY "BY AUTHORITY OF THE PRESIDENT" IS A VALID CERTIFICATION. — On Aug. 15, 1961, the then Executive Secretary Natalio Castillo, in a letter signed "by authority of the President", officially referred the controversy between the GSIS Manangement and the GSIS Employees and Supervisors Association, to the Court of Industrial Relations. The said unions brought this petition to prohibit the CIR from hearing and adjudicating the labor controversy, alleging that the letter was not a valid certification. *Held,* the certification of a dispute

involving an industry indispensable to the national interest by the President to the Court of Industrial Relations, made in a letter signed by the Executive Secretary "by authority of the President" is a valid certification. The statute does not prescribe in what form the President should certify an industrial controversy to the CIR. GSIS EMPLOYEES' ASSOCIATION *v.* CIR & GSIS, G.R. No. L-18734, Dec. 30, 1961.

LABOR LAW — SOCIAL SECURITY ACT — EMPLOYEES MAY AVAIL OF SICKNESS BENEFITS UNDER THE SOCIAL SECURITY ACT EVEN THOUGH THEY MAY HAVE RECEIVED HALF-PAY FROM THEIR EMPLOYER DURING THEIR ILLNESS. — Petitioners, employees of the PLDT, were members of the S.S.S. In the collective agreement of the union of which the petitioners were members, respondent granted its employees sick leave with full pay for the first two weeks of illness and thereafter, sick leave with half-pay for the duration of the illness up to a maximum of six months. Accordingly, they were given full-pay for the first two weeks of their illness and thereafter, sick leave with half-pay for the duration of their illness. Subsequently, they were discharged by the company. Soon after their discharge, they filed a petition for sickness benefits under the Social Security Act, for the reason that upon the exhaustion of their two weeks full-pay, they became entitled to such although they were still enjoying the half-pay benefit during their illness. The respondent refused to grant the same on the ground that as the petitioners are still receiving some amount of sick leave pay from it, they are not entitled to the sickness allowance under the Social Security Act. *Held,* the Act was enacted for the avowed purpose of protecting employees against the hazards of disability, sickness, old age and death and this purpose would be frustrated if lawful claims were to be denied simply because the claimant is receiving some pay, however infinitesimal, from the employer. It stands to reason that in requiring the employee to exhaust all his leaves of absence with pay before his sickness allowance can begin, the statute takes into consideration that if the employee does not receive compensation as when he is healthy, he has no ground for complaint. But this cannot be the rule if the compensation received during his leave of absence is substantially reduced. MOSUELA *v.* PHILIPPINE LONG DISTANCE TELEPHONE CO., G.R. No. L-16693, Jan. 30, 1962.

LABOR LAW — SOCIAL SECURITY ACT — AN EMPLOYER IS STILL LIABLE TO PAY HIS CONTRIBUTIONS TO THE SOCIAL SECURITY COMMISSION ON ACCOUNT OF HIS EMPLOYEE WHO IS ON LEAVE EVEN WITHOUT PAY. — Petitioner Insular Life Assurance Co., Ltd., employer of Agustin Benitez, filed a request with the Social Security Commission for the refund of ₱36.14, representing the premium paid by it for the account of its employee, Benitez, for the period from May 15, 1959 to Aug, 30, 1959, when said employee was on leave of absence without pay. Petitioner's contention was that, there being no compensation given to the employee, the employer's liability for social security does not exist because the compensation is the basis of computation of the premiums and contribution. The request was denied. *Held,* the payment of contributions by an employer is compulsory during the existence of an employer-employee relation. While an employee is on leave, even without pay, he is still liable to pay his contribution to the Commission on account of said employee. In this jurisdiction, the contributions are considered as premiums collectible even when the employee is not actually paid his compensation. INSULAR LIFE ASSURANCE CO. LTD. *v.* SOCIAL SECURITY COMMISSION, G.R. No. L-16359, Dec. 28, 1961.

LABOR LAW — SOCIAL SECURITY SYSTEM — THE BENEFICIARY WHETHER A MEMBER OF THE FAMILY OR A STRANGER IS ENTITLED TO DEATH BENEFITS UNDER THE SYSTEM. — The late Lim Hoc, a former employee of the Yuyitung Publishing Co., was a member of the Social Security System at the time of his death. He designated petitioner Tecson, a friend and coworker of his, as his beneficiary. After Lim Hoc's death, petitioner claimed for death benefits from the S.S.S. but the latter denied payment on the ground that the legislative policy underlying the System is to grant and afford protection to the covered employee as well as his family only. It is not just anyone whom the employee designates who may be appointed as his beneficiary. *Held,* Sec. 13 of R.A. 1161, as amended, provides: "Upon the covered employee's death, . . . his beneficiaries as recorded by his employer, shall be entitled to the following benefits x x x." When the provisions of law are clear and explicit, the courts can do nothing but apply its clear and explicit provisions, for the Social Security Act is not a law of succession. Its purpose is to provide social security which means funds for the beneficiary, if the employee dies, or for the employee himself and his dependents if he is unable to perform his task because of temporary lay-off due to strike, etc. It is only in case the beneficiary is the estate, or if there is none designated or if the designation is void, that the system is required to pay the employee's heirs. Such is the express provision of the law. TECSON *v.* SOCIAL SECURITY SYSTEM, G.R. No. L-15798, Dec. 28, 1961.

LABOR LAW — WORKMEN'S COMPENSATION ACT — A CASUAL EMPLOYEE WHOSE WORK IS DONE IN CONNECTION WITH THE BUSINESS OF THE EMPLOYER IS A LABORER WITHIN THE PURVIEW OF THE DEFINITION OF EMPLOYEE OR LABORER UNDER THE WORKMEN'S COMPENSATION ACT. — Bautista, a dealer of sand and gravel for building construction, was constructing a new building which would house his business. Murillo was introduced to Bautista 3 months before the construction. During the construction of the new building, he was doing odd jobs for he was not a regular employee. Murillo received ₱3.00 a day. Sometime in March, 1955, when the part of the stonewall was being demolished, and while the clai-

mant was working, the wall toppled down and caught his leg resulting in its fracture. In the action to claim compensation, Bautista contended that inasmuch as Murillo was merely a casual employee, he was not entitled thereto. *Held,* laborer is a synonym of employee and means every person who has entered the employment of or works under the service or apprenticeship contract of an employer. It does not include a person whose employment is purely casual as when the employment is one not for the occupation or business of the employer. But the claimant here even though a casual employee, is entitled to compensation for his work is done in connection with the business of the employer. Thus, claimant falls within the purview of the definition of laborer or employee. BAUTISTA *v.* MURILLO, G.R. No. L-13374, Jan. 31, 1962.

LABOR LAW — WORKMEN'S COMPENSATION ACT — AN EMPLOYEE WHO DIES AS A RESULT OF A FALL SUSTAINED WHILE ATTEMPTING TO OVERTAKE AND RIDE ON A VEHICLE USED TO CONVEY EMPLOYEE TO AND FROM THEIR WORK IS ENTITLED TO COMPENSATION AS HE IS DEEMED TO HAVE DIED IN THE COURSE OF HIS EMPLOYMENT. — Martin, the deceased husband of the claimant, was an employee of the respondent at the Binga Hydroelectric Project at Benguet, Mt. Province. On Dec. 3, 1957, the deceased, with other employees of the respondent, was waiting near their place of work for the company truck that would convey them home. As the truck approached, the group signalled the driver to stop, but the latter did not heed their sign and continued on its way. The deceased, with some others, ran after the truck and upon overtaking it, attempted to ride on on its platform. However, the decedent in so doing, slipped and fell and was ran over by the right rear wheel of the truck causing his death. The respondent refused to grant compensation on the ground that the injuries sustained in the accident causing Martin's death did not arise out of or in the course of his employment. *Held,* the truck involved in the accident was a service truck of the respondent company furnished to convey its workers back home from work. It is clear, therefore, that the accident arose out of or in the course of employment and that the deceased was killed as a result of his negligence. Negligence, however, to be a successful defense in a compensation case must be more than simple or contributory. It is clear from the records of the case that the truck was not running at a great speed and that the condition of the road made it possible for the aforementioned laborers to achieve their purpose. In fact, several of the men succeeded in boarding the truck in motion. The negligence on the part of the deceased was at most contributory. MARTIN *v.* PHILIPPINE ENGINEERS SYNDICATE INC., G.R. No. L-17533, Jan. 31, 1962.

LAND REGISTATION — PUBLIC LAND ACT — ACT 2874 APPLIES TO ALL ALIENATIONS OR CONVEYANCES OF LAND GRANTS BY HOMESTEAD OR FREE PATENT IRRESPECTIVE OF WHETHER THE LAND HAS BEEN ACQUIRED UNDER SAID ACT OR ANY OTHER LAW. — Before the effectivity of Act 2874, plaintiffs' parents had acquired by free patent two parcels of land for which a Torrens Title was issued. Upon their parents' demise, the plaintiffs adjudicated unto themselves said two parcels and obtained for them Transfer Certificate of Title. Subsequently, they sold the lands in question to the defendants. Before five years could elapse, the plaintiffs in the complaint sought to repurchase from the defendants these lands invoking the provisions of Sec. 117 of Act 2874, incorporated in Com. Act 141 as Sec. 119 thereof (which was passed after the acquisition of said lands). Judgment was rendered for the plaintiffs and so defendants appealed. *Issue,* whether or not the provisions on repurchase under Sec. 117 of Act 2874 apply to lands acquired under Act 926 which contains no provisions to applicant's, his widow's or heir's right to repurchase the same within five years. *Held,* the provisions comprehend clearly not only those acquired under said Act or any law thereafter, but also to lands acquired by virtue of homestead or free patents. The law did not refer to acquisition but conveyance of land. In other words, Act 2874 applies to all alienations or conveyances of land grants (by homestead or free patent) irrespective of whether the same have been acquired under said Act or any other law. FRANCISCO *v.* CERTEZA, G.R. No. L-16849, Nov. 29, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — TO BE A "QUALIFIED VOTER", REGISTRATION AS A VOTER IS NOT AN ESSENTIAL CONDITION. — In the elections held in November, 1959, Manuel Sotto was declared elected as Vice-Governor of Davao. Petitioner Aportadera contested Sotto's election on the ground that the latter was not a qualified voter of Davao being a registered voter of Manila, and therefore not qualified as Vice-Governor. *Issue,* whether or not respondent is a qualified voter of Davao. *Held,* under Sec. 1095, registration as a voter is not an essential condition to be "a qualified voter". Registration is essential to the exercise of the right of suffrage, not to the possession thereof. Indeed, only those who have such right may be registered. In other words, the right must be possessed before the registration. The latter does not confer it. Even if the candidate had not been registered at all in the place where he runs for the position, provided that he has all the other qualifications, this fact does not affect his qualification that he is a qualified voter. APORTADERA *v.* SOTTO, G.R. No. L-18876, Nov. 30, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — THE CASHIER OF THE MRR IS NOT AN OFFICER OF THE GOVERNMENT AND THE FUNDS HANDLED BY HIM BELONG TO THE MRR AS A PRIVATE CORPORATION AND THEREFORE SEC. 636 WHICH REFERS TO GOVERNMENT PROPERTY AND SEC. 637 (R.A.C.) WHICH REFERS TO LIABILITY OF OFFICERS ACCOUNTABLE FOR GOVERNMENT FUNDS, CANNOT BE MADE TO APPLY TO THE MRR CASHIER

CAUSING LOSS TO THE COMPANY DUE TO THE PAYMENT BY HIM OF FORGED CHECKS. — Plaintiff Tanchoco, an employee of the Manila Railroad Company, applied for retirement pursuant to R.A. 186, as amended. The GSIS approved his application and a treasury warrant in the sum of ₱868.65, representing part of his gratuity was prepared for payment to him. Despite repeated demands, the System refused to deliver the warrant to him, upon the representations of the MRR, because as cashier of the latter, he had paid the aggregate amount of ₱10,936.20 for several treasury warrants which later turned out to have been forged. In an action by the plaintiff against the GSIS for the said sum of ₱868.65, the MRR intervened. *Issue,* whether or not the gratuity due to Tanchoco under R.A. No. 186 may be applied to the satisfaction of the sum of ₱10,136.20 lost by the company. *Held,* Sec. 636, Rev. Adm. Code, has no bearing on the issue for said provision refers to government property, not to funds as those involved in the case at bar. Neither is Sec. 637 in point for the same refers to the "liability of officers accountable for government funds", whereas those handled by Tanchoco were funds belonging to the Company which, although owned by the government, is a private corporation and as such an entity, separate and distinct from the latter, engaged in public service like any other business enterprises operating a similar undertaking. The funds in question, therefore, belong to said private corporation, not to the government. Again, as Company cashier, Tanchoco was not officer of the government. TANCHOCO *v.* GOVERNMENT SERVICE INSURANCE SYSTEM, G.R. No. L-16926, Jan. 31, 1962.

POLITICAL LAW — ADMINISTRATIVE LAW — A NON-CIVIL SERVICE ELIGIBLE CANNOT INVOKE THE CIVIL SERVICE LAW THAT HE CAN ONLY BE REMOVED FOR CAUSE, FOR ABOLITION OF HIS OFFICE IN GOOD FAITH IS NOT REMOVAL. — Ulep who is not a civil service eligible, was appointed as a local Civil Registry Clerk. As required by Sec. 232 of R.A. 2260, he took a civil service examination but the results thereof were not yet released. Resolution No. 67 of Asingan, Pangasinan abolished his position together with his co-petitioner's. They assailed the validity of the resolution and the legality of their removal. The lower court upheld the validity of that portion of the resolution abolishing Ulep's position. Ulep appealed. *Issue,* whether or not Ulep was validly removed from office. *Held,* the power to create an office includes the power to abolish it unless there are constitutional or statutory rules expressly or impliedly providing otherwise. Abolition of a position in good faith is not removal, hence one cannot attack the abolition as an illegal removal. One who has not yet passed the civil service examination cannot invoke "removal for cause" guaranteed by the Civil Service Act. ULEP *v.* CARBONELL, G.R. No. L-17807, Jan. 31, 1962.

POLITICAL LAW — CONSTITUTIONAL LAW — THE OUTGOING PRESIDENT'S ADMINISTRATION DURING THE PERIOD FOLLOWING THE PROCLAMATION OF THE ELECTION OF THE NEW PRESIDENT-ELECT BY CONGRESS AND BEFORE THE LATTER'S ASSUMPTION OF OFFICE IS NO MORE THAN A "CARETAKER" ADMINISTRATION. — On Dec. 13, 1961, Congress proclaimed Diosdado Macapagal as President of the Philippines. On the 29th of the same month, Pres. Garcia submitted 350 ad-interim appointments to the Commission on Appointments for confirmation. On Dec. 31st, Pres. Macapagal issued Administrative Order No. 2, recalling, withdrawing and cancelling all ad-interim appointments made by Pres. Garcia after Dec. 13, 1961. *Issue,* what is the nature of the administration of an outgoing President during the period following the proclamation of the election of the new President-elect by Congress and before the latter's assumption of office? *Held,* while nobody will assert that Pres. Garcia ceased to be such earlier than at noon of Dec. 30, 1961, it is common sense to believe that after the proclamation of the election of Pres. Macapagal, his (Pres. Garcia's) was no more than a "care-taker" administration. He was duty bound to prepare for the orderly transfer of authority to the incoming President, and he should not do acts which would embarrass or obstruct the policies of his successor. AYTONA *v.* CASTILLO, G.R. No. L-19313, January 19, 1962.

POLITICAL LAW — DEPORTATION — AN ALIEN WHO, IN ANY IMMIGRATION MATTER, SHALL KNOWINGLY MAKE UNDER OATH ANY FALSE STATEMENT OR REPRESENTATIONS SHALL BE GUILTY OF AN OFFENSE, AND UPON CONVICTION THEREOF, SHALL, ASIDE FROM THE PENALTIES IMPOSED BY LAW, BE SUBJECT TO DEPORTATION. — Shiu Shun Man, alias Loo Boon was admitted to the Philippines as temporary visitor upon the filing of a cash bond of ₱10,000.00. Later, his admission status was changed upon application, to that of prearranged employee and was authorized to stay as such until April 30, 1957. The Immigration Commissioner ordered his deportation on the ground that in his sworn application for Alien Certificate of Registration, the petitioner deliberately and willfully declared under oath and represented himself as single when in truth and in fact, he was really married in China in 1948 and has 3 children with his wife Ng He Chiok, and upon the further fact that his authorized stay in the Philippines has expired on April 30, 1957. *Held,* Sec. 45 (f) of Com. Act 613, as amended, provides that "Any individual who in any immigration matter shall knowingly make under oath any false statement or representations shall be guilty of an offense, and upon conviction thereof, shall be fined not more than ₱1,000.00 and sentenced to imprisonment for not more than 2 years, and deported if he is an alien." Petitioner having knowingly made the false statement referred to above, is liable for deportation under the aforecited section of the Immigration Law, and should he fail to leave within the specified period, his bond shall be forfeited. SHIU SHUN MAN *v.* GALANG, G.R. N. L-16486, Dec. 30, 1961.

POLITICAL LAW — THE JUDGE MOTU PROPIO MAY APPOINT A COMMISSIONER TO RECEIVE, FOR IDENTIFICATION PURPOSES, EVIDENCE OB-

JECTED TO BY THE LITIGANTS. — In an election protest filed by Pajarillo against Asis, Judge Ilao appointed the Clerk of Court as commissioner "to receive the evidence consisting of ballots". The appointment of a commissioner was deemed necessary by the Judge to expedite the hearing of this case and other cases pending before the court. This was objected to by the petitioner. *Issue,* whether or not the judge may validly appoint a commissioner to receive the evidence of the parties in an election case. *Held,* under Sec. 175 of the Revised Election Code, the court is not only authorized, upon petition of an interested party or *motu propio* if the interest of justice so requires, to order the production of election paraphernalia for the examination of the ballots and the counting of votes but also and for the purpose of such examination and counting, to appoint such officer as it may deem necessary. The court's authority to appoint such officer (commissioner) is based on the Revised Election Code and not on Sec. 2 of Rule 34 of the Rules of Court for the latter shall only apply to election cases by analogy or in suppletory character and whenever practicable and convenient. ASIS *v.* HON. ILAO, G.R. No. L-17451, Jan. 31, 1962.

POLITICAL LAW — ELECTION LAW — ONLY PRECINCTS INCLUDED IN THE PROTEST MAY BE REVISED. — On Nov. 10, 1959, Matas was declared elected municipal mayor of Padada, Davao. Ordaneza, in his protest, alleged frauds, abuses and irregularities in 9 precincts. Subsequently, in an amended petition, he included therein another 11 precincts. Matas filed an answer denying the allegations and a counter-protest was lodged alleging frauds and irregularities in Precinct No. 15. When the commissioners were about to complete the recounting and classification of the ballots in the first 8 precincts already brought before the court, Matas filed an urgent motion praying that all the other 12 ballot boxes be opened also and the ballots therein revised. *Held,* in this jurisdiction, the rule has invariably been to deny revision in precincts that are not contested, either in the petition of protest or in a counter-protest. To permit revision in precincts not subject of a petition or counter-protest would mean allowing any party to conduct a fishing expedition and unduly prolong the contest resulting in cutting down the term of the winner. The decision of this Court and those of the House Electoral Tribunal are to the effect that a protestant must specify in his answer the precincts in which he desires or demands revision and that he may not demand the revision of the precincts which he did not include in his protest. If the protestant is not permitted to demand revision in precincts not included in his petition of protest, neither should the defendant or protestee be allowed to do so. MATAS *v.* HON. JUDGE ROMERO, G.R. No. L-16897, Jan. 31, 1962.

POLITICAL LAW — ELECTION LAW — THERE IS NO APPEAL FROM THE CFI'S JUDGMENT IN ELECTION CONTESTS FOR VICE-MAYORS. — Gonzales and Flores were candidates for Vice-Mayor of Butuan City, in the November, 1959 elections. Flores was proclaimed elected by a plurality of 222 votes over Gonzales. Gonzales contested Flores' proclamation. The Agusan CFI declared Gonzales duly elected Vice-Mayor of Butuan City. Flores appealed to the Court of Appeals. Gonzales moved to dismiss on ground that Sec. 178 of the Revised Election Code, as amended, does not confer the right to appeal from a judgment of the Court of First Instance upon the parties to an election contest for the position of Vice-Mayor. *Held,* the rule is that an appeal to a higher court, being merely a statutory right and not ordinarily a necessary part of due process, may only be taken when the law so provides. Sec. 178 of the Rev. Elec. Code, as amended, in providing for the right of appeal in election contests, enumerates the offices where the candidates thereof can appeal from an election contest. Vice-Mayors not being included therein, it is clear that no appeal to this Court lies from a decision of the Court of First Instance in election contests for Vice-Mayors. GONZALES *v.* COURTS OF APPEALS, G.R. No. L-18255, Nov. 21, 1961.

POLITICAL LAW — ELECTION LAW — ONLY THE SUPREME COURT AND NOT THE CFI HAS JURISDICTION TO PASS UPON DECISIONS, ORDERS AND RULINGS OF THE COMMISSION ON ELECTIONS. — Albano, a candidate for Congressman of Isabela, alleged that there was a material variance in the election returns produced by the Prov. Treasurer for several precincts and those furnished to his representative for said precincts. The Commission on Elections ordered said Prov. Treasurer to suspend the proclamation of the winning candidate. The Court of First Instance acting on the petition of the opposing candidate, ordered the Provincial Board of Canvassers to declare the winner and the Prov. Treasurer to refrain from bringing the questioned returns to Manila as instructed by the Commission. *Issue,* whether or not CFI is vested with jurisdiction to pass upon the validity of orders of the Commission on Elections. *Held,* the suspension of the proclamation of the winning candidate pending an inquiry is within the administrative jurisdiction of the Commission in view of the exclusive authority conferred upon it by the Constitution with respect to the administration and enforcement of all laws relative to elections. Besides, even assuming that such suspension order was in any way defective, the correction thereof lies not within the jurisdiction of the CFI but with the Supreme Court alone (Art. X, Sec. 2). To allow the CFI of each and every province to arrogate upon itself the power to disregard, suspend or contradict any order of the Commission on Elections would be to speedily reduce that constitutional body to impotence. ALBANO *v.* HON. ARRANZ, G.R. No. L-19260, Jan. 31, 1962.

POLITICAL LAW — LAW OF PUBLIC OFFICERS — THE RULE THAT AN APPOINTMENT ONCE ISSUED CANNOT BE RECONSIDERED, SPECIALLY WHERE

THE APPOINTEE HAS QUALIFIED, DOES NOT APPLY TO MASS AD-INTERIM APPOINTMENTS. — On the eve of President Macapagal's assumption of office, outgoing Pres. Garcia submitted to the Commission on Appointments, for confirmation, a total of 350 ad-interim appointments. A day after his assumption of office, Pres. Macapagal revoked all these appointments. *Issue*, can the appointments be revoked? *Held*, the outgoing President should be doubly careful in extending ad-interim appointments. The rule that an appointment once issued can no longer be reconsidered, specially where the appointee has qualified, does not refer to mass ad-interim appointments, issued in the last hours of an outgoing Chief Executive, in a setting characterized by hurried maneuvers and other happenings detracting from that degree of good faith, morality and propriety which form the basic foundation of claims to equitable relief. Indeed, it is doubtful whether the underlying reason for denying the power to revoke after the appointee has qualified, i.e., the latter's equitable rights, can be successfully set up in the present situation. AYTONA *v.* CASTILLO, G.R. No. L-19313, Jan. 19, 1962.

POLITICAL LAW — LAW OF PUBLIC OFFICERS — UPON REACHING SIXTY FIVE YEARS OF AGE, A GOVERNMENT EMPLOYEE IS AUTOMATICALLY RETIRED, AS PROVIDED FOR BY LAW. — A few minutes before he was to be automatically retired, plaintiff who was then the General Manager and Acting Chairman of the Board of Directors of defendant corporation, was suspended from office by the President of the Philippines as a result of which his request for retirement was suspended and his claim for vacation leave and other retirement privileges was withheld by defendant corporation. Upon his exoneration from the charges, after more than two years of suspension, plaintiff demanded from defendant the payment of his salary during his suspension and his additional terminal vacation and sick leave pay in the amount of ₱38,805.83, on the premise that his services were extended by the President. *Issue*, whether or not the plaintiff was automatically retired. *Held*, under Sec. 12 (c) of Com. Act 186 as inserted by Sec. 8 of R.A. 660 and as amended by Sec. 6 of R.A. 728, "retirement shall be automatic and compulsory at the age of 65 years" subject to the condition that he has completed fifteen years of service and that he has not been separated therefrom during the last 3 years of service prior to retirement. Since on April 5, 1954, appellant has completed more than 15 years of service and has reached the age of 65 years, even if minutes before he was suspended by the President in view of certain charges filed against him, there is no question that under the law, he was deemed to have been automatically and compulsorily retired on said date, and exoneration does not entitle him any salary corresponding to the period of suspension. FRAGANTE *v.* PHILIPPINE HOMESITE AND HOUSING CORPORATION, G.R. No. L-16020, Jan. 30, 1962.

POLITICAL LAW — POLICE POWER — SEC. 770 IN RELATION TO SEC. 2678 OF THE REVISED ADMINISTRATIVE CODE PUNISHING ILLEGAL PRACTICE OF MEDICINE IS CONSTITUTIONAL. — The accused Ventura was prosecuted and convicted of the crime of illegal practice of medicine, defined and penalized in Sec. 770 in relation to Sec. 2678 of the Revised Administrative Code. He assailed the constitutionality of the law claiming that it is violative of the equal protection clause and a curtailment of one's profession. *Held*, the law is constitutional. It is within the exercise of the police power of the State to prescribe such regulations as in its judgment will secure or tend to protect the general welfare of the people against consequences of ignorance and incapacity as well as deception and fraud. PEOPLE *v.* VENTURA, G.R. No. L-15079, Jan. 31, 1962.

POLITICAL LAW — PUBLIC CORPORATIONS — THE VICE-MAYOR HAS THE RIGHT TO ASSUME THE OFFICE OF THE MAYOR WHEN THE LATTER IS "EFFECTIVELY ABSENT". — On Nov. 20, 1961, Mayor Pablo Cuneta, of Pasay City, left the Philippines for Japan. After Mayor Cuneta's departure, petitioner assumed the powers, duties, functions and prerogatives of the Mayor. Thereafter, petitioner Vice-Mayor was informed that Mayor Cuneta before leaving issued on Nov. 16, 1961, a memorandum designating respondent as "Acting Secretary to the Mayor and Office Caretaker of the Office of the Mayor" effective Nov. 20, 1961, with the power to act on official business matters submitted to the office according to previous instructions. *Issue*, whether or not petitioner Vice-Mayor was entitled to assume the powers and functions of the Mayor during the latter's absence. *Held*, the Vice-Mayor is entitled to assume the powers, duties, and prerogatives of the Mayor's Office if the Mayor is "effectively absent". By "effective absence" is meant one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his office. Leaving Philippine territory, whether on official business or not, is "effective absence" for government by remote control is not authorized by law. PAREDES *v.* ANTILLON, G.R. No. L-19168, Dec. 22, 1961.

POLITICAL LAW — PUBLIC CORPORATIONS — THE FIVE-DAY PERIOD FOR MOTION FOR RECONSIDERATION OF DECISIONS OF THE EXECUTIVE SECRETARY REFERS TO BOTH THE MAYOR AND RESPONDENT OR WHOEVER MAY BE ADVERSELY AFFECTED BY THE DECISION. — Petitioner Vito, a civil service eligible assigned to the City Treasurer's Office, was dismissed from the service by Mayor Lacson. Petitioner appealed to the then Executive Secretary Yengco, Jr. who modified the Mayor's order by merely suspending the former for two months. On Jan. 29, 1955, or 37 days after receipt of the decision, the respondent mayor filed a motion for reconsideration which was denied. On Jan. 11, 1956, he filed a second motion for reconsideration and this time Executive Secretary Fortunato de Leon reversed the decision of Secretary Yengco, Jr. and ordered the dismissal of the petitioner from the service. She filed a motion for reconsideration which was denied. Hence,

this petition for certiorari and mandamus. *Held,* under the Revised Charter of Manila, R.A. 409, Sec. 22 (7), petitions for reconsideration of decision rendered by the Secretary of Interior (now Executive Secretary) may be filed within 5 days from and after receipt of a copy of the decision or notice thereof. Hence, after the lapse of 5 days, the decision of Executive Secretary Yengco, Jr. became final and executory and cannot be reconsidered by Executive Secretary Fortunato de Leon. The petition for reconsideration of decisions of the Executive Secretary refers to both the Mayor and respondent or whoever may be adversely affected by the decision. VITO *v.* LACSON, G.R. No. L-16173, Dec. 23, 1961.

POLITICAL LAW — PUBLIC CORPORATIONS — MUNICIPAL ORDINANCES MUST SATISFY THE REQUIREMENT THAT THEY SHOULD "PROVIDE FOR THE HEALTH AND SAFETY, ETC. OF THE MUNICIPALITY AND ITS INHABITANTS", IN ORDER TO BE VALID. — The Municipal Council of Tarlac passed on ordinance prohibiting the establishment of bus terminals within certain areas of the town including the place where the terminal of plaintiffs is situated. Plaintiffs were given ten days within which to remove and transfer their terminal which defendant claims, is obstructing the traffic and causing inconvenience to the public. Plaintiffs contend that the ordinance is null and void not being within the council's power to enact. Defendant contends that it is so authorized under Sec. 71 of the Motor Vehicles Law and Sec. 2238 of the Rev. Adm. Code. *Issue,* whether or not the ordinance is valid. *Held,* the ordinance in question does not satisfy the requirement of the general welfare clause under Sec. 2238, R.A.C. It did not provide for the health, safety, peace, good order, comfort and convenience of the municipality and the inhabitants thereof. The bus terminal building involved is not a nuisance and causes no injury to the appellant municipality but on the contrary, helps relieve pedestrian congestion in that place. Ordinances should not encroach upon property rights. PAMPANGA BUS CO. INC. *v.* MUN. OF TARLAC, G.R. No. L-15759, Dec. 30, 1961.

POLITICAL LAW — TAXATION — WHERE THE NET PROCEEDS OF A FUND-RAISING EXHIBITION ARE SUBSTANTIAL AND THE EXPENSES ARE EXORBITANT, THE PROMOTER IS LIABLE FOR AMUSEMENT TAX DESPITE THE APPLICATION FOR EXEMPTION. — Calanoc was authorized to solicit and receive contributions for the orphans and destitute children of the Child Welfare Workers Club of the Commission for which he promoted a boxing or wrestling exhibition at the Rizal Memorial Stadium. He filed an application for exemption of amusement tax with the respondent, relying on Sec. 260 of the National Internal Revenue Code. The gross sales was ₱26,533.00; the expenditures — ₱25,157.62; net profit — ₱1,375.38. The expenditures consisted of police protection — ₱461.65; gifts — ₱460.00; parties — ₱1,880.05; and several items. The net profit was turned over to the Social

Welfare Commission. The Collector of Internal Revenue demanded from petitioner an amusement tax of ₱7,378.57, upon authority of the Secretary of Finance that an application for exemption may be denied if the net proceeds are substantial or where the expenses are exorbitant. *Held,* the payment of police protection is illegal as it is a consideration for the performance by the police of functions required of them by law. Expenditures for gifts, parties and other items are excessive and the petitioner could not account for these excessive expenditures. Hence, petitioner is liable as assessed. CALANOC *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-15922, Nov. 29, 1961.

POLITICAL LAW — TAXATION — THE UNALTERED AND UNMODIFIED LETTER OF DEMAND OR ASSESSMENT SENT BY THE COLLECTOR OF INTERNAL REVENUE CONTAINING A DETERMINATION OF TAX LIABILITY IS CONSIDERED A DECISION APPEALABLE TO THE TAX COURT; THE 30-DAY PERIOD FOR APPEAL IS JURISDICTIONAL AND COMMENCES TO RUN FROM THE RECEIPT OF SAID LETTER OF DEMAND OR ASSESSMENT. — The Revenue Collector assessed the tax liabilities of petitioner. Upon the latter's failure to pay, a letter of demand was sent. When the petitioner sought the reconsideration of the demand letter, a revision of the previous assessments was made by the Collector in his letter of Jan. 5, 1954, reducing the tax liabilities. Demands were reiterated in several letters, the last being dated Jan. 23, 1956. On Feb. 9, 1956, the Collector issued a warrant of distraint and levy against the petitioner. The petitioner filed a petition for review with preliminary injunction. The Collector filed a motion to dismiss on the ground of lack of jurisdiction and the Tax Court dismissed the petition. Hence, this appeal. *Issue,* from which letter of demand shall the 30-day period of jurisdictional requirement provided in Sec. 11 of R.A. 1125, commence to run? *Held,* the respondent Collector's decision which is appealable under Secs. 7 and 11 of R.A. 1125 is the one contained in his letter of Jan. 5, 1954, the same having remained unaltered and unmodified up to the date the appeal was filed. Moreover, since a letter of demand or assessment, sent by the Collector to a taxpayer, contains a determination of tax liability of the latter, such letter or assessment must be considered the "decision" appealable to this Court. Such being the case, it logically follows that the decision which was appealed from, was that of Jan. 5, 1954 and the thirty-day period should have started from the receipt of said letter of Jan. 5, 1954. While the right to appeal a decision of the Collector to the Court of Tax Appeals is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days after receipt of the Collector's decision or ruling is jurisdictional. KER *v.* COURT OF TAX APPEALS, G.R. No. L-12396, Jan. 31, 1962.

REMEDIAL LAW — CIVIL PROCEDURE — THE POWER TO ISSUE A WRIT OF EXECUTION IS JUDICIAL IN NATURE AND CANNOT BE VESTED IN AD-

MINISTRATIVE BODIES LIKE THE WORKMEN'S COMPENSATION COMMISSION. — Petitioner was a carpenter employee of the respondent. One day, while working in the shop, he had an accident in consequence of which, he lost the use of one eye with the danger of affecting the other eye by sympathetic opthalsia. He filed a claim for compensation and the Regional Office No. 3 of the Department of Labor rendered a decision against the respondent, which was affirmed on appeal by the Workmen's Compensation Commission. The decision having thus become final and executory, the Commission issued a writ of execution. *Issue,* has the Commission authority to issue a writ of execution? *Held,* the disputed writ of execution is null and void for the power to issue such writ is judicial in nature and cannot be vested in administrative bodies, like the Workmen's Compensation Commission. Sec. 51 of the Workmen's Compensation Act sets forth the procedure for the enforcement of the award before the court of record not before the Workmen's Compensation Commission. DIVINAGRACIA *v.* COURT OF FIRST INSTANCE, G.R. No. L-17690, Dec. 28, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — THE COUNSEL CANNOT ASSUME THAT HE IS ENTITLED TO A 30-DAY EXTENSION FOR HIS PERIOD OF APPEAL BY REASON OF "PRESSURE OF WORK FROM OTHER CASES." — A summary judgment was rendered against respondent. Six days before the expiration of his time for appeal, he filed a notice of appeal and a motion for an extension of 30 days within which to submit his record of appeal and appeal bond "due to pressure of work from other cases". Motion for extension was denied. The period for appeal expired. Nevertheless, he filed his record on appeal and appeal bond which were disapproved on the ground that the decision had already become final and executory under Sec. 3, Rule 41 of the Rules of Court. *Held,* there was no abuse of discretion on the part of the trial court. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. The filing of a motion for extension does not suspend the running of the period of appeal. The rule is that, while the trial court may, in its discretion, extend the time for appeal beyond the period fixed by law, it must be satisfactorily shown that there is mistake, or excusable negligence, or similar supervening casualty, without fault on the part of the appellant. HON. BELLO *v.* FERNANDO, G.R. No. L-16970, Jan. 30, 1962.

REMEDIAL LAW — CIVIL PROCEDURE — IN THE REDEMPTION OF PROPERTIES SOLD AT AN EXECUTION SALE, THE AMOUNT TO BE PAID IS NOT THE JUDGMENT DEBT BUT THE PURCHASE PRICE, AND THE TENDER OF A PART THEREOF IS INSUFFICIENT. — A decision was rendered in favor of the plaintiff and the same having become final, a writ of execution was issued against the 12 defendants to satisfy the judgment of ₱3,401.00. Consequently, ten parcels of land, three of which belonged to appellee Simplicia Nagtalon, were levied upon and sold for ₱3,401.00. On the last day of the one-year period of redemption, Nagtalon deposited with the Deputy Provincial Sheriff the sum of ₱317.44, representing ½ of the consideration of the sale plus 1 per cent interest thereon, and prayed for the issuance of the corresponding deed of redemption as to the three parcels of land belonging to her. The purchaser opposed on the ground that the amount tendered did not cover the full redemption price. The redemption paper for the 3 parcels of land was delivered to appellee Nagtalon. Purchaser appealed. *Held,* under Sec. 26, Rule 39 of the Rules of Court, the judgment debtor or redemptioner may redeem the property from the purchaser within 12 months after sale, by paying the purchaser the amount of his purchase with 1% per month as interest thereon up to the time of the redemption, together with the taxes paid by the purchaser, if any. In other words, in the redemption of properties sold at an execution sale, the amount of payment is no longer the judgment debt but the purchase price. Considering that appellee tendered payment only of the sum of ₱317.44, whereas, the three parcels of land she was seeking to redeem were sold for the sum of ₱1,240.00; ₱21.00; and ₱30.00, respectively, the aforementioned amount of ₱317.44, is insufficient to effectively release the properties. CASTILLO *v.* NAGTALON, G.R. No. L-17079, Jan. 29, 1962.

REMEDIAL LAW — CRIMINAL PROCEDURE — CONVICTION OR ACQUITTAL CAN BE HAD UPON A DEFECTIVE COMPLAINT IF NO OBJECTION IS RAISED. — On Oct. 25, 1957, Pascual Silva, driver of a La Mallorca bus that collided with another bus was charged with slight physical injuries thru reckless imprudence in the Justice of the Peace Court of Meycauayan, Bulacan and of homicide with serious physical injuries thru reckless imprudence in the Bulacan CFI. Acquitted by the J.P. Court, Silva asked for the dismissal of the charge filed in the CFI on the ground of double jeopardy. The fiscal contended that there is no double jeopardy because the first complaint under which accused was acquitted was fatally defective. *Held,* a conviction or acquittal under a fatally defective complaint for want of certain allegations which are essential is not necessarily void when no objection appears to have been raised at the trail court and the fatal defect could have been supplied by competent proof. PEOPLE *v.* SILVA, G.R. No. L-15974, Jan. 30, 1962.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE ACQUITTAL OF THE ACCUSED FROM A LESSER OFFENSE WHICH IS AN INGREDIENT OF A MORE SERIOUS ONE CONSTITUTES A BAR TO THE PROSECUTION OF THE LATTER UNDER THE PRINCIPLE OF DOUBLE JEOPARDY. — As a result of a bus collision, Silva was prosecuted for slight physical injuries thru reckless imprudence in the J. P. Court of Meycauayan, Bulacan. Acquitted therefrom, he moved to quash the information charging him with homicide with serious physical injuries thru reckless imprudence filed against him with the Bulacan

CFI on the ground of double jeopardy. *Held,* although under Art. 48 of the Rev. Penal Code, the charge of slight physical injuries thru reckless imprudence cannot be joined with the charge of homicide with serious physical injuries thru reckless imprudence, the prosecution of the lesser offense bars prosecution of the more serious offense for the former is an ingredient of the latter and the principle of double jeopardy attaches. PEOPLE *v.* SILVA, G.R. No. L-15974, Jan. 30, 1962.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PERSON'S TESTIMONY UNDER OATH IN THE WITNESS STAND IS A SUFFICIENT COMPLIANCE WITH THE REQUIREMENT OF FILING AN AFFIDAVIT OF MERIT IN A MOTION FOR NEW TRIAL. — On June 2, 1958, Catalan was charged with malicious mischief. On June 6, 1958, he pleaded guilty and was sentenced accordingly. On the same day, he filed a motion contending that in a civil case, he and his co-heirs were declared owners of the land where he uprooted plants and for which he was charged with malicious mischief. He prayed that the judgement be vacated and his plea of guilty be changed to that of not guilty. J.P. granted the motion. The fiscal, after his motion for reconsideration was denied, filed a petition for certiorari contending that the J.P. acted with grave abuse of discretion and that the motion for reconsideration being in reality a motion for a new trial, should be verified and supported with an affidavit of merit. *Held,* petition denied. The motion even though not verified and there was no affidavit of merit, the defect was merely in form and had been cured when respondent took the witness stand under oath and was cross-examined by both counsels. PAREDES *v.* BORJA, G.R. No. L-15559, Nov. 29, 1961.

REMEDIAL LAW — CRIMINAL PROCEDURE — A MERE RECOMMENDATION OF DISMISSAL BY AN ASSISTANT CITY FISCAL WHO CONDUCTED THE PRELIMINARY INVESTIGATION OF A CASE IS NOT A FINAL RESOLUTION OF DISMISSAL. — Fiscal Jose T. M. Mayo, after conducting a joint preliminary investigation of the cases filed by Lim Bun Chuan against Vicente Sun and Yu Go Kee and by the latter's wife against Lim Bun Chuan, submitted his "Report of Investigation," recommending dismissal of both cases. Second Assistant City Fiscal Carlos C. Gonzales, Chief of the Prosecution Division of the City Fiscal's Office, disagreed and filed three informations with the CFI of Manila charging Yu Go Kee and Vicente Sun for falsification of public and official documents. Attorneys for defendants filed separate motions to quash, alleging that there was no valid preliminary invesetigation conducted by Fiscal Gonzales. *Held,* there was a valid preliminary investigation. The "Report of Investigation" prepared by Fiscal Mayo, being a mere recommendation, was not a final resolution of dismissal but was intended for review and final action of either Fiscal Gonzales or the City Fiscal himself. The review made by Fiscal Gonzales was but a mere continuation of the preliminary investigation conducted by Fiscal Mayo within

the purview of Sec. 38-C of R.A. 409, as amended. PEOPLE *v.* YU GO KEE & VICENTE SUN, G.R. No. L-16155-57, Nov. 29, 1961.

REMEDIAL LAW — JUDICIARY ACT — THE JUSTICE OF THE PEACE, NOT THE MUNICIPAL MAYOR, HAS THE POWER TO APPOINT CLERK OF COURT. — The Acting Justice of the Peace of San Jose, Nueva Ecija, appointed petitioner as clerk of such court in said municipality. The appointment, after its approval by the Department of Justice and Civil Service Commission, was forwarded to the Municipal Treasurer. The petitioner submitted certain vouchers for payment, having as supporting papers, his daily time record approved by the Justice of the Peace, but the treasurer returned the vouchers informing the petitioner that the same should first be approved by the Mayor. The vouchers were submitted to the Mayor but the latter refused to approve them for the reason that according to the Provincial Fiscal, Sec. 75 of R.A. No. 296 has been repealed by R.A. 1551, the latter providing that "Hereafter, all employees whose salaries are paid out of the general funds of the municipalities, shall, subject to Civil Service Law, be appointed by the Mun. Mayor . . ." *Held,* there is no repeal. Sec. 75 of the Judiciary Act of 1948, authorizes the Justice of the Peace, not the mayor, to appoint clerk of court. The independence of the judiciary will be greatly hampered if subordinate officials of the courts are subject to appointment by the head of the municipality or province. The power of appointment of the mayor under R.A. 1551 refers to subordinate officials in the executive and legislative branch of the municipality. GARCIA *v.* PASCUAL, G.R. No. L-16950, Dec. 22, 1961.

REMEDIAL LAW — PROVISIONAL REMEDIES — PROPERTY SUBJECT TO THE JURISDICTION OF ONE COURT CANNOT BE INTERFERED WITH BY INJUNCTION BY ANOTHER COURT OF EQUAL AND COORDINATE JURISDICTION. — On Mar. 31, 1959, the Court of First Instance of Manila ordered the City of Baguio to pay the petitioner ₱240,000.00 representing the unpaid electric charges and rentals for 2 electric generators, etc. In executing the writ of execution issued by the Manila CFI, the Sheriff garnished the cash deposits of Baguio City amounting to ₱239,589.80 deposited with the Baguio Branch of the Philippine National Bank. Acting on the complaint, the Baguio CFI issued a preliminary injunction to restore the deposits on the ground that there was apparently an illegal service of the writ. *Issue,* whether or not property garnished by one court, may be subject to the jurisdiction of another court in an independent suit impugning the legality of said garnishment. *Held,* a court having control of a property exercises exclusive jurisdiction over the same. Only courts having supervisory control or superior jurisdiction may interfere with and change that possession. No court has authority to interfere by injunction with judgments or decrees of a court of concurrent or coordinate jurisdiction. NATIONAL POWER CORPORATION *v.* HON. DE VEYRA, G.R. No. L-15763, Dec. 22, 1961.

REMEDIAL LAW — PROVISIONAL REMEDIES — A JUDGMENT AGAINST A DEFENDANT CANNOT PER SE BE ENFORCED AGAINST THE SURETY WITHOUT A FINAL JUDGMENT AGAINST THE LATTER'S COUNTERBOND. — Plaintiff obtained a writ of preliminary injunction to enjoin defendant Movido and the Prov. Sheriffs of Leyte and Samar from selling plaintiff's properties by virtue of a writ of execution issued in favor of said defendant. Said writ of preliminary injunction was issued upon the filing of a bond by the Luzon Surety Co. Inc. which undertook to pay the defendants "all such damages as such party may sustain by reason of the writ of preliminary injunction, if the Court finally decides that the plaintiff is not entitled thereto". Due to the failure of the plaintiff to appear in the hearing, the case was dismissed and the defendant asked for the issuance of a writ of execution against the bond of the surety which the lower court granted. *Issue,* is the surety liable on his bond? *Held,* a judgment against a defendant cannot per se be enforced against the surety on his counterbond. In accordance with Sec. 9, Rule 61 of the Rules of Court, a judgment against the surety must first be secured before the counterbond may be proceeded against. Since there is neither a claim nor evidence of damages sustained by Movido as a result of the issuance of the injunction and since the judgment was an order of dismissal for failure of the plaintiff to appear and did not declare that the plaintiff was not entitled to the writ of preliminary injunction, there is, therefore, no legal basis for making the surety liable upon its bond. VET BROS. & Co., INC. *v.* MOVIDO, G.R. No. L-16662, Jan. 31, 1962.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — FOR MANDAMUS TO LIE, THE RIGHT MUST BE CLEAR, THE DUTY ENJOINED MUST BE CLEARLY DEFINED AND THERE MUST BE NO OTHER REMEDIES AVAILABLE. — Petitioner was one of the voted candidates for councilor for Borongan, Samar in the November 1959 elections. The results in 41 precincts were contained in Commission on Elections Form No. 8 as required to be accomplished in the instructions for the Board of Inspectors and was submitted to the respondent Mun. Treasurer. Claiming that the results are public and/or official documents which may be shown or released to the public upon demand, the petitioner asked for their certified copies. Upon the refusal of the respondent, a writ of mandamus was issued by the lower court. Hence, this appeal. *Held,* the writ of mandamus has no legal basis. The petitioner has not shown any law which enjoins the respondent to issue the certificate sought. Neither was he able to show that he has a clear right to be furnished with such certificates. The fact that he was a candidate for councilor did not entitle the petitioner to ask for the certificate. No mention was made of the purpose for asking it. No election protest was pending. The proper procedure would have been to ask the court to issue a sub-poena duces tecum for the production of the document in court. In order to lie, the right to a mandamus must be clear and the duty must be clearly defined and peremptorily enjoined by law or by reason of official station (Sec. 3, Rule 67, Rules of Court). Moreover, there are other remedies available to the petitioner in which he may ask for the issuance of the certificate. ALIDO *v.* ALAR, G.R. No. L-16722, Nov. 29, 1961.

REMEDIAL LAW — SPECIAL CIVIL ACTION — CERTIORARI OR PROHIBITION, NOT A DIRECT ACTION OF ANNULMENT, IS THE PROPER REMEDY TO SET ASIDE DECISIONS OF THE BOARD OF LIQUIDATORS. — Plaintiff filed an action in the CFI to annul a decision of the Board of Liquidators, cancelling the sale of a National Abaca and Other Fibers Corporation land to him, declaring forfeited 2 installments thereon made by him, awarding one portion of said lot to another, and declaring the other portion vacant. The complaint alleged that the administrative investigation ordered by the Board of Liquidators was made by a partial investigator. Defendants moved for its dismissal on the ground of lack of jurisdiction. *Held,* the power to dispose of lands placed under the administration of the Board of Liquidators is lodged in said Board. There is no provision of law authorizing courts to review decisions of the Board of Liquidators and to take cognizance of actions to annul awards of sale or any other action made by it pursuant to the authority granted it by law. If the courts are to take cognizance of cases involving errors or abuse of power exercised by the Board of Liquidators, the remedy would be by means of an action of certiorari or prohibition to set aside the orders or decisions of the Board. But this special civil action would not lie unless there is an allegation of abuse of discretion or a lack of jurisdiction. The remedy would be either certiorari or prohibition, and not a direct action of annulment as the one instituted in this case. ALVAREZ *v.* BOARD OF LIQUIDATORS, G.R. No. L-14834, Jan. 31, 1962.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A GUARDIAN CANNOT BE LEGALLY REMOVED FROM HIS TRUST EXCEPT FOR THE CAUSES MENTIONED IN THE RULES OF COURT AND THE COURT IN USING ITS DISCRETION TO REMOVE HIM MUST CONFINE ITSELF TO ANY OF THOSE GROUNDS. — Carmen Bengzon, a beneficiary of accrued insurance and other benefits from the U.S.V.A., was adjudged to be an incompetent as a result of which, the court appointed the P.N.B. as guardian of her estate comprising the moneys due from the said Veterans Administration. Subsequently, the court appointed Francisco Bengzon, son of Carmen, as the latter's guardian. *Issue,* whether or not the substitution of the P.N.B. by Francisco as guardian of the estate of the ward was valid. *Held,* the removal of a guardian is discretionary upon the court. Since Rule 98, Sec. 2 of the Rules of Court enumerates the grounds for the removal of a guardian, a guardian cannot be legally removed from the trust except for causes mentioned therein. No pretense is made in this case and nothing in the record would indicate that there was any legal ground upon which the removal of the P.N.B. as guardian, was founded. BENGZON *v.* P.N.B., G.R. No. L-17066, Dec. 28, 1961.

REMEDIAL LAW — SPECIAL PROCEEDINGS — NOTICE TO THE HEIRS AND OTHER INTERESTED PERSONS IS MANDATORY FOR THE VALIDITY OF ANY CONVEYANCE OF PROPERTY HELD IN TRUST BY THE DECEASED, OTHERWISE THE ORDER OF CONVEYANCE AND THE CONVEYANCE ITSELF ARE VOID. — Ines Alejandrino, the administratrix of the estate of Melecio de Jesus entered into stipulation with Eusebia de Jesus and the heirs of Cirilo de Jesus whereby Ines recognized that Eusebia and Cirilo are co-owners with deceased of a parcel of land included in the inventory of the estate of the latter and that said parcel of land was registered in the sole name of the deceased only in trust for all the co-owners. Eusebia waived her money claims against the estate in view of the court's approval to such stipulation. Leon de Jesus, who replaced her mother in the administration, claims that said stipulations were null and void for lack of jurisdiction on the part of the probate court to act on them, as well as for lack of notice to the interested parties, especially to the heirs of Melecio. *Held,* under Sec. 9, Rule 90, Rules of Court, authority can be given by the probate court to the administrator to convey property held in trust only after notice has been given personally or by mail to all persons interested and such further notice by publication or otherwise as the court deems proper. This rule makes it mandatory that notice be served on the heirs and other interested persons of the application for approval of any conveyance of property held in trust by the deceased and where no such notice is given, the order authorizing the conveyance and the conveyance itself are completely void. DE JESUS *v.* D. JESUS, G. R. No .L-16553, Nov. 29, 1961.

REMEDIAL LAW — SPECIAL PROCEEDINGS — ATTORNEY'S FEES, BEING ADMINISTRATIVE EXPENSES, SHALL BE BORNE BY THE ESTATE UNDER ADMINISTRATION, NOT BY THE ADMINISTRATRIX. — Montemayor was appointed administratrix of the estate of her deceased husband. After the partition of some properties, three cases were filed against the administratrix and the heirs for the recovery of alleged share or participation in the real properties already partitioned of which the services of Atty. Gutierrez were retained by the administratrix. The Pampanga CFI allowed no attorney's fees but on appeal, the Court of Appeals allowed ₱9,600.00 as attorney's fees, to be paid by the administratrix personally, with right of reimbursement from the heirs of the deceased bondmen. The administratrix appealed. *Issue,* whether or not the administratrix shall bear personally the attorney's fees. *Held,* the properties under administration or income derived therefrom shall bear the expenses of administration. The administratrix, not being guilty of malfeasance, maladministration or violation of her duties, is not personally liable. Neither should the bondsmen or her bond be liable, there being no violation of the guaranty. Therefore, the attorney's fees shall be apportioned among the heirs pursuant to Sec. 5 and 6 of Rule 89, of the Rules of Court. MONTEMAYOR *v.* HEIRS OF GUTIERREZ, G.R. No. L-16959, Jan. 30, 1962.

REMEDIAL LAW—SPECIAL PROCEEDINGS—AN EXTRAJUDICIAL PARTITION MADE WITHOUT THE KNOWLEDGE OF THE OTHER HEIRS DOES NOT BAR THEM FROM CONTESTING IT. — In 1943, an extrajudicial partition of the estate of Macario Beltran was made by and between Corazon Ayson and J. de la Cruz to the exclusion of the plaintiffs. The plaintiffs only knew of the said partition just shortly before they filed this complaint in May, 1955. *Issue,* whether or not an extrajudicial partition made without the knowledge of the other heirs may still be set aside after the lapse of more than two years. *Held,* Sec. 4, Rule 74 of the Rules of Court, barring distributees and heirs from objecting to an extrajudicial partition, is applicable only to persons who have participated or taken part or had notice of the extrajudicial partition and to minors who had been represented by their guardians in accordance with Sec. 1, Rule 74, of the Rules of Court. BELTRAN *v.* AYSON, G.R. No. L-14662, Jan. 30, 1962.

COURT OF APPEALS CASE DIGEST

CIVIL LAW — DAMAGES — ANSWERS TO QUESTIONS PROPOUNDED BY A COMMISSIONER ACTING FOR THE COURT IN THE COURSE OF A JUDICIAL PROCEEDING, ALTHOUGH THEY MAY BE DEFAMATORY IN NATURE, WHEN RELEVANT TO A MATTER IN ISSUE, CONSTITUTE PRIVILEGED MATTER AND CANNOT GIVE RISE TO ANY LIABILITY FOR DAMAGES — In the hearing of the special proceedings for the settlement of the Testate Estate of Dy Lac, Paz Ty Sin Tei, defendant herein and widow of Dy Lac, made statements, in response to questions propounded by the Commissioner, to the effect that Jose Lee Dy Piao, plaintiff herein, was the son of Dy Lac by Uy Cho, and that Dy Lac and said Uy Cho were not legally married. This information, she said, was imparted to her by Dy Lac himself. Plaintiff brought this action for damages, alleging that his honor, reputation and good name had been maliciously attacked. *Held,* the answers given by the defendant to the question of the Commissioner acting for the court, relate to a matter at issue in the case. Said answers are relevant and material and constitute privileged matter. They were given in the course of a judicial proceeding and cannot give rise to any liability for damages. DY PIAO *v.* TY SIN TEI, (CA) No. 24966-R, May 30, 1960.

CIVIL LAW — PARTNERSHIP — MISAPPROPRIATION OF PARTNERSHIP CAPITAL IPSO FACTO TERMINATES PARTNERSHIP SUPPOSED TO BE FORMED AND THERE IS NO NEED FOR DISSOLUTION. — Leocadio Ventura filed suit to recover from the spouses Justino and Praxedes Pabalan the amount ₱3,850 advanced by him to the latter for investment in a business partnership. Trial court, upon finding that the amount was ₱3,000 and that Praxedes never in vested such amount in the business of the partnership, ordered the return of said sum. On appeal, appellant contends that she does not have to refund until the dissolution of the partnership and liquidation of its assets and that because of the distinct personality of the partnership from its members, Ventura had no right of action against her, and that action should have been one for dissolution and liquidation. *Held,* upon misappropriation of the partnership capital, the partnership supposed to have been formed was *ipso facto* terminated and one cannot invoke in his favor the existence of a partnership he did not intend to create as shown by the fact of misappropriation. The partnership, never having transacted business and having been terminated, dissolution is not necessary, and Art. 1839 of the NCC which applies after dissolution, in providing that liabilities to creditors should first be paid, implying that there were already transactions with third parties, is not applicable. VENTURA *v.* PABALAN, (CA) No. 2405-R, May 28, 1960.

CIVIL LAW — PERSONS — THERE IS NO FRAUD WHEN A MAN CONTRACTS MARRIAGE KNOWING THAT THE BRIDE IS PREGNANT. — Plaintiff and the defendant, who was already pregnant, agreed to marry outside of Manila fearing that the parents of the plaintiff would stop his studies should they learn of the marriage. After spending the eve of the marriage in Lubao, Pampanga, where the marriage was celebrated, the couple returned to Manila as man and wife. Plaintiff appeals from the decision of the Juvenile & Domestic Relation Court dismissing his action for annulment based on fraud, force, duress, threats and intimidation. *Held,* there is no fraud where a man contracts marriage knowing the woman to be pregnant. A marriage is cleansed of its infirmities, if any, and cannot be annulled, where on the night of the marriage both appellant and appellee slept by themselves in the same room and where subsequently, they lived continuously as husband and wife for three years. CASTRO *v.* DABU, (CA) No. 23270-R, June 22, 1960.

CIVIL LAW — TORTS — THE DOCTRINE OF "RES IPSA LOQUITOR" IS NOT APPLICABLE WHERE THE FACTS AND CIRCUMSTANCES OF THE ACCIDENT APPEAR IN THE RECORDS. — Plaintiff sued for damages when he was injured by a ring wheel which mysteriously flew off a tire of a truck owned by the defendant. Defendant, however, was able to show in the lower court that there was neither negligence on his part but plaintiff appealed basing his appeal on *"res ipsa loquitor". Held,* the doctrine applies only when the facts and circumstances of the accident do not appear in the record. The doctrine being a rule of necessity, it must be invoked only when evidence of exercise of due care and diligence is absent and not readily available. Nor is it applicable where the cause of the accident is unknown. RIINGEN *v.* CHAMORRO, (CA) 57 O. G. 1789, April 24, 1961.

CIVIL LAW — TORTS AND DAMAGES — THE DOCTRINE OF "ATTRACTIVE NUISANCE" IMPOSES LIABILITY FOR INJURIES TO CHILDREN, EVEN THOUGH THEY ARE TECHNICAL TRESPASSERS, WHERE SUCH INJURIES ARE THE RESULT OF THE FAILURE OF THE OWNER OR PERSON IN CHARGE TO TAKE PRECAUTIONS TO PREVENT INJURIES TO CHILDREN BY INSTRUMENTALITIES OR CONDITIONS WHICH HE SHOULD, IN THE EXERCISE OF ORDINARY JUDGMENT AND PRUDENCE, KNOW WOULD NATURALLY ATTRACT THEM INTO UNSUSPECTED DANGER. — Raymundo Bautista and several classmates were playing in a lot where the carriages and the track of a partly dismantled carnival machine more commonly known as "caterpillar" or "linding loop" remained, when one of the carriages, loaded with boys, glided down the rails. A wheel of the carriage pinned and crushed three fingers of Raymundo's right hand. As a result of the accident, Raymundo's fingers had to be treated for a period of thirty days and he cannot flex or unflex his three injured fingers and finds difficulty in writing. In this action to recover actual and moral damages, defendants contend that the accident was due to

the fault of Raymundo because with the other boys he untied one carriage, then rushed down to clamber into it, resulting in the accident and his injury. *Held,* defendant's contention is not supported by evidence. But even assuming *arguendo* that such were the facts, still the defendants cannot escape liability under the "attractive nuisance" doctrine which "imposes liability for injuries to children, even though they are technical trespassers, where such injuries are the result of the failure of the owner or person in charge to take proper precautions to prevent injuries to children by instrumentalities or conditions which he should, in the exercise of ordinary judgment and prudence, know would naturally attract them into unsuspected danger." (45 C. J. 758-759) BAUTISTA *v.* TAGUBA (CA) No. 18986-R, June 10, 1960.

COMMERCIAL LAW — TRANSPORTATION — FORTUITOUS EVENT, AS A CIRCUMSTANCE EXEMPTING THE CARRIER FROM LIABILITY, MUST NOT ONLY BE THE PROXIMATE CAUSE OF THE LOSS, BUT ALSO ITS SOLE CAUSE. —Abelardo Vergara entered into a contract with Juliano & Co. to transport his goods to Zamboanga del Sur. His goods were loaded aboard the ship "Tawi-tawi J". On Aug. 27, 1954, when the ship sailed for Pagadian, a typhoon was approaching Southern Mindanao but it still continued the trip with seventy passengers and only two engineers. The capacity of the ship was limited to forty-five persons. The ship had no radio equipment. When it was near its destination, because of the strong lashes of the winds, the cracked portion below the engine room which existed before, gave way causing the ship to sink. Plaintiff brought action to recover damages but the defendant claimed that they were exempted because the goods were lost through fortuitous event. *Held,* untenable. Fortuitous event must not only be the proximate cause but the sole cause of loss. Here, the carrier was negligent as shown by the fact that the ship was overloaded and that there were only two engineers instead of three as required by law. VERGARA *v.* JULIANO & CO., INC., (CA) No. 23903-R, June 21, 1960.

CRIMINAL LAW — ESTAFA — JEWELRY MISAPPROPRIATED WHICH HAS NOT DISAPPEARED AND STILL EXISTING MUST BE RETURNED TO THE LAWFUL OWNER WITHOUT OBLIGATION ON THE LATTER'S PART TO PAY THE LOAN GIVEN IT, DESPITE ACQUISTION IN GOOD FAITH AND BY LEGAL MEANS ON THE PART OF THE PAWNSHOP. — Aurora Quiamco, having pawned jewelry worth ₱2,800 in San Lazaro Pawnshop received by her from Luz C. Vasquez to be sold on commission during the period of May 11-15, 1957, pleaded guilty to the charge of estafa instituted by Vasquez. Upon reconsideration, the CFI ordered restitution of the jewelry to Vasquez without the latter being required to pay the amount loaned for the jewelry. The San Lazaro Pawnshop appealed. *Held,* misappropriated jewelry which has not disappeared and still existing must be returned to the owner and the acquisition of the jewelry by legal means in good faith by the pawnshop is not an impediment to its restitution to the lawful owner without obligation on her part to pay the loan given on the jewelry and the accrued interest thereon. PEOPLE *v.* QUIAMCO, (CA) No. 23411-R, April 8, 1960.

CRIMINAL LAW — PHYSICAL INJURIES — WHERE THE ACCUSED VOLUNTARILY LEFT THEIR VICTIM AFTER GIVING HIM A SOUND THRASHING, WITHOUT INFLICTING ANY FATAL INJURY ALTHOUGH THEY COULD HAVE EASILY KILLED THEIR SAID VICTIM, CONSIDERING THEIR SUPERIOR NUMBER AND THE WEAPONS WITH WHICH THEY WERE PROVIDED, THE INTENT TO KILL ON THE PART OF THE ACCUSED IS WANTING. — Upon arrival at the place of a supposed drinking party with Ardidon to which the latter had invited him, Nicasio was set upon with fists, wooden clubs and bolos by the defendants. The four defendants then carried him in the direction of the house of Alipio Malinao's house and subjected him to further maltreatment, after which they stopped and left. Nicasio had to undergo treatment for three months on account of the injuries he suffered. Defendants were charged with and convicted for attempted murder in the lower court; thus, this appeal. *Held,* the evidence shows that the defendants had no intent to kill the offended party. They could have easily killed him considering their superior number and the weapons with which they were provided. But without having inflicted any fatal injury, they voluntarily left the complainant after giving him a sound thrashing. The offense is serious physical injuries. PEOPLE *v.* MALINAO, (CA) No. 25707-R, June 9, 1960.

CRIMINAL LAW — SLANDER — TO CONSTITUTE SLANDER, THE PERSON DEFAMED MUST BE CLEARLY AND DEFINITELY IDENTIFIED. — On December, 1954, while the complainant was walking home from church and passing the store of the accused, the latter uttered the following remarks: "*Ayan pustura na naman si Mrs., para mabili siya; simba ng simba, torotot naman ang labas.*" Although the complainant's name was not mentioned and although she was followed closely by other pedestrians who also came from church, she was of the impression that the prefix word "Mrs." employed by the accused could not refer to anybody else but her alone, claiming that the accused had nourished a grudge against her. Thus, she charged accused with slander. *Held,* in cases of slander, the language imputing the vice, defect, act, omission or circumstance tending to cause dishonor, discredit or contempt of a person must be defamatory and the person defamed must be clearly and definitely identified. The identification is not clear and definite where the complainant was being followed closely by other pedestrians at the moment when the accused uttered the slanderous words notwithstanding the fact that the two of them are not in good terms and the complainant was of the belief that the prefix "Mrs." used in the alleged defamatory phrase referred to her. PEOPLE *v.* HALILI, (CA), 57 O.G. 3135 April 24, 1961.

LAND TITLES AND DEEDS — WAIVER AND ABANDONMENT OF A MINING CLAIM MAY BE IMPLIED FROM THE FACT THAT THE OWNER OF A PIECE OF LAND HAS ALLOWED ANOTHER TO ENTER AND LOCATE MINERALS THEREIN. — Francisco Mendoza is the owner of a parcel of land in Ipil, Marinduque, mainly planted with coconuts and with several caves containing guano and phosphatic rock deposits. Marquez filed with the mining records a declaration of location of placer deposit within the property of Mendoza. Marquez, in compliance with the requirements of the law, obtained the necessary permit from Mendoza as shown by the sworn document. After the mining claim was awarded to Marquez, Mendoza filed an action claiming that he has a preferential right and therefore entitled to the mining claim. *Held*, no claim was made by Mendoza to the minerals discovered—he had not, at any time, located the same and filed a declaration of location with the mining recorder, what with the lapse of years from discovery. By these, he has waived and abandoned his right to the mining claim. By allowing Marquez to enter and locate minerals in his land, he is deemed to have waived his right thereto. MENDOZA *v.* MARQUEZ, (CA) No. 21344-R, June 28, 1960.

POLITICAL LAW — LAW OF PUBLIC OFFICERS — FAILURE TO OBJECT TO APPOINTMENT OF ANOTHER TO SAME POSITION HELD BY THE APPELLANT ESTOPS HIM FROM DEMANDING REINSTATEMENT. — Petitioner was duly appointed as Deputy Governor of Negros Occidental. On Jan. 1, 1956, Teves, the new Provincial Governor of Negros Occidental, appointed Bollos as Deputy Governor, the latter assuming office without objection from petitioner. On Jan. 3, 1956, petitioner filed an application for sick and vacation leave which was approved upon condition that his term would be considered terminated upon the expiration of his leave. On the same date, he requested Teves to transfer him to another branch of the government service. The request was granted. Subsequently, petitioner filed quo warranto proceedings when reinstatement was refused him. *Held,* where it could be reasonably inferred from his own conduct that a separated employee accepted his replacement willingly and was willing to occupy some other position, his subsequent change of mind and attempt to challenge his superior's right to replace him with another of the latter's confidence are not sufficient to avoid the application against him of the doctrine of estoppel. ARIETA *v.* BOLLOS (CA) No. 24003-R, March 3, 1960.

REMEDIAL LAW — CRIMINAL PROCEDURE — IF THE DEFENDANT DOES NOT MOVE TO QUASH THE INFORMATION ON THE GROUND OF DOUBLE JEOPARDY BEFORE HE PLEADS THERETO, HE IS DEEMED TO HAVE WAIVED SUCH OBJECTION AND THE SAME CAN NO LONGER BE ENTERTAINED ON APPEAL. — Defendant was branch manager of the PRATRA in Sorsogon. An information for "Estafa thru falsification of commercial documents" was filed against him, for having falsified several delivery forms of the branch, making it appear that various PRATRA commodities were sold on credit and delivered to several persons. CFI found him guilty and from this decision, he appealed contending among other things that the crime he committed, if any, was malversation and not estafa, and that such being the case, there is double jeopardy inasmuch as he had already been convicted of the same offense upon two other informations, all of which were filed in connection with his duties as manager of the branch. *Held,* when the accused was arraigned, he entered a plea of not guilty. It was only at the start of the hearing that his counsel made a manifestation that they were also entering a "plea of double jeopardy" and went to trial. This plea of double jeopardy cannot be considered a motion to quash on such ground. Accused was aware all the time of the other criminal cases filed against him, and the trial judge could not simply take judicial notice of such cases on the basis of the mere plea of double jeopardy which was improperly made. Under Sec. 10 of the Rules of Court, he is deemed to have waived the objection of double jeopardy as a ground for a motion to quash and it can no longer be entertained on appeal. PEOPLE *v.* BALLESTEROS, (CA) No. 18090-R, June 13, 1960.

REMEDIAL LAW — EVIDENCE — PERSONAL CONCLUSIONS BASED ON NITRATE TESTS CANNOT BE GIVEN CREDENCE OVER THE TESTIMONIES OF WITNESSES PRESENT AT THE SCENE OF THE CRIME. — Marcelino Cagurangan, charged with murder, was found guilty of homicide. He appealed on the ground that the court erred in convicting him notwithstanding two inconsistent theories relative to the cause of death. The records show two conflicting testimonies: that of a doctor and another person to the effect that the gun was fired 18 and 12 inches away from the body, respectively, and those of witnesses who saw the act of killing showing that there was no such accidental shooting and thus the willful shooting on the part of the appellant. *Held,* the personal conclusion of a physician based on nitrate tests cannot be given credence as against the testimonies of witnesses present at the scene of the crime for even if a gun is fired at a long distance, the possibility of the presence of powder nitrate in the cloth is not remote, because the bullet may be stained with carbonized powder during the initial explosion and part of this may be left at the periphery of the point of entrance. PEOPLE *v.* CAGURANGAN, (CA) No. 26365-R, Aug. 8, 1960.

REMEDIAL LAW — PROVISIONAL REMEDIES — A VOID ORDER CANNOT BE THE BASIS FOR CONTEMPT. — A judgment for a sum of money was rendered in the CFI of Manila against Chiong Bu Hong who was doing business in Ozamis City. After the judgment had become final and executory, a writ of execution was issued and forwarded to the Sheriff of Misamis Occidental. After due investigation, the sheriff returned the writ