uted a deed of sale of real property in favor of Salim Jacob Assad. This deed of sale contained the personal circumstances such as civil status, age, residence, and stated Salim Jacob Assad's citizenship as Filipino in accordance with his certificate of naturalization. The broker, one Umali, who negotiated the sale, signed the deed as witness. A certain Velazquez notarized the instrument. Plaintiff, widow of the late Justice Hilado, seeks now to annul the sale on the ground that respondent Assad, a Syrian, nephew of Salim Jacob Assad, was in truth and in fact the real vendee, the use of his uncle's name having been made only for the purpose of circumventing the law prohibiting non-Filipino citizens from acquiring lands in the Philippines. The trial court annulled the sale for the following reasons: (1) Justice Hilado is dead and his lips forever sealed; he has therefore been defrauded; (2) the property was paraphernal and was sold without the widow's consent; and (3) Jacob Assad, the nephew, is the real vendee, his uncle's name having been employed only as a dummy. *Held*, the trial court assumed that there must have been fraud because the vendor is dead and is now in no position to deny the fraud. But fraud is never presumed; it must be proved by satisfactory, if not conclusive, evidence. There could have been no personal reason why the deceased vendor wanted to sell the property to Jacob and not to his uncle. The testimonies of Jacob Assad himself and that of Umali, the broker, reveal that the deceased vendor never showed interest in finding out who the real purchaser was. It is certain, however, that once the sale was perfected, he received from Jacob Assad the naturalization papers of Salim Jacob Assad and copied therefrom on a piece of paper the data which he furnished the notary public who prepared the deed of sale. Jacob Assad testified that he informed Justice Hilado that he was buying the property for his uncle, who thereupon gave him the power of attorney and the naturalization papers. This testimony was corroborated by Umali and no evidence was submitted to contradict it. The trial court merely rejected them without cause or reason on the pure assumption that Jacob Assad was merely circumventing the law, and really wanted the property for himself. The presumption is that men act in good faith and intend the consequences of their acts. A violation of law is never presumed. HILADO *v.* ASSAD, G.R. No. L-6397, Aug. 30, 1955.

COURT OF APPEALS

CIVIL LAW — PERSONS — AN ATTEMPT BY ONE SPOUSE AGAINST THE LIFE OF THE OTHER, IN ORDER TO CONSTITUTE A GROUND FOR LEGAL SEPARATION, MUST SHOW AN INTENTION TO KILL — Plaintiff and Defendant were husband and wife. It seems that during their married life the couple had frequent quarrels, on which occasions the husband maltreated his wife by deeds, and because the latter was made to bear said punishments, they separated in 1947. Notwithstanding this separation of dwellings, they met each other in Manila and the wife claims that in December, 1950 and in September ————, she was again maltreated by her husband. This moved her to institute the present action for legal separation on the ground that Defendant had made several attempts on her life, thus compelling her to live separately and apart from him. *Held*, An attempt on the life of a person implies that the actor, in the attempt, is moved by an intention to kill the person against whom the attempt is made. Maltreatment by a husband his wife, like giving her fist blows on the face, boxing her in the abdomen, pulling her hair and twisting her neck, do not constitute attempts on the life of said spouse as provided in Art. 97 No. 2 of the New Civil Code. MUÑOZ *v.* BARRIO, (CA) G.R. No. 12506-R, April 15, 1955.

CIVIL LAW — CONTRACTS — FORCE MAJEURE, TO JUSTIFY NON-PERFORMANCE, SHOULD ARISE FROM CAUSES INDEPENDENT OF THE WILL OF THE OBLIGOR OR HIS EMPLOYEES — On Oct. 23, 1946, appellee National Rice and Corn Corporation and appellant Pan-Phil. Shipping entered into a contract of purchase and sale, whereunder the latter agreed to sell and deliver to the former 850 metric tons of Ecuadorian rice at $12.51 per pound. In accordance with one of the terms of the contract, the appellee applied to the Philippine National Bank for the opening of a letter of credit for the sum of $2,579,155.42 with Nicholas Graven & Sons of San Francisco, agent of appellant, as beneficiary. Acting upon said application, the P.N.B. on the same date of the contract, arranged with and transmitted an irrevocable letter of credit for the sum of $2,579,155.42 to the Anglo-California National Bank of San Francisco in favor of the appellant's agent, payable on sight against complete shipping document with certificate as to weight, quality and moisture content of the rice to be shipped. For the opening of said letter of credit, the P.N.B. charged appellee the amount of ₱12,907.77 for bank commission and miscellaneous charges and payment of this amount was debited to appellee's account with the Bank. Notwithstanding the opening of the letter of credit, appellant not only failed to ship the rice subject of the contract but also failed to pay the appellee the amount of ₱12,907.77 despite repeated demands. The appellant sought to excuse non-performance by the averment that non-shipment of the rice contracted for was due to causes beyond its control because its agent and beneficiary refused to use the letter of credit upon the ground that it did not conform with the condition of the sales contract. *Held*, The letter of credit is in strict accord with the terms of appellee's contract with appellant. Nothing more was left to be done by appellee. Accordingly, the mere refusal of the beneficiary to use said letter of credit cannot be *force majeure* within the meaning of the law. It is not an extra-ordinary circumstance or occurrence which could not be foreseen or, if foreseen, could not have been avoided. *Force majeure*, to justify non-performance, should arise from causes independent of the will of the obligor or his employees. It must be an act of God. Accordingly, appellant's liability to pay for bank commission and miscellaneous charges in connection with this contract, as provided therein, became inescapable. NATIONAL RICE *v.* PAN-PHIL. SHIPPING, (CA) G.R. No. 11302-R, May 7, 1955.

CIVIL LAW — CONTRACTS — IN A CONTRACT OF SALE WITH PACTO DE RETRO, THE RIGHT TO REPURCHASE, IN THE PRESENCE OF AN AGREEMENT, LASTS FOR A PERIOD OF TEN YEARS — By a public document executed on March 19, 1939, Plaintiff executed in favor of the Defendant, her elder brother, a deed of sale whereby she sold her one-seventh share of the fishpond located in Malabon, Rizal, in consideration of ₱2,000.00. Simultaneously, the Defendant executed in favor of the Plaintiff another public document giving her the right to repurchase the same during her lifetime. In Dec., 1951, the Plaintiff offered to redeem the property but the Defendant refused. *Held*, The attempt to repurchase the property came too late. Although the document gave her the right to repurchase during her lifetime, nevertheless, Art. 1508 of the old Civil Code (1606 New Civil Code) provides that the right to repurchase, in the absence of an express agree-

ment, shall last four years from the date of the contract. Should there be an agreement, the period cannot exceed 10 years. Here, the agreement calls for the repurchase during her lifetime. Under the law, therefore, the period should be reduced to 10 years from March 19, 1939. Accordingly, Plaintiff's right to repurchase expired on March 19, 1949 and she has therefore no cause of action. RIVERA *v.* RIVERA, (CA) G.R. No. 11915-R, April 29, 1955.

CIVIL LAW — CONTRACTS — THE AUTHORITY OF THE COURT TO FIX A LONGER TERM OF THE LEASE MAY BE EXERCISED IN THE ACTION FOR EJECTMENT ITSELF — Plaintiff, the owner of a parcel of land, leased it to the Defendants, on which the latter built their residence. There was no written contract of lease between them, but Defendants have been occupying the premises since 1937 at a monthly rental of ₱19.62. On June 1, 1950, Plaintiff sent notice to the Defendants notifying them that the former needed the land for her exclusive use and that the lease would be definitely terminated on June 30, 1950, giving them until the end of July within which to vacate said land. On Aug. 11, 1950, Defendants having failed to comply with these demands, a complaint for ejectment was filed against them. The court rendered judgment in favor of the Plaintiff ordering the Defendants to vacate the premises. The Defendant appealed and contends that in view of Art. 1687 of the Civil Code, the Plaintiff cannot legally terminate the lease since they have occupied the leased property for more than one year, and that the Plaintiff should first institute an independent action to fix the terms of the lease agreement. *Held,* Art. 1687 merely confers upon the court the authority to fix a longer term of the lease in the specified cases and this authority may be exercised in the action for ejectment itself. It would be an idle and costly procedure to require a lessor to file one action to have the term of the lease fixed, with all the possible delays attendant upon a lawsuit, and then file another action for ejectment on the ground that the period fixed in the first one has expired. PRIETO *v.* LIM, (CA) G.R. No. 11108-R, April 30, 1955.

CIVIL LAW — CONTRACTS — CONTRACT OF AGENCY DISTINGUISHED FROM THE CONTRACT OF LEASE OF WORK OR SERVICE — The deceased Melliza during his lifetime contracted the personal service of Gabin. According to the contract Gabin was to attend to, administer and manage certain haciendas belonging to Melliza for a period of 30 years at a salary of 150 cavanes of palay per annum. Gabin was granted the power to contract the services of laborers whom she believes were suitable for the work in the fields and to pay them the compensation which she deemed convenient. In the exploitation of the haciendas, she was empowered to make improvements thereon and was enjoined to employ the diligence of a good father of a family. Upon the death of Melliza, Gabin presented her claim against the estate of the deceased, praying that the executrix be ordered to pay her 150 cavanes of palay, beginning the agricultural year 1945-1946, until the termination of the testamentary proceedings, and that, thereafter, the heir or heirs to whom the haciendas might be adjudicated be ordered to pay her the amount of palay every year until the expiration of 30 years from the agricultural year 1945-1946. Subsequently, Gabin died and the complaint was amended by the substitution of the heirs of Gabin as parties-plaintiff. The defense interposed by the Defendant is that the Plaintiffs have no cause of action for the reason that the right of Gabin under the contract was personal in nature and

therefore intransmissible to her heirs. *Held,* the contract in question was not merely one of lease of work or services. The services to be rendered under the terms of the contract by Gabin was not simply to render services for a definite price or to perform acts solely manual or mechanical. More than that, she was manager and administrator of the haciendas with wide discretion to employ the means necessary to accomplish the end — to make the haciendas more productive. Obviously, as the contract itself implies, the management was given to Gabin in consideration of her personal qualification. She was indeed a representative or agent of the hacienda owner. The fact that the contract was for a period of 30 years is immaterial for an agency is revoked, among other causes, by the fact of death of the principal or agent. PERPAS *v.* VILLANUEVA, (CA) G.R. No. 11693-R, June 29, 1955.

COMMERCIAL LAW — NEGTIABLE INSTRUMENTS — THE LIABILITY AND WARRANTY UNDER §§ 65 AND 66 IS APPLICABLE TO ALL INDORSERS ALIKE, BE THEY HOLDERS IN DUE COURSE OR OTHERWISE — On Jan. 10, 1949, Tuljaram opened a current deposit account with the Cebu branch of the Chartered Bank of India. A good portion of the amounts he deposited in that account consisted of U.S. depositary checks. As of Aug. 5, 1950, that account was closed. Involved herein are seven of said depositary checks. These checks were drawn upon the National City Bank of New York by the chief disbursing officer of the U.S. Treasury, payable to different persons. They were indorsed by Tuljaram to the Chartered Bank of India, and fully credited by the latter in favor of and paid to the former. Thereafter, the Chartered Bank of India, through its Manila office, forwarded said checks to the National City Bank of New York at Manila for collection. The latter dishonored the check for the reason that the indorsement of the diverse payees thereof were forged. Advised of the dishonor, the Chartered Bank of India sent to Tuljaram proper notice of dishonor and demanded repayment of the amount of the checks. Tuljaram refused to pay, claiming that being a holder in due course, he is not responsible to the Bank for the value of the checks. *Held,* the view of Tuljaram is untenable. A holder in due course, within the meaning of § 52 of the Negotiable Instruments Law, holds the instrument free from any defects of title of prior parties among themselves and may enforce payment of the instrument for the full value thereof against all parties liable thereon. Nevertheless, his liability and warranty set forth in §§ 65 and 66 of the Negotiable Instruments Law do not differentiate between one who is a holder in due course and another who is not. The absence of the distinction or any specific exception in the law as to holders in due course, makes both §§ 65 and 66 applicable to all indorsers alike, be they holders in due course or otherwise. CHARTERED BANK OF INDIA *v.* TULJARAM, (CA) G.R. No. 12049-R, April 14, 1955.

CRIMINAL LAW — ATTEMPTED FELONY — VOLUNTARY DESISTANCE MAY ONLY BE PLEADED AS A DEFENSE IF MADE WHEN THE CRIME CHARGED IS IN THE ATTEMPTED STAGE — The appellant in this case was one of the persons charged and convicted of the crime of illegal fishing with explosives. He contends that the trial court erred in convicting him because of the fact that he had voluntarily and spontaneously desisted from fishing with the other defendant, upon seeing that his companion was exploding a dynamite. The facts however, shows that the appellant went to go fishing with Eresco, was found in the scene of the explosion, and fled only upon the arrival of the author-

ities. *Held*, the appellant left Eresco not because of spontaneous desistance but because of fear of apprehension upon seeing the authorities closing upon them after the explosion. Voluntary desistance may only be pleaded as a defense if made when the crime charged is in its attempted stage. PEOPLE v. PATAN, (CA) G.R. No. 12775-R, April 30, 1955.

CRIMINAL LAW — FALSIFICATION OF PUBLIC DOCUMENT — THE RULE IS THAT IF THE STATEMENTS ARE NOT ALTOGETHER FALSE, THERE BEING SOME COLORABLE TRUTH IN SUCH STATEMENTS,THE CRIME OF FALSIFICATION IS NOT DEEMED COMMITTED — The appellant, together with others, was charged with falsification of a public document in that they made untruthful statements in the narration of facts in the contract of lease covering the Makati-Jole ferry contrary to the terms and conditions fixed in the proposal for bids for the exclusive operation thereof. The following changes were found in the contract of lease; First, the fare of ₱0.05 was substituted in place of ₱0.03 for children; and second, the rates of fare to be charged as set forth in the contract are doubled from 7:00 P.M. to 5:00 A.M., a condition not provided for in the notice to bidders. The trial court held that such changes constituted untruthful statements in the narration of facts and found appellant guilty of the crime charged. *Held*, there was a defect in the notice of bidders — it did not specify the hours of service for which the rates of fare are to be charged. The assertion in the contract of the disputed double-rate for night service could also be interposed as a waiver of such defect. The crime of falsification is not present in view of the lack of specification in the notice to bidders as to the rates of fare for night service, granting a leeway to make provision for such rates. The result is that said proviso is not altogether false; there is some colorable truth in it. The rule is that if the statements are not altogether false, there being some colorable truth in such statements, the crime of falsification if not deemed to have been committed. (The most than can be inferred is that Mayor Villena in inserting the double-rate provision in the contract, exceeded his authority as representative of the municipality but the act is not criminal.) PEOPLE v. VILLENA, (CA) G.R. No. 10946-R, May 28, 1955.

CRIMINAL LAW — INFIDELITY IN THE CUSTODY OF PRISONERS — IT IS THE GRAVAMEN OF THE CRIME OF EVASION THROUGH NEGLIGENCE THAT THE NEGLIGENCE BE COMMITTED BY THE OFFICER IN CHARGED OR IN CUSTODY OF THE ESCAPING PRISONER — Shortly after midnight of Aug. 31, 1953, Layros escaped from prison passing through the main door thereof, which was then unlocked. For such evasion of Leyros, the prison guards, Silvosa and Calang together with the warden were brought into court for infidelity in the custody of prisoners. Upon motion of the Fiscal, the warden was discharged for insufficiency of evidence. The case proceeded against Silvosa and Calang and after trial, the Court of First Instance rendered judgment concluding that at midnight when Leyros escaped, nobody was on guard duty in the jail because Calang at past 11:00 o'clock had no longer any obligation to continue on guard and was within his right to leave the post. He advised Silvosa to relieve him, but Silvosa paid no attention, refused to be bothered and continued to sleep. Consequently, the court acquitted Calang and convicted Silvosa of the crime of evasion through negligence. *Held*, a guard is not deemed relieved from his duties and responsibilities until he has turned over his prisoner to the relieving guard. If the succeeding guard has not arrived yet, the guard to be substituted should not leave his post but should continue

therein and be responsible therefore until he is actually replaced. The custody was not yet transferred to Silvosa by his predecessor when the evasion took place and it being the gravamen of the crime of evasion through negligence that it be committed by the officer in charge or in the custody of the escaping prisoner, Silvosa's conviction is therefore not justified. PEOPLE *v.* SILVOSA, (CA) G.R. No. 12736-R, April 30, 1955.

CRIMINAL LAW — ESTAFA — APPROPRIATION PRESUPPOSES TWO DIFFERENT FACTS: THE SEIZURE OF THE THING RECEIVED AND THE INTENT TO APPROPRIATE IT — Appellant Abellada, engaged in the business of purchase and sale of jewelry, was entrusted with certain pieces of jewelries by the complaining witness, Carlos, to be sold on commission. The pieces of jewelries were in turn entrusted by the appellant to Mrs. Escanilla, for the reason that according to the latter, she had a cash customer, a Chinese smuggler. Subsequently, it was discovered that Mrs. Escanilla was a notorious swindler and upon knowing this, appellant filed a case of estafa against her. The point in issue is whether appellant misappropriated or converted the said jewels. *Held*, Appropriation or Diversion indicates the action of an agent whereby he disposes of the thing as if it were his own. This appropriation presupposes two different facts, the seizure of the thing received and the intent of appropriating it. It is evident, therefore, that there can be no appropriation without intent, without fraud. In the present case, there being no stipulation in the document that appellant was prohibited from delivering the jewels to another person for purposes of selling them, he could therefore give those jewels to a third person for sale. There being no evidence that there was connivance or collusion or conspiracy to defraud between appellant and Mrs. Escanilla, that appellant had received a single centavo from the latter, or that he had appropriated the proceeds thereof, the appellant did not commit estafa. PEOPLE *v.* ABELLADA, (CA) G.R. No. 13129-R, May 28, 1955.

CRIMINAL LAW — GRAVE ORAL DEFAMATION — IN SLANDER CASES THE COURT SHOULD CONFINE ITSELF TO THE NATURE OF THE DEFAMATORY LANGUAGE USED — At the hearing in the Court of First Instance of Manila of a criminal case for robbery, the herein offended party, Atty. De la Rosa, was the counsel for the accused while the herein appellant was the offended party. During the cross-examination of the offended party, the latter approached Atty. De la Rosa, who was then seated at the lawyers table and said, "Excuse me, if I am not mistaken this is my pen," taking hold of it at the same time. Because of this incident, she was accused and subsequently convicted of grave oral defamation. Appellant claims that she uttered the phrase in question without malice or malevolous intention; and therefore the trial court erred in holding it slanderous. *Held*, The phrase is not malicious *per se*. It is even courteous. The kind of language used cannot be defamatory or slanderous. It is an assertion of an honest claim of ownership. In slander or libel cases, the court should confine itself to the nature of the alleged libelous or defamatory language and cannot look into the construction placed upon it by the offended party in his innuendo. The tone, gestures and accompanying acts of the appellant should be taken into consideration in order to arrive at a right conclusion as to whether the phrase in question was slanderous or not. It is true that in some instances words which are harmless in themselves may be actionable in the light of sur-

rounding circumstances. However, in the case at bar, due to lack of proof of malice on the part of the appellant, or convincing evidence to the effect that she had criminal intent to defame or to put in ridicule the complaining witness, appellant should be acquitted. PEOPLE *v.* HILADO, (CA) G.R. No. 12595-R, April 30, 1955.

CRIMINAL LAW — RECKLESS IMPRUDENCE — THE LAW DOES NOT DECLARE AS A CRIME AND NO PENALTY IS PROVIDED FOR, THE EXECUTION OF AN ACT, COMMITTED THRU RECKLESS IMPRUDENCE WHICH, IF INTENTIONAL, ALSO AMOUNTS TO A LIGHT FELONY — The Defendant, a driver of a passenger truck, while operating the same in Intramuros, Manila, hit and struck a jeep, as a result of which two persons in said jeep suffered physical injuries. The Defendant was charged and found guilty of slight physical injuries thru reckless imprudence with respect to one of the offended parties. *Held*, under Art. 365 of the Revised Penal Code, reckless imprudence is only punishable if the fact complained of constitutes a grave or less grave felony had it been intentional. The same legal precept imposes punishment upon a person who, by simple imprudence, shall cause some wrong which, if done maliciously, would have constituted a light felony. The law, however, does not declare as a crime, and does not provide any penalty for, the execution of an act, more serious as it is; committed thru reckless imprudence which, if intentional, also amounts to a light felony. PEOPLE *v.* ANDE (CA) G.R. No. 12221-R, April 19, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — THE PROVISION OF § 2176 REVISED ADMINISTRATIVE CODE, IS NOT VIOLATED WHERE THE PUBLIC OFFICER DOES NOT INTERVENE OR EXERT INFLUENCE, OR TAKE ADVANTAGE OF HIS PUBLIC POSITION, IN THE CONTRACT TO PROMOTE HIS OWN INTEREST OF THAT OF HIS WIFE — Appellant was accused of having unlawfully permitted his wife, Bienvenida Duterte, to sell to the municipal government of Davao the materials in question consisting of gravel and stones during the period comprised between Feb. 22, 1951 to June 18, 1951, allegedly taking advantage of his official position as municipal councilor in said municipality since he had taken part in the deliberation, discussion and final approval of the general budget for that fiscal year 1951. *Held*, because of the fact that the prosecution failed to show that the appellant had taken part in the deliberation, discussion and approval of the general budget for the year 1951 during which the questioned transaction had taken place, or that the appellant as councilor had intervened in the bidding wherein Bienvenida Duterte won, or that he had in any manner exerted influence, taking advantage of his public position, in the questioned contract to protect or promote his own interest or those of his wife to the detriment of public interest coupled by the fact that Bienvenida Duterte was licensed for the business of supplying gravel, that she had participated and won in a fair and legitimate oral public bidding, and that no prejudice to the interest of the state in connection with said transaction was shown, the appellant is deemed not to have violated the provisions of § 2176 of the Revised Administrative Code. PEOPLE *v.* DUTERTE, (CA) G.R. No. 12339-R, April 30, 1955.

REMEDIAL LAW — SPECIAL PROCEEDINGS — ACT OF PARTITION IS COMPLETED BY THE ORDER OF DISTRIBUTION ISSUED BY THE COURT — The testamentary [illegible] of the late Teresa Tuason signed a project of partition which was duly approved by the probate court on Feb. 14, 1952. Among the properties assigned to the heir Antonio Prieto in said project of partition is a parcel of urban land situated at Rosario Street, Manila. On Sept. 6, 1952, the court issued an order approving the bond filed by Prieto to answer for the payment of the estate and inheritance taxes due from him and authorizing the administratrix to deliver to him the properties corresponding to his share in the estate, according to the partition previously approved. On Sept. 16, 1952, Prieto filed a motion praying that the administratrix be directed to turn over to him the amount of P11,690.00, allegedly representing the rents of the Rosario Street property from the date of the approval of the project of partition to the date of the delivery of said property to him. *Held*, an order approving a project of partition, where one is submitted, is not necessarily self-executing in the sense that the heirs can take possession of their respective shares from the person in charge of the administration. The property continues to be under judicial administration, unless such order at the same time directs the distribution and delivery thereof, which shall take place only after all the obligations of the estate have been satisfied or, as provided in § 1 of Rule 91, where all of the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligation. PRIETO *v.* VALDEZ, (CA) G.R. No. 12647-R, March 5, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE LAW DOES NOT REQUIRE PERSONAL NOTICE TO THE ACCUSED TO APPEAR; NOTICE TO THE SURETIES TO PRODUCE THE DEFENDANT IN COURT ON A GIVEN DATE IS ALL THAT IS REQUIRED — This is a petition for a writ of certiorari with preliminary injunction. It appears that the petitioner, who was charged with estafa thru falsification of public document, was granted temporary liberty pending trial upon a bond filed by the Alto Surety. On Jan. 18, 1955, the surety was given notice to produce in court the body of the petitioner on Jan. 28, 1955 for the promulgation of its sentence in said criminal case, which prior to said date was then under advisement. For reasons not disclosed, said notice was transmitted by the surety to the petitioner only in the morning of Jan. 27, 1955. Counsel for the petitioner immediately sent a telegram to the respondent judge in which he asked for the postponement of the promulgation of the judgment of the case to a later date, alleging that it was impossible for the petitioner to be present. Notwithstanding this telegram, respondent judge called the case on Jan. 28, 1955, and the petitioner being absent, issued an order directing his arrest and the confiscation of the bond. The petitioner now alleges that the respondent judge acted with grave abuse of discretion. *Held*, the petitioner's contention is untenable because the respondent judge had jurisdiction to issue the notice in question. The surety was given ample time to adopt the necessary measures to insure the appearance of the petitioner in court at the time fixed therein. The sureties of a person accused of a crime before a court, upon the assumption of the bail obligation, becomes in law the jailers of their principals. Their custody of him is the continuance of the original imprisonment, and they are subrogated to all the rights and means which the government possesses to make their control effective. Whenever the appearance of an accused in a criminal case is required by the court, all that the latter is required to do under the law is to notify the sureties to produce him in court on a given date. The law does not require personal notice to the accused and if the accused fails to appear as required,

the bond filed for his temporary liberty may be declared forfeited and he may be ordered arrested. REYES *v.* FERNANDEZ, (CA) G.R. No. 14457-R, June 6, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — PRIOR TO THE SALE OF THE PROPERTIES OF THE BONDSMAN OR THE PAYMENT OF THE VALUE OF THE BAIL, THE COURT HAS THE DISCRETIONARY POWER TO REDUCE THE SURETY'S LIABILITY FOR GOOD REASONS — It appears that Alto Surety posted a bail bond for the amount of ₱10,000 in favor of Jose Corpus who was charged with treason in the People's Court. With the abolition of the People's Court in 1948, however, the case was referred to the Court of First Instance of Ilocos Norte. When the case was called for trial on Oct. 5, 1950, the Defendant failed to appear, notwithstanding due notice previously served upon the surety. Thereupon, on the fiscal's petition, the court declared the bond confiscated and granted the surety 30 days within which to produce the body of the accused and to explain the cause of his non-appearance. On Nov. 17, 1950, and on Dec. 27, 1950, on the surety's petitions, the trial court granted the latter extension of thirty days within which to produce the body of the Defendant before the court. On Feb. 15, 1951, upon the surety's failure to comply with its undertaking within the last period granted it, and there having been no further motion for extension filed, the court, on petition of the fiscal, rendered judgment against the surety for the amount of the bond of ₱10,000 and a writ of execution of the bond was issued. On Oct. 5, 1951, the surety filed a petition for the cancellation of the bond based on the allegations that the Defendant had jumped bail pending hearing in the People's Court and joined the dissidents; that upon learning of his flight, the bonding company exerted diligent efforts, even spending ₱2,000, to apprehend the Defendant by enlisting the aid of the army; and that on Sept. 25, 1951, the Defendant was killed in the course of an army raid. The court denied the petition. On Dec. 18, 1951, the Surety filed a motion, this time, praying for partial execution of the bond from the amount of ₱10,000 to ₱2,000. Despite the fiscal's opposition, the court reduced the amount from ₱10,000 to ₱3,000. The fiscal appealed from the order on the ground that the court acted in excess of its jurisdiction by setting aside its previous order of confiscation and the writ of execution. *Held,* the principle that prior to the sale of the properties of the bondsman or the payment of the value of the bail bond, the court still retains the discretionary power to reduce the surety's liabilities for good and substantial reasons cannot be questioned. In the present case, considering the fact that the Defendant had paid with his life whatever he owed to society, coupled by the fact that the surety company had exerted effort and spent money to apprehend its principal, it is therefore in line with the rules of equity to grant the appellee surety company a reduction of its liability on the bail bond. PEOPLE *v.* CORPUS, (CA) G.R. No. 10586-R, June 27, 1955.

BOOK NOTE

CIVIL LAW REVIEWER. By Francisco R. Capistrano.* Manila: Dean Capistrano Publications, Inc., 1954. Two volumes, pp. x, 549; viii, 709. ₱40.00 per set; ₱20.00, $10.00 per volume.

"How to study" has been found by surveys abroad to rank high in the list of scholastic problems.[1] And why, declares Assistant Dean Kinyon of the University of Minnesota College of Law, why "far too many students get off on the wrong foot in law school" is "because they don't understand *the real object of their law study.*" He continues:

> They get the idea that all they are supposed to do is memorize a flock of rules and decisions just as they memorize the multiplication tables back in grade school. Such a notion is fatal. Even though you know by heart all the decisions and rules you have studied in a course you can still flunk the exam. After all, you learned the multiplication tables — not merely to be able to recite them like a poem — but to enable you to *solve problems* in arithmetic. Likewise, you are learning rules of law and studying the court decisions and legal proceedings in which they are applied, to enable you to *solve legal problems as they are solved by our legal system.*[2]

And such a frame of mind is not, by a long shot, *derigueur* merely in the law school. The more, and especially, will it be called into play after the Bar; to solve legal problems is the long and short of every lawyer, his only reason for being, if he is to earn his keep by his chosen *métier.* To paraphrase the words of the Great Dissenter, the reason why people will pay lawyers to argue for them or to advice them is because they want to know which, in the long run, would be the better course — to go to court, or to keep out of it — and to assure themselves of that course.[3] Accordingly, "to understand in order to apply" should be the aim and end of all legal study.

But how to study, that is, to study with effect, still is a mystery to a good many students.[4] Even the best of them have been found to have bad study habits. "Contrary to the opinion of many students," says an eminent psychologist, "the way to achieve effective study is not by more study or more determined concentration, but by changing the quality of study method . . . [A] student, even one with good grades, may be trying to do his

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[1] ROBINSON, EFFECTIVE STUDY 1 (1946).

[2] KINYON, HOW TO STUDY LAW AND WRITE LAW EXAMINATIONS 12-13 (1951).

[3] See HOLMES, *The Path of the Law in* THE MIND AND FAITH OF JUSTICE HOLMES 71-72 (Lerner ed. 1954).

[4] See ROBINSON, *op. cit. supra* note 1.