speaks of the power of the municipal council to exercise the power of eminent domain for specified purposes, all concerning municipal projects, whereas section 3(c) of the Local Autonomy Act relates to a similar power of the provincial board concerning provincial public works projects. The distinction is to be presumed, considering that before the passage of Republic Act No. 2264 both the provincial board and the municipal council concurrently possessed the power of eminent domain under sections 2106 and 2245 of the Revised Administrative Code respectively. Thus, we are inclined to read section 3(c) of Republic Act No. 2264 as an amendment merely to section 2106 of the said Code in the sense that the approval of the Department Head is dispensed with, and the specific projects for which the power of eminent domain may be exercised by the provincial board have been increased.

This conclusion is consonant with the spirit and general purpose of Republic Act No. 2264, which was enacted to increase the autonomy of local government and which expressly provides in section 10 that "nothing herein contained shall be construed as depriving any province, city, municipality or municipal district of **any power at present enjoyed or already exercised** or done by it or as diminishing its autonomy." Besides, there is merit in the contention of the Municipal Mayor of Gasan, Marinduque, in the attached memorandum, to the effect that in view of the provision in the Barrio Charter vesting in the barrio council the power of eminent domain for certain public works (section 12, Republic Act No. 2370), it could not have been intended by the legislature to revoke a similar power theretofore granted to the municipal council.

(SGD.) ALEJO MABANAG
Secretary of Justice

SUPREME COURT CASE DIGEST

CIVIL LAW—PARENTAL AUTHORITY—ALTHOUGH THE WIDOW IS THE LEGAL ADMINISTRATOR OF THE PROPERTY OF THE CHILDREN UNDER PARENTAL AUTHORITY, SHE HAS NO AUTHORITY AS SUCH TO COMPROMISE THE LATTER'S CLAIMS FOR INDEMNITY.—A truck of the Mindanao Bus Co., then driven by Jesus Verano, met an accident resulting in the death of Dominador Paras and injuries of 23 others, all passengers of said vehicle. The Company paid the victims certain sums of money and all of them including the heirs of the deceased Paras waived their rights to recover damages. The waiver in question was made by Mrs. Paras for herself and in behalf of her minor children. She was paid the sum of ₱3,000 pursuant to the compromise entered into with the Company. Verano was subsequently charged for homicide with multiple physical injuries. The trial court found him guilty as charged and ordered him to pay the heirs of the deceased Paras ₱5,000 by way of damages. Verano appealed. One of the questions raised on appeal was whether or not the waiver made by Mrs. Paras in behalf of the minor children of their claims for indemnity arising from their father's death was properly made. *Held*, the heirs of the deceased are still entitled to the sum of ₱2,000. While under Art. 320 (New Civil Code), the widow is the legal administrator of the property pertaining to the children under parental authority, said article gives her no authority, as such legal administrator, to compromise their claims for indemnity arising from their father's death, for "compromise has always been deemed equivalent to an alienation and is an act of strict ownership that goes beyond mere administration" (Visaya v. Suguitan, No. L-8300, Nov. 1955). PEOPLE *v.* VERANO, G.R. No. L-15805, February 28, 1961.

CIVIL LAW—PERSONS AND FAMILY RELATIONS—THE LAW DETERMINATIVE OF PROPERTY RELATIONS OF FOREIGNERS MARRIED IN THE PHILIPPINES BEFORE THE EFFECTIVITY OF THE NEW CIVIL CODE IS THE NATIONAL LAW OF THEIR FOREIGN COUNTRY.—The Stevenson spouses, both British subjects, were married in the Philippines in 1909. In 1945 they moved to San Francisco, California, where the husband died in 1951. The wife was instituted sole heiress of real and personal properties located in the Philippines, acquired during their marriage. Estate and inheritance taxes were assessed thereon and paid by the estate. Subsequently, a claim for refund of alleged overpayments was filed with the Collector of Internal Revenue. Upon its denial, the Fishers, assignees of the wife, brought an action for recovery to the Court of Tax Appeals. The CTA held, *inter alia*, that in determining the net estate of the decedent, one-half (1/2) of the net estate should be deducted therefrom as share of the surviving spouse in accordance with our law on conjugal partnership and in relation to Section 89 (c) of the National Internal Revenue Code. On appeal the Collector contends, that pursuant to Art.

124 and Art. 16 of the New Civil Code, English law should apply, which, he alleged, vests full ownership of the properties in the husband alone. *Held,* since the spouses were married in 1909 the Old Civil Code is the law applicable. Article 1325 of the Old Civil Code is different from Article 124 of the New Civil Code in that the former applies only to marriages contracted in a foreign land. Both articles, it should be noted, refer to mixed marriages of citizen and foreigner. In the instant case the marriage is between foreigners, in the Philippines. In such a case, according to Manresa, the law of the foreign country is the law determinative of property relations between the spouses. Since the law of England on the matter was merely alleged but not proven, the CTA was justified in presuming that the law of England on this matter is the same as our law. COLLECTOR OF INT. REV. *v.* FISHER AND FISHER; FISHER AND FISHER *v.* COLLECTOR OF INT. REV., G.R. Nos. L-11622 & 11668, January 28, 1961.

CIVIL LAW—PROPERTY—UNDER THE SPANISH CIVIL CODE DONATIONS *PROPTER NUPTIAS* OF REAL PROPERTY THROUGH A PRIVATE INSTRUMENT ARE NOT VALID EVEN BETWEEN THE PARTIES. — Flaviano Pacio married Severa Jucutan in 1901, begetting the defendants. After Severa died Flaviano married Toribia Fontanilla, begetting the plaintiffs. The dispute is with respect to a parcel of land awarded by the trial court to the defendants on the ground that it had been donated *propter nuptias* in a private instrument to Severa Jucutan in 1901 by Flaviano Pacio. The land, however, continued to be held in the name of Flaviano Pacio and taxes were paid in his name until 1956 when the same was held in the name of the defendants. *Held,* the case falls under Art. 633 of the Spanish Civil Code under which it has been held that a donation *propter nuptias* of real property written in a private instrument is not valid even between the parties. Since Flaviano Pacio continued to be the owner as the donation had no effect, the land now is joint property of the children of the first and second marriages, subject to the rights of the surviving spouse. PACIO *v.* PACIO, G.R. No. L-15088, January 31, 1961.

CIVIL LAW—QUASI-CONTRACTS—THE REQUISITES OF *SOLUTIO INDEBITI* ARE (a) THAT HE WHO HAS PAID WAS NOT UNDER OBLIGATION TO DO SO, AND (b) THAT THE PAYMENT WAS MADE BY REASON OF AN ESSENTIAL MISTAKE OF FACT. — Anacleto Caballero filed with the CFI of Cebu a petition for mandamus against the city mayor, the municipal board, the city treasurer and city auditor, all of Cebu City, for reinstatement to his former position of caretaker of cemeteries and for the payment of his back salaries. The CFI rendered judgment ordering the reinstatement and the payment of the back salaries of Caballero. The municipal board of Cebu City passed a resolution appropriating ₱3,224 for the payment of back salaries which amount was paid to Caballero. The City of Cebu, later on, claiming that the payment of the sum of ₱3,224 to Caballero was wrongful and illegal since it was not party to the (mandamus) case, instituted an action against Caballero for the recovery of the same amount. The complaint for refund is predicated upon the following provision of the New Civil Code (Art. 2154) that

"if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises." The lower court dismissed the complaint. Hence, this appeal. *Held,* considering that the indispensable requisites of this juridical relation, known as *solutio indebiti,* are (a) that he who paid was not under obligation to do so, and (b) that the payment was made by reason of an essential mistake of fact, we are of the belief that the complaint was correctly dismissed. It is established that Caballero had the right to demand for the payment of his back salaries during his illegal dismissal, that the sum of ₱3,224 was paid to Caballero by virtue of a writ of execution lawfully issued, and that the payment was not made through mistake. THE CITY OF CEBU *v.* PICCIO, G.R. No. L-13012 and L-14876, December 31, 1960.

CIVIL LAW—SALES—IN SALES WITH *PACTO DE RETRO* OWNERSHIP IS CONSOLIDATED BY OPERATION OF LAW WITHOUT THE NEED OF A JUDICIAL ORDER. — On June 8, 1953 plaintiff and defendant entered into a contract of sale with right to repurchase within one year from said date. After several unsuccessful attempts to repurchase the property, the stipulated period expired and the plaintiff brought an action for reconveyance, admitting a *pacto de retro* sale but contending that appellee has not yet acquired any title in the absence of any consolidation of ownership in accordance with article 1607 of the New Civil Code. *Held,* plaintiff's contention cannot be sustained. According to Art. 1607 the vendee irrevocably acquires ownership of the thing sold upon the failure of the vendee to fulfill what is prescribed in Art. 1616. Under said provisions, ownership is consolidated by operation of law in the vendee and the vendor loses his rights over the property by the same token. The judicial order required in Art. 1607 is merely for purposes of registering the consolidation of title. ROSARIO *v.* ROSARIO, G.R. No. L-13018, December 29, 1960.

CIVIL LAW—SALES—UNPAID VENDOR'S LIEN, THOUGH NOT REGISTERED, HAS THE SAME STANDING AS THE REGISTERED MORTGAGE CREDITS OVER THE SAME PROPERTY. — Rosario Cruzado, as guardian of her minor children and having been authorized by the probate court, sold a parcel of land to Pura Villanueva for ₱19,000.00 in installments. After being able to secure in her name Transfer Certificate of Title covering the house and lot, Pura Villanueva mortgaged the said property to Magdalena Barretto as security for a loan in the amount of ₱30,000.00. Pura Villanueva having failed to pay the balance of ₱12,000.00 as part of the purchase price, Cruzado filed a complaint for recovery. Pending trial a lien was constituted upon the property in the nature of levy in attachment in favor of the Cruzados, said lien being annotated at the back of the Transfer Certificate of Title. Pura Villanueva having, likewise, failed to pay her indebtedness to Magdalena Barretto, the latter instituted against the Villanuevas an action for foreclosure of mortgage, joining the Cruzados as party defendants. Decision having been rendered against the Villanuevas, the Barrettos filed a motion of execution, hence the property was sold at public auction. The Barrettos opposed the claim of the Cruzados for the unpaid vendor's lien, which

was granted by the lower court. *Held,* by the lights of the provisions of Arts. 2242 & 2249, the Cruzados, as unpaid vendor of the property in question, have the right to share *pro-rata* with the Barrettos the proceeds of the foreclosure sale. The law does not make any distinction between registered and unregistered vendor's lien, which only goes to show that any lien of that kind enjoys the preferred credit status. BARRETTO *v.* VILLANUEVA, G.R. No. L-14938, January 28, 1961.

CIVIL LAW—TORTS AND DAMAGES—THE INCOME WHICH A FOURTH YEAR MEDICAL STUDENT COULD HAVE EARNED UPON BECOMING A DOCTOR CONSTITUTES ACTUAL DAMAGES IN AN ACCIDENT RENDERING HIM AN INVALID. — Through the negligence of its driver, the LTB bus bearing Edgardo Cariaga, a fourth year medical student of UST, bumped against a passing train, killing the driver and injuring many of its passengers, including Edgardo who, as a result of the physical injuries he sustained, is now in a helpless condition, virtually an invalid both physically and mentally. LTB paid for all his medical and other expenses. Cariaga sought to recover from the LTB and the MRR Co. the total sum of ₱312,000 as actual, compensatory, moral and exemplary damages and ₱18,000 in the same concepts for his parents. The trial court rendered judgment sentencing LTB to pay Edgardo the sum of ₱10,490 as compensatory damages with legal interest and dismissing LTB's cross claim against MRR Co. *Held,* LTB being guilty of a breach of contract, but having acted in good faith, is liable for the natural and probable consequences of the breach and which the parties had foreseen or could have reasonably foreseen at the time the obligation was constituted, provided such damages have been proven. The actual damages consisting of medical, hospital and other expenses should also include the income which Edgardo could earn if he should finish the medical course and pass the corresponding board examinations, because they could have reasonably been foreseen by the parties at the time he boarded the LTB bus. CARIAGA *v.* LAGUNA TAYABAS BUS COMPANY, G.R. No. L-11037, December 29, 1960.

CIVIL LAW—TORTS AND DAMAGES—UTTERANCES MADE IN THE COURSE OF JUDICIAL PROCEEDINGS ARE ABSOLUTELY PRIVILEGED COMMUNICATIONS AND ARE NOT ACTIONABLE, UNLESS IRRELEVANT.—Several parcels of land were bequeathed and donated to Priscila de la Fuente de Sison by Margarita David. Subsequently, Gonzalo David, defendant, caused to be annotated on their titles a notice of adverse claim for executor's fees of Jose Teodoro, Sr. and for his own fees as counsel for the executor. These properties were, however, earlier assigned by Sison to the Priscila Estate Inc.—a corporation organized by her and her husband, herein plaintiff Carlos Moran Sison, with some nominal parties—in exchange for shares of stock thereof. The corporation, of which herein plaintiff is president, filed an "Urgent Petition Ex-Parte" to lift defendant's adverse claim with respect to one of the several properties upon the ground that said property belonged already to the corporation which wanted to sell it, and that there were other properties of the estate of Margarita David sufficient to answer

said claim. This motion was granted. Defendant subsequently filed on his behalf and that of the executor a "Petition for Bond," praying that the sale of the property he disapproved "and/or a bond of ₱12,000 be forthwith furnished" by the Priscila Estate Inc. Plaintiff then commenced this action in the lower court for damages, attorney's fees and costs for alleged malicious averments made, with evident intent to put him in ridicule, in the "Petition for Bond" filed by defendant. A counterclaim for damages from alleged scurrilous, insulting and scandalous statements made by plaintiff through counsel in the special proceedings for the settlement of the estate of Margarita David was interposed by defendant. The lower court decided for the plaintiff, increasing the awarded damages in an amended decision. Hence, this appeal was taken by defendant. *Held,* utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions, belong to the class of communications that are absolutely privileged, and, unlike qualifiedly privileged communications, are not actionable even upon proof of "actual malice" so long as the derogatory statements in question are pertinent, relevant or related to, or connected with, the subject matter of the communication involved. Considering that the remedy sought by the "Petition for Bond" filed by defendant was not merely, as the lower court seems to believe, the filing of a bond, but primarily the disapproval of the sale, it is obvious that allegations therein regarding the operations of the Priscila Estate are not only pertinent but material to the relief prayed for. The statements made by plaintiff through counsel in the special proceedings, in pleadings filed therein are likewise absolutely privileged and relevant to the subject matter of the pleadings, hence the counterclaim predicated thereon does not lie. SISON *v.* DAVID, G.R. No. L-11268, January 28, 1961.

CIVIL LAW—TORTS AND DAMAGES—THE WAIVER OF THE RIGHT TO RECOVER DAMAGES MADE IN FAVOR OF THE EMPLOYER ALSO BENEFITS THE EMPLOYEE. — The Mindanao Bus Co. is the owner of a truck driven by Jesus Verano, which figured in an accident resulting in the death of one passenger and injuries of 23 others. The Company paid the victims certain sums of money and all of them waived and/or renounced their rights to recover damages. Verano was subsequently charged for homicide with multiple physical injuries thru reckless imprudence, found guilty as charged, and, in addition to the sentence of imprisonment, was ordered to pay the heirs of the deceased passenger the sum of ₱5,000. He appealed. One of the questions raised on appeal was whether or not the waiver made in favor of the Bus Co. includes the civil liability of the driver Verano. *Held,* the person principally liable is the driver appellant, since it is he who committed the criminal act. However, since the Company is admittedly his employer, the law makes it subsidiarily liable for the civil obligation, and in default of the person criminally liable, responsible for civil liability. While the name of the appellant does not appear in the waiver, however, the same necessarily includes him because the Company will, in the final analysis, have to pay. PEOPLE *v.* VERANO, G.R. No. L-15805, February 28, 1961.

COMMERCIAL LAW—MOTOR VEHICLES REGISTRATION—THE LAST WORKING DAY FOR PURPOSES OF REGISTRATION OF MOTOR VEHICLES WITHOUT PENALTIES MAY BE DIFFERENT FROM THE LAST WORKING DAY OF THE MOTOR VEHICLES OFFICE.—Gonzaga registered his cargo truck and passenger bus, paying the first installment. To cover the second installment, Gonzaga remitted to the provincial treasurer of Cagayan by registered mail P500.00 in postal money order. The postal cancellation marks on the envelope and on the face of the money order bore the date of August 31, 1957. The Registrar sought to impose 50% delinquency penalty or to confiscate the certificate of registration for the vehicles because the remittance was made beyond the time fixed by law, the same being the last working day of August, which he claimed to be Friday, August 30, 1957. *Held,* the last working day as provided by R.A. No. 3992 does not necessarily mean the last working day for the MVO pursuant to R.A. No. 1880, the 40-Hour Work Law. Act No. 3992 recognizing the date of cancellation as the date of application impliedly permits of a remittance or payment within the last working day of August during which the Post Office may still effect cancellation and it is not shown that the Post Office ceased to transact business or discharge its functions on Saturdays by reason alone of R.A. No. 1880. GONZAGA *v.* DAVID, G.R. No. L-14853, December 29, 1960.

COMMERCIAL LAW—PATENT LAW—IN CANCELLATION OF PATENTS PROCEEDINGS, THE DIRECTOR OF PATENTS IS NOT BOUND BY THE FINDINGS IN A CRIMINAL CASE FOR UNFAIR COMPETITION. — This is a petition for review of a decision of the Director of Patents denying a petition for cancellation of Letters Patent Nos. 6 and 7 issued in favor of respondent Jose Ong Lian Bio. Petitioner contends that the Director of Patents erred in not accepting as final and conclusive the findings of fact of the Court of Appeals to the effect that petitioner was the prior user of the design in question, and that the designs in Letters Patent Nos. 6 and 7 are not new and original. The case referred to is People vs. Co San, G.R. No. 11277-B, wherein petitioner was acquitted of the crime of unfair competition. *Held,* the petition is dismissed. In the cancellation proceedings the question refers to the validity of the design patents issued to respondent, while in the criminal case the inquiry is whether Co San unfairly competed against the product of respondent protected by design patent No. 7. The first is within the cognizance of the Patent Office; the second is under the jurisdiction of the Court of First Instance. The acquittal by the Court of Appeals was not based on the cancellation of a patent, but on the opinion that accused had not deceived or defrauded the complainant. CO SAN *v.* DIRECTOR OF PATENTS, G.R. No. L-10563, February 23, 1961.

COMMERCIAL LAW—PRIVATE CORPORATIONS—WHERE A CORPORATION WAS ORGANIZED BY THE LEADING STOCKHOLDERS OF ANOTHER, FINANCED AND GIVEN CREDIT EXTENSIONS BY THE LATTER AND CONTROLLED BY OFFICERS COMMON TO BOTH, IT IS A MERE SUBSIDIARY OF THE LATTER.—Until June of 1946, the petitioner Yutivo Sons Hardware Co., a domestic corporation, bought a number of cars and trucks from the General Motors, an American corporation licensed to do business in the Philippines. On June 13, 1946, the Southern Motors, Inc. (SM) was organized by the leading stockholders of Yutivo Sons Hardware Co. to engage in the business of selling cars, trucks and spare parts. After the withdrawal of General Motors (GM) from the Philippines in June, 1947, the cars and trucks purchased by Yutivo from GM were sold by Yutivo to SM which in turn sold them to the public. In July, 1947, GM appointed Yutivo as importer of its cars and Yutivo continued with its arrangement of selling exclusively to SM. As importer, Yutivo paid the sales tax prescribed on the basis of its selling price to SM. On November 7, 1950, the Collector of Internal Revenue made an assessment on Yutivo and demanded from the latter deficiency sales tax from July 1, 1947 to December 31, 1949, claiming that the taxable sales were the retail sales by SM to the public and not the sales at wholesale made by Yutivo to SM inasmuch as SM and Yutivo were one and the same corporation. Yutivo contested the assessment before the Tax Court which affirmed the assessment made by the Collector. Hence, this appeal. Did the Tax Court correctly disregard the technical defense of separate corporate entity in order to arrive at the true liability of the petitioner? *Held,* the court below was correct in holding that Southern Motors was a mere subsidiary of Yutivo. It is admitted that SM was organized by the leading stockholders of Yutivo. Yutivo financed principally, if not wholly, the business of SM and actually extended all the credit to the latter not only in the form of starting capital but also in the form of credits extended for the cars allegedly sold by Yutivo to SM. The funds of SM were all merged in the cash funds of Yutivo. At all times, Yutivo through officers and directors common to it and SM exercised full control over the cash funds, policies, expenditures and obligations of the latter. YUTIVO SONS HARDWARE CO. *v.* THE COURT OF TAX APPEALS, G.R. No. L-13203, January 28, 1961.

COMMERCIAL LAW—TRADE MARK REGISTRATION—THE DIRECTOR OF PATENTS MAY DISMISS AN APPLICATION FOR REGISTRATION OF TRADE MARK EVEN AFTER ITS PUBLICATION.—On June 14, 1947, Marcelo T. Pua applied for registration of trade mark but later transferred his rights to petitioner who renewed application on November 8, 1957. The examiner of the Patents Office recommended its allowance and consequently the Director ordered its publication in the Official Gazette. At the hearing Pellicer filed opposition which was dismissed together with the petition for registration. The present petition is one for review of the resolution of the Director denying application for registration and denying the motion for reconsideration at the same time reinstating Pellicer's opposition to the registration. *Held,* dismissal of the application only after its publication is not a procedural error reversible on appeal. Neither did such publication divest the Director of the prerogative to dismiss the application. The decision prior to the publication is provisional in the sense that the application appears to be meritorious and is entitled to be given course leading to the more formal and important second step of hearing and trial, where the public and interested parties are allowed to take part. The Director can reinstate the opposition

even *motu proprio*, provided it was done in due time and while he still had jurisdiction over the case. EAST PACIFIC MERCHANDISING CORP. *v.* DIRECTOR OF PATENTS, G.R. No. L-14377, December 29, 1960.

CRIMINAL LAW—ACCESSORIES—WHERE THE ACCUSED ADMITTED HAVING KNOWLEDGE OF THE CRIME, ACCEPTED PART OF THE LOOTED MONEY AND FAILED TO REPORT THE FACT TO THE AUTHORITIES, HE IS GUILTY AS AN ACCESSORY. — Amdad and several others were charged with the crime of robbery in band with murder and frustrated murder. He admitted having acquired knowledge of the commission of the crime and in fact accepted ₱100 of the looted money which he claimed was forced on him. ₱72 was recovered by the police in a glass bottle buried in his yard. Found in his house were the rifle used in the killing and a .45 cal. pistol taken from the slain security guard. He failed to report the fact to the police. There is, however, no proof to establish his participation as a principal in the crime charged. *Held*, he is guilty as "encubridor" under Art. 19 of the Revised Penal Code which punishes as accessories those, who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission by profiting themselves or by concealing the effects or instruments of the crime. PEOPLE *v.* AMAJUL, G.R. No. L-14626-27, February 28, 1961.

CRIMINAL LAW—COMPLEX CRIME—WHERE THE ACCUSED RAPED A GIRL AND CHOKED HER TO PREVENT HER FROM SHOUTING, AS A RESULT OF WHICH SHE DIED, THERE IS A COMPLEX CRIME OF RAPE WITH MURDER. — Antonio Yu was charged with the crime of rape with murder committed as follows: that on or about November 14, 1957 he raped Delia Abule, age 6, and to prevent her from shouting, strangled her, as a result of which she died. He pleaded guilty, but alleged that he did not intend to commit so grave a crime as that which resulted. The lower court held that the case was a complex crime of rape with murder and imposed the penalty of death. On automatic appeal Yu assigns as error, among others, the finding that he committed a complex crime. *Held*, defendant committed a complex crime because there was a unity of thought in the criminal purpose of the accused. He had to choke and strangle the girl at the same time that he was satisfying his lust on her. PEOPLE *v.* YU, G.R. No. L-13780, January 28, 1961.

CRIMINAL LAW—CONSPIRACY—ALTHOUGH THERE WAS A CONSPIRACY TO STEAL ELECTRIC CURRENT, THE EXONERATION OF ONE DOES NOT CARRY WITH IT THE ACQUITTAL OF THE OTHER. — Fermin Villanueva operated the Majestic Steam Laundry and Dry Cleaners, in which the necessary electric energy was supplied by the Meralco. With a previous understanding with the consumer Villanueva, Avelino Natividad, a meter-reader of the Meralco, misread the electric meter so as to decrease the amount which such consumer had to pay, thus depriving the Meralco of about 11,880 kilowatt hours. The Court of Appeals acquitted Villanueva and affirmed the conviction of Natividad. The latter filed a petition for review contending that in as much as both of them had been prosecuted for having conspired to steal electric current, the exoneration of Villanueva should benefit him. *Held*, contrary to petitioner's contention, the acquittal of Villanueva did not necessarily mean that no electric current had been taken away gratis. Anyway, the acquittal rested on the lack of proof that Villanueva *had tampered* with the electric meter to conceal the crime. The offense was already committed when Villanueva paid his bills. NATIVIDAD *v.* COURT OF APPEALS, G.R. No. L-14887, January 31, 1961.

CRIMINAL LAW—ESTAFA—WHERE THE ACCUSED CAUSED HER NAME TO BE WRITTEN ON THE DEED OF SALE INSTEAD OF THE VENDEE'S, SOLD THE PROPERTY AND RETAINED THE PRICE, SHE IS GUILTY OF ESTAFA. — Appellant prevailed upon the complainant to buy a house and lot for ₱3,000. The complainant, not having enough money for the purpose, was furnished by the appellant ₱1,000 provided that she (the appellant) was paid back. In the deed of sale of the house and lot, the appellant caused her name to appear as vendee instead of the complainant's, with the explanation that the title of the property would be transferred to her (the complainant) after she had paid back the sum of ₱1,000 owed by her. After obtaining the deed of sale in her name, appellant sold the property to another person and retained the price. It appeared, however, that complainant had already paid back her debt to the appellant before the second sale. Convicted of estafa, defendant appealed. *Held*, the judgment is affirmed. Where the defendant (a) caused the notary public to write the document of sale in her own name, instead of that of the complainant (the vendee), and (b) subsequently sold the property to another person and retained the price, and it also appearing that complainant had already repaid to the defendant the money furnished by the latter to the former in purchasing the property, she is guilty of estafa. MERCADO *v.* PEOPLE, G.R. No. L-11553, February 28, 1961.

CRIMINAL LAW—KIDNAPPING WITH MURDER—WHERE THE VICTIM HAD BEEN TAKEN ONLY ABOUT 40 METERS FROM HIS HOUSE WHERE HE WAS SHOT, AND THERE WAS NO APPRECIABLE INTERVAL BETWEEN HIS BEING TAKEN AND HIS BEING SHOT FROM WHICH KIDNAPPING MAY BE INFERRED, THE CRIME COMMITTED WAS MURDER AND NOT THE COMPLEX CRIME OF KIDNAPPING WITH MURDER. — Around midnight of June 17, 1952, a group of five armed men converged on the house of the deceased Juan Galaraga. They forcibly brought down with them the deceased Juan Galaraga and his son-in-law Victor Alamar. At a distance of about 40 meters from their house, Juan Galaraga and Victor Alamar were fired upon by their captors, who hit Juan Galaraga mortally and wounded Victor Alamar seriously. Only the defendant-appellant was arrested and charged; the others remained at large. The defendant was convicted of kidnapping with murder and kidnapping with frustrated murder and sentenced ac-

cordingly. He appealed the decision of the court of first instance. *Held,* the crimes committed were murder and frustrated murder. The victims had been taken only about 40 meters from their house when they were shot. Nothing was said or done by the accused or his confederates to show that they had intended to deprive their victims of their liberty for some time and for some purpose. There was no appreciable interval between their being taken and their being shot from which kidnapping may be inferred (see People v. Remalente, No. L-3412, Sept. 26, 1952). PEOPLE *v.* SACAYANAN, G.R. No. L-15024-25, December 31, 1960.

CRIMINAL LAW—LIBEL—R.A. NO. 1289 AMENDING ART. 360 OF THE REVISED PENAL CODE DID NOT DEPRIVE INFERIOR COURTS OF THE POWER TO CONDUCT PRELIMINARY INVESTIGATIONS IN LIBEL CASES. — On April 20, 1959 Amancio Balite filed with the justice of the peace court at Bobon, Samar, a criminal complaint for libel against Delfin Mercader. After making the preliminary examination, the justice of the peace issued the corresponding warrant of arrest. The accused moved to dismiss for lack of jurisdiction and cause of action. The motion was denied; hence, this petition for certiorari. It is contended that the passage of R.A. No. 1289 on June 15, 1955 had the effect of depriving justice of the peace courts of their power even to conduct preliminary investigations in the matter of libel or written defamation. *Held,* as held by this Court in People vs. Olarte (L-13027, June 30, 1960), the jurisdiction of courts of first instance to hear and determine criminal actions within the original jurisdiction thereof is far from inconsistent with the authority of justices of the peace to make preliminary investigations in such actions. MERCADER *v.* VALILA, G.R. No. L-16118, Feburary 16, 1961.

CRIMINAL LAW—LIBEL—THE ACTION FOR LIBEL MAY BE BROUGHT IN ANY PROVINCE OR CITY IN WHICH SAID LIBEL IS PUBLISHED OR CIRCULATED. — On April 20, 1959 Amancio Balite filed with the justice of the peace court at Bobon, Samar, a criminal complaint for libel against Delfin Mercader. After making the preliminary examination, the justice of the peace issued the corresponding warrant of arrest. The accused moved to dismiss for lack of jurisdiction and cause of action. The motion was denied; hence, this petition for certiorari. Petitioner maintains that even granting jurisdiction, the venue was improperly laid in Bobon because neither the complainant nor the defendant resided there. *Held,* R.A. No. 1289 amending Art. 360 of the Revised Penal Code, provides that where the libel is published or circulated in a province or city wherein neither the offended party nor the offender resides, action may be brought therein. Since the complaint herein questioned alleges that the libel had been published and circulated in Bobon and other municipalities of Samar, Bobon and Samar constituted proper venue. MERCADER *v.* VALILA, G.R. No. L-16118, February 16, 1961.

CRIMINAL LAW—MITIGATING CIRCUMSTANCES—THERE IS NO MITIGATING CIRCUMSTANCE OF LACK OF INTENT WHERE THE

ACCUSED EMPLOYED BRUTE FORCE WHICH WOULD NATURALLY CAUSE DEATH. — Antonio Yu was charged with the crime of rape with murder committed as follows: that on or about November 14, 1957 he raped Delia Abule, age 6, and to prevent her from shouting, strangled her, as a result of which she died. He pleaded guilty, but alleged that he did not intend to commit so grave a crime as that which resulted. The lower court held that the case was a complex crime of rape with murder and imposed the death penalty. On automatic appeal the defendant contends that the mitigating circumstance of lack of intent to commit so grave a crime should be considered. *Held,* intent can be gathered from the external conduct and actions of the offender. From his acts, his superior strength, the defendant ought to have known that the act of strangling would naturally result in death. The brute force employed by appellant contradicts his claim of lack of intent. PEOPLE *v.* YU, G.R. No. L-13780, January 28, 1961.

CRIMINAL LAW—PENALTIES—IN CONSTRUING ART. 39 OF THE REVISED PENAL CODE, PRINCIPAL PENALTY MEANS THE AGGREGATE PENALTIES CONSIDERED IN BULK, NOT SEPARATELY. — Petitioner has been sentenced in nine criminal cases, to a total imprisonment of 10 years, 11 months and 5 days. Petitioner was also sentenced to pay certain indemnities, which if not paid, would normally entail subsidiary imprisonment of 3 years and 7 months. Petitioner having served time for 10 years, 11 months and 26 days (with good conduct time allowance), requested release which was denied by the Superintendent of the Correctional Institution for Women on account of his failure to pay indemnities. He was, therefore, required to undergo subsidiary imprisonment. The petitioner contended that she should not be required to suffer subsidiary detention, in view of Art. 39 of the Revised Penal Code which states: "When the principal penalty imposed is higher than *prision correccional,* no subsidiary imprisonment shall be imposed upon the culprit." The superintendent maintains that in as much as none of the nine separate convictions and sentences imposed on the prisoner had exceeded *prision correccional,* the above provision would not apply. *Held,* the apparent theory of the law is that no prisoner shall be in jail for more than 6 years by reason of insolvency. Therefore, the aggregate penalties should be considered in bulk — not separately, as indicated in Bagtas v. Director of Prisons, 84 Phil. 692. This cumulation of sentences aligns with the underlying principle in the matter of the three-fold duration of penalties under Art. 70 of the Revised Penal Code. TOLEDO *v.* THE SUPERINTENDENT OF THE CORRECTIONAL INSTITUTIONAL FOR WOMEN, G.R. No. L-16377, January 28, 1961.

CRIMINAL LAW—PRESCRIPTION OF OFFENSES—THE RUNNING OF THE PRESCRIPTIVE PERIOD IS INTERRUPTED BY THE FILING OF THE COMPLAINT OR INFORMATION IN THE PROPER COURT, NOT BY THE LODGING OF AN ACCUSATION IN THE FISCAL'S OFFICE. — The defendant, a policeman, was charged with maltreatment of a detention prisoner. He was, however, convicted of slight physical injuries,

it not having been shown that the offended party was a prisoner or detention prisoner under his charge. The defendant, while admitting liability for slight physical injuries, raised the defense of prescription. *Held*, the complaint or information which interrupts the running of the prescriptive period is that which is filed in the proper court and not the denunciation or accusation lodged by the offended party in the fiscal's office. The defendant cannot be convicted since the information was filed in court more than two months after the commission and discovery of the offense. PEOPLE *v.* ROSARIO, G.R. No. L-15140, December 29, 1960.

CRIMINAL LAW—ROBBERY—IN ROBBERY WITH HOMICIDE, NEITHER THE AGGRAVATING CIRCUMSTANCE OF HAVING COMMITTED THE CRIME IN A BAND NOR THE MITIGATING CIRCUMSTANCE OF LACK OF INSTRUCTION CAN BE TAKEN INTO CONSIDERATION. — The accused were charged with the crime of robbery in band with murder and frustrated murder. They were convicted under Art. 294, par. 1, Revised Penal Code, which penalizes robbery with homicide. The trial court took into consideration the aggravating circumstance of having committed the offense in band, being offset by lack of instruction. This action by the trial court is questioned on appeal. *Held*, as correctly pointed out, the commission of crime in band is taken into account only in connection with subdivisions 3, 4 and 5 of Art. 294 of the Revised Penal Code, but not as in this case where robbery falls under par. 1 of the same article (see Art. 295, R.P.C.; People v. Casunuran, L-7654, Aug. 16, 1956) and neither should the ordinary mitigating circumstance of lack of instruction be considered in crimes against property (People v. Melendrez, 59 Phil. 154; U.S. v. Pascual, 9 Phil. 491). PEOPLE *v.* AMAJUL, G.R. No. L-14626-27, February 28, 1961.

CRIMINAL LAW—MURDER—WHERE THE CONSPIRATORS PLANNED TO COMMIT THE CRIME OF MURDER, NOT THAT OF KIDNAPPING THE VICTIM AND KILLING HER LATER, THE CRIME COMMITTED IS MURDER. — Rosario Lao hired Bienvenido Santos and Alberto Padiamat to take Rosa Baltazar away from her poultry farm and to kill her. After several conferences between the three, Santos and Padiamat, disguised in fatigue uniforms with MP arm bands, took Rosa Baltazar in the night of December 7, 1953 away from the poultry farm to some distance therefrom where they killed her by a blow with a mason's sledge hammer found in a nearby quarry. The two subsequently dug a grave therein where they buried the body of Rosa Baltazar and from which her mortal remains were found on January 9, 1954. Rosario Lao and Padiamat were convicted of kidnapping with murder. Hence, this appeal. *Held*, the crime committed is not kidnapping with murder as stated in the title of the information, but murder, for the reason that the conspirators had planned to commit the latter crime, not that of kidnapping the victim first and killing her later. PEOPLE *v.* LAO AND PADIAMAT, G.R. No. L-10473, January 28, 1961.

LABOR LAW—BARGAINING UNIT—THE ABSENCE OF AN EXPRESS ALLEGATION THAT THE MEMBERS OF A GUILD CONSTITUTE A PROPER BARGAINING UNIT IS NOT FATAL IN A CERTIFICATION PROCEEDING.—The film companies assailed the validity of the action of the Court of Industrial Relations in entertaining a petition filed by the Musician's Guild notwithstanding that the existence of an employer-employee relationship between the parties is contested, on the gound that (1) the petition for the certification does not allege and no evidence was presented that the alleged musician employees of the respondents constitute a proper bargaining unit and (2) that the alleged musician employees represent a majority of other numerous employees of the film companies constituting a proper bargaining unit under section (1) of R.A. No. 875, the Industrial Peace Act. *Held*, the absence of an express allegation that the members of the Guild constitute a proper bargaining unit is not fatal in a certification proceeding, for the same is not a litigation in the sense in which the term is commonly used and understood, but a mere investigation of a non-adversary, fact finding character in which the investigating committee plays the part of a disinterested investigator seeking merely to ascertain the desire of the employees on matters of representation. The action of the lower court in deciding upon the appropriate unit for collective bargaining purposes is discretionary and its judgment in this respect is entitled to complete finality unless its action is arbitrary or capricious, which is not so here. Since the Guild seeks to be and was certified as the sole and exclusive bargaining agency for the musicians working in the film companies and does not intend to represent the other employees therein, it is not necessary for the Guild to allege that its members constitute a majority of all the employees of the film companies including those who are not musicians. LVN PICTURES *v.* PHILIPPINE MUSICIANS GUILD, G.R. No. L-12584; SAMPAGUITA PICTURES, INC. *v.* PHILIPPINE MUSICIANS GUILD, G.R. No. L-12598, January 28, 1961.

LABOR LAW—CLOSED-SHOP AGREEMENTS—THE CLOSED-SHOP AGREEMENT AUTHORIZED UNDER SECTION 4, SUB-SECTION (a), (4), OF THE INDUSTRIAL PEACE ACT APPLIES ONLY TO PERSONS TO BE HIRED OR TO EMPLOYEES WHO ARE NOT YET MEMBERS OF ANY LABOR ORGANIZATION. — In a certification election ordered by the CIR between the Kapisanan Ng Mga Manggagawa sa Damit Balangay (NAFLU) and Freeman Shirt Employees Labor Union, the latter won and was certified as the sole bargaining representative of the employees of the Freeman Shirt Mfg. Co., Inc. In the collective bargaining agreement, it was included as one of the provisions of the union security a closed-shop or union shop agreement which requires membership in the union as a condition to a continued employment in the Company. The employees who are not members of the union were given 30 days to join the bargaining union. In consequence, ten employees who refused to join the Union were dismissed from the Company. The dismissed employees, through the Kapisanan Ng Mga Manggagawa sa Damit Balangay (NAFLU) of which they were members filed a complaint for unfair labor practice against the Freeman Shirt Mfg. Co. Inc., its general manager and the Freeman Shirt Employees' Labor Union, it being charged that the Company dominated the Union and that said Company violated Sec. 4, (a), (1) of

Rep. Act No. 875 for having dismissed the ten laborers. The CIR absolved the Company of the charges of unfair labor practice and dismissed the complaint, but ordered the reinstatement of the employees. The Company asked for the reconsideration of the decision on the reinstatement of the dismissed employees, which motion was denied. *Held,* a closed-shop agreement has been considered as one form of union security whereby only union members can be hired and workers must remain members in good standing as condition to continued employment. This union security clause as embodied in Sec. 4, Subsection (a), (1), (4), of the Industrial Peact Act applies only to persons to be hired or to employees who are not yet members of any labor organization. It is inapplicable to those already in the service who are members of another union. To hold otherwise, i. e., that the employees in a company who are members of minority union may be compelled to disaffiliate from their union and join the majority or contracting union, would render nugatory the right of all employees to self-organization and to form, join or assist labor organization of their own choosing, a right guaranteed by the Industrial Peace Act (Sec. 3, Rep. Act. No. 875) as well as by the Constitution (Art. III, Sec. 1, [6]), FREEMAN SHIRT MANUFACTURING CO., INC. *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-16561, January 28, 1961.

LABOR LAW—COLLECTIVE BARGAINING—A COLLECTIVE BARGAINING AGREEMENT BENEFITS NOT ONLY UNION MEMBERS BUT ALSO NON-MEMBERS EMPLOYED BY THE COMPANY.—On May 11, 1951, the CIR made a final award prescribing a minimum wage of ₱5.50 a day for all regular male employees of the respondent Company. On April 6, 1957, the Company entered into a collective bargaining agreement with the petitioner-Union, approved by the CIR, providing for the conversion of extra or temporary laborers who have rendered satisfactory service to the Company to regular workers after one year from the signing of the agreement. On April 14, 1958, the president of the petitioning Union in behalf of 18 laborers of the Company asked the Company to raise the salaries of the laborers from ₱4.00 to ₱5.50 a day pursuant to the CIR's award and the bargaining agreement. Upon refusal of the request by the Company, the petitioner filed before the CIR a motion for compliance alleging that since the 18 laborers who were classified as temporary were already converted by the Company into regular workers in view of the lapse of the one-year probationary period and the minimum wage of ₱5.50 a day awarded by the Court has not been paid to them, the Company should be ordered to pay their differential wages. The trial judge issued an order directing the Company to pay the salary differentials of the laborers in question. The respondent Company elevated the case to the Court *en banc,* where the latter issued a resolution reversing the order of the trial judge, among others, on the ground that as 12 of the 18 laborers were not yet members of the Union in 1956 and only became so after the probationary period of one year, they are not entitled to the awards of the Court, and hence, their claim can be dismissed on this ground alone. *Held,* anent the claim of the respondent Court that because the 12 laborers were not members of the petitioning Union their case may be dismissed on this ground implying that only union members are entitled to the benefits of the collective bargaining agreement, suffice it to state that such cannot be entertained because to accord its benefits only to members of the union without any valid reason would constitute undue discrimination against non-members. INTERNATIONAL OIL FACTORY WORKERS UNION *v.* MARTINEZ, G.R. No. L-15560, December 31, 1960.

LABOR LAW—COLLECTIVE BARGAINING—WHERE THE COLLECTIVE BARGAINING AGREEMENT PROVIDES THAT TEMPORARY LABORERS SHALL BE CONVERTED TO REGULAR WORKERS AFTER ONE YEAR SATISFACTORY SERVICE AND IT APPEARS THAT PRIVILEGES ORDINARILY GIVEN TO REGULAR WORKERS HAVE ALSO BEEN ACCORDED TO THE LABORERS INVOLVED, THE CONDITION PRECEDENT FOR THE CONVERSION OF THE STATUS OF THE SAID LABORERS HAS BEEN COMPLIED WITH. — This is an incidental case which stems from two final awards made by the CIR on May 11, 1951 and April 12, 1957, respectively, the first prescribing a minimum wage of ₱5.50 a day for all regular male employees of the respondent Company, and the second approving the collective bargaining agreement entered into between said Company and the petitioning Union, dated April 6, 1957, providing for the conversion of temporary laborers who have rendered satisfactory service to regular workers after one year from the signing of the agreement. Pursuant to the aforementioned awards, the president of the petitioning Union, in behalf of the 18 laborers of the Company, requested the Company to raise their salaries from ₱4.00 to ₱5.50 a day. The Company having refused, the petitioner filed before the CIR a motion for compliance alleging that since the 18 laborers who were classified as temporary on April 6, 1957 were already converted by the Company into regular workers on April 7, 1958 in view of the lapse of the one-year probationary period and the minimum wage of ₱5.50 a day has not been paid to them, the Company should be ordered to pay their differential wages. The trial judge issued an order directing the Company to pay the salary differentials of the laborers in question. Dissatisfied with this order, the respondent Company elevated the case to the Court *en banc,* which reversed the order of the trial judge. Hence, this petition by way of certiorari. The only question to be determined is whether the CIR acted correctly in issuing its resolution declaring that the 18 laborers are not entitled to the wage differentials provided for in the collective bargaining agreement on the ground that the condition precedent relative to their satisfactory service has not been complied with. *Held,* the condition precedent for the conversion of the status of the laborers in question has been complied with. Practically all the privileges ordinarily given to regular workers of the company have also been accorded to the laborers herein involved, only that the Company now claims that they cannot be given that increase because they were found to be inefficient and incompetent, invoking in support of the charge the fact that they were found guilty of certain violations of some of the Company's rules. But it should be noted that the alleged violations, if any, were committed after the one-year probationary period and no evidence whatsoever was introduced to prove their inefficiency during the probationary period. If during the probationary period they proved to be efficient, they are en-

titled to be classified as regular laborers regardless of the infractions they may commit thereafter. INTERNATIONAL OIL FACTORY WORKERS UNION *v.* MARTINEZ, G.R. No. L-15560, December 31, 1960.

LABOR LAW—COURT OF INDUSTRIAL RELATIONS—THE CIR HAS DISCRETION TO ACCEPT OR REJECT THE FINDINGS OF THE PROSECUTOR AND HEARING EXAMINERS. — This is an appeal from an order of the Court of Industrial Relations for the payment of back wages to Eulogio Flores who was dismissed summarily and discriminatingly by herein petitioner for union activities. Petitioner now assails the manner of prosecution, alleging that the filing of the complaint by the prosecutor of the CIR who conducted the preliminary investigation, the reception of evidence by the examiners, the adoption by the judges of the report of the examiners made the CIR assume the role of accuser, prosecutor and judge at the same time. *Held,* there is no merit to this contention. The CIR has discretion to accept or reject the findings of the prosecutor and hearing examiners. ERLANGER AND GALINGER *v.* CIR, G.R. No. L-15118, December 29, 1960.

LABOR LAW—EMPLOYER-EMPLOYEE RELATION—WHERE THE PERSON FOR WHOM THE SERVICES ARE PERFORMED RESERVES THE RIGHT TO CONTROL NOT ONLY THE END TO BE ACHIEVED BUT ALSO THE MEANS TO BE USED IN REACHING THE END, THERE IS AN EMPLOYER-EMPLOYEE RELATIONSHIP. — The Court of Industrial Relations certified the Philippine Musicians Guild as the sole and exclusive bargaining representative of all musicians working for the LVN Pictures and Sampaguita Pictures, Inc. in its order which is now being assailed by the said film companies by appeal through certiorari to this Court. The film companies allege that such musicians are employed by an independent contractor, directly contracted by the film companies, having the power to hire and to fire out said musicians, and consequently, they are employees of the contractor and not of the film companies. *Held,* from the evidence presented, an employer-employee relationship exists between the film companies and the musicians. The film companies, not the independent contractor, fix the time and place including the date of the work. They provide transportation to and from the studio and meals at dinner time. The Company, through its Director during the recording session, supervises the recording of the musicians, what pieces are to be played and tells them what to do in every detail. He directly controls the activities of the musicians. An employer-employee relationship exists under the right to control test where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching the end. It exists notwithstanding the intervention of an independent contractor who had and exercised the power to hire and dismiss said musicians. It is the control over the means to be used in reaching the desired end which controls. LVN PICTURES *v.* PHILIPPINE MUSICIANS GUILD, G.R. No. L-12584; SAMPAGUITA PICTURES *v.* PHILIPPINE MUSICIANS GUILD, G.R. No. No. L-12598, January 28, 1961.

LABOR LAW—INDUSTRIAL PEACE ACT—UNFAVORABLE BUSINESS CONDITIONS DO NOT SUFFICE TO DENY BACK WAGES TO AN EMPLOYEE ILLEGALLY DISMISSED FOR UNION ACTIVITIES.— The Court of Industrial Relations ordered the reinstatement of Eulogio Flores as credit-investigator and the payment of back salaries, after he had been summarily and discriminatingly discharged for union activities by the petitioners. Upon appeal the appellate court sent back the case to the CIR for more evidence. After finding that the business of the corporation has suffered a recession and that its collectible accounts had declined, the CIR modified its decision, eliminating the reinstatment order and merely requiring the payment of back salaries less what Flores earned in the meantime. Petitioner assails, among others, the order for payment of back wages. *Held,* the unfavorable conditions in the corporation's business and the consequent reduction of its collectible accounts may not justify reinstatement but they are not sufficient grounds to deny back wages to Flores who was illegally dismissed on account of union activities. To hold otherwise would render the provisions of the Industrial Peace Act on unfair labor practices nugatory. ERLANGER AND GALINGER, INC. *v.* CIR, G.R. No. L-15118, December 29, 1960.

LABOR LAW—JURISDICTION OF THE COURT OF AGRARIAN RELATIONS—WHERE NO TENANCY RELATIONSHIP EXISTS BETWEEN THE CONTENDING PARTIES AND THE SITUATION IS ONE MERELY OF FORCIBLE ENTRY, THE COURT OF AGRARIAN RELATIONS HAS NO JURISDICTION. — The Camarines Sur Regional Agricultural School, et. al., filed with the CAR a complaint for illegal ejectment, alleging that the Agricultural School was the owner and/or legal possessor of a parcel of land tilled by its tenants, herein respondents; that the predecessor of the herein petitioner without consent of the complainants fenced the entire area of their holding and prevented the tenants from planting thereon unless they recognize him as the absolute legal owner and give him the landholder's share. The complainants asked that herein petitioner Arejola be ordered to desist from interfering with their cultivation of the premises. The tenants have no legal relationship with Arejola and he asserted that there being no tenancy relationship between himself and the complainants, the CAR had no jurisdiction over the controversy. The remedy, he maintained, was an action in the ordinary courts of justice for forcible entry. As the parties admitted the identity of the lot and the dispossession of the "tenants" by Arejola, the CAR, invoking Sec. 21 of R.A. 1199, and Sec. 16 of R.A. 2263 which provides: "it shall be unlawful for any third party to dispossess the tenant of his holding except by order of the court," directed Arejola to reinstate the "tenants" to their respective landholdings. Hence this appeal by certiorari, raising the only question of jurisdiction. *Held,* where no tenancy relationship exists between the contending parties and the situation is one merely of forcible entry, the CAR has no jurisdiction. There is no compelling reason to widen the scope of Sec. 7 of R.A. 1267 (as amended) creating the CAR so as to include any legal dispute wherein one party is agricultural tenant, no matter who his opponent is. Considering the whole of R.A. 1199 the "third party" mentioned in the said Sec. 21 should be construed to mean a person who is neither landholder nor tenant, but who acts for the landholder, like a

sheriff enforcing an execution sale against the landholder, or a purchaser or transferee of the land, or a mere dummy of the landholder. VDA. DE AREJOLA *v.* CAMARINES SUR REGIONAL AGRICULTURAL SCHOOL, G.R. No. L-15753, December 29, 1960.

LABOR LAW—SOCIAL SECURITY LAW—THE COMPULSORY COVERAGE OF R.A. NO. 1161, AS AMENDED, OR THE SOCIAL SECURITY LAW OF 1954, INCLUDES RELIGIOUS AND CHARITABLE INSTITUTIONS AND IS NOT LIMITED TO BUSINESSES AND ACTIVITIES ORGANIZED FOR PROFIT. — This is an appeal from two resolutions of the Social Security Commission denying the requests filed by the Roman Catholic Archbishop of Manila for exemption from compulsory coverage of R.A. No. 1161, as amended, otherwise known as the Social Security Law of 1954, of Catholic Charities and all religious and charitable institutions and/or organizations, which are directly or indirectly, wholly or partially, operated by the Roman Catholic Archbishop of Manila. The Social Security Law defines "employer" as "any person, natural or juridical, domestic or foreign, who carries in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by Government" (par. [c], sec. 8). Appellant contends that, following the principle of *ejusdem generis,* "employer" should be limited to those who carry on "undertakings or activities which have the element of profit or gain, or which are pursued for profit or gain" because the phrase "activity of any kind" in the definition is preceded by the words "any trade, business, industry, undertaking." *Held,* the rule of *ejusdem generis* is not applicable in the case at bar, for there is no uncertainty as to the purpose and intent of the Legislature. Had the Legislature really intended to limit the operation of law to entities organized for profit or gain, it would not have defined an "employer" in such a way as to include the Government and yet make an express exception of it. Furthermore, R.A. No. 1792, which took effect in 1957, expressly deleted the original provisions of the Social Security Law which then excluded religious and charitable institutions from its coverage, clearly indicating that inclusion thereof is now the legislative intent. ROMAN CATHOLIC ARCHBISHOP OF MANILA *v.* SOCIAL SECURITY COMMISSION, G.R. No. L-15045, January 20, 1961.

LABOR LAW—SOCIAL SECURITY LAW—THE RULE THAT LABOR LAWS APPLY ONLY TO INDUSTRY AND OCCUPATION FOR PURPOSES OF PROFIT OR GAIN HOLDS TRUE ONLY WHEN THE LABOR LAW INVOLVED EXPRESSLY PROVIDES FOR SUCH LIMITATION.— This is an appeal by the Roman Cotholic Archbishop of Manila from the resolutions of the Social Security Commission denying requests for exemption from compulsory coverage of R.A. No. 1161, as amended, or the Social Security Law of 1954, of Catholic Charities and all religious and charitable institutions and for organizations, directly or indirectly, wholly or partially, operated by the appellant. Appellant contends that the Social Security Law is a labor law. Consequently, following the rule laid down in the case of Boy Scouts of the Philippines v. Araos (G.R. No. L-10091, January 29, 1958) and other cases, it applies only to industry and occupation for purposes of profit or gain. *Held,* appellant's argument is untenable, for the cases cited by appellant are not in point, since the law therein involved, unlike the Social Security Law, expressely limits its application either to commercial, industrial or agricultural establishments or enterprises. ROMAN CATHOLIC ARCHBISHOP OF MANILA *v.* SOCIAL SECURITY COMMISSION, G.R. No. L-15045, January 20, 1961.

LABOR LAW—TENANCY LAW—TENANCY RELATIONSHIP CAN ONLY BE CREATED WITH THE CONSENT OF THE LANDHOLDER AND NOT BY USURPATION; HIRING LABORERS TO WORK FOR HIM CONSTITUTES A VALID GROUND FOR THE TENANT'S DISPOSSESSION.—The petitioners filed a petition with the Court of Agrarian Relations for reliquidation of crops and reinstatement in their landholdings. Named respondents were the alleged landholders and the tenants working on the landholdings from which petitioners claim to have been ejected. Petitioner Ismael Cañada admitted that he was not a tenant but that he used to help his father, the other petitioner, who, on his part, admitted that the landholdings he claims to have been dispossessed of were worked by hired laborers and his children. The lower court considered this admission as corroborating the claim of the respondents that Martin Cañada grabbed the landholdings of other tenants and had the same worked by hired laborers and some of his children. From the evidence presented, the lower court found that petitioners failed to establish their alleged tenancy of the landholdings claimed by them and that even assuming that petitioner Martin Cañada was really a tenant, he has nevertheless been guilty of acts which constitute valid grounds for his dispossession. The petition was accordingly dismissed. Hence, this present petition for review. It is urged that Martin Cañada was a tenant because it is admitted that there were lands cultivated by him. *Held,* the contention is untenable. Petitioners cannot be considered tenants simply because they actually worked as tenants on the landholdings in question. Tenancy relationship can only be created with the consent of the landholder through lawful means and not by imposition or usurpation. Even assuming that petitioner Martin Cañada was a tenant, he cannot now be ordered reinstated because he had been guilty of acts which constitute valid grounds for his dispossession, for while the law enjoins him to personally work the land himself or with the aid of the members of his family, he merely hired laborers to work for him. CAÑADA *v.* RUBI, G.R. No. L-15595 December 29, 1960.

LAND TITLES AND DEEDS—LAND REGISTRATION ACT—AN ORDER OF THE REGISTRATION COURT REQUIRING THE HOLDER OF A DUPLICATE CERTIFICATE OF TITLE TO SURRENDER THE SAME FOR ANNOTATION OF A LIEN IS APPEALABLE.—Jose, Juliana, Andrica and Jacinto Seton are children of the spouses Baldomero Seton and Severa Quimada. The said children were left as the legitimate heirs of the spouses when the latter died sometime in 1918 and 1940, respectively.

Among the properties left was a piece of land covered by Original Certificate of Title No. RO-783 (O-244) issued in the names of the deceased spouses, but in the possession of Jose and Juliana. In June, 1959, Jacinto's son, Ignacio, filed a motion in the court of first instance of Cebu in the original land registration proceedings, praying that Jose and Juliana be ordered to deliver the owner's duplicate of the original certificate of title to the Register of Deeds so that the deed of sale executed by his father in his favor of a portion of the land covered by the title may be annotated thereon. The court of first instance issued an order requiring Jose and Juliana to surrender the owner's duplicate of the original certificate of title for annotation of the sale. Jose and Juliana appealed. The court of first instance, however, dismissed the record on appeal, citing Gov't. of P.I. v. Payva (44 Phil., 629) to the effect that the order requiring the holder of a duplicate certificate of title to surrender the same for annotation of attachment or any other lien under Section 72 of Act No. 496 is not appealable. *Held*, the court erred in dismissing petitioners' record on appeal on the authority of the case cited. It was precisely held there that an order of the registration court requiring the holder of a duplicate certificate of title to surrender the same for the purpose of annotating an attachment, lien or adverse claim under Section 72 of Act No. 496 is appealable because it resolves important questions as to the respective rights of the parties. SETON *v.* RODRIGUEZ, G.R. No. L-16285, December 29, 1960.

LAND TITLES AND DEEDS—LAND REGISTRATION ACT—THE PENDENCY OF PARTITION PROCEEDINGS WHEREIN THE VALIDITY OF THE SALE OF A PIECE OF LAND COVERED BY A CERTIFICATE OF TITLE IS IN ISSUE IS NOT A BAR TO THE ANNOTATION OF THE SALE ON THE TITLE.—Jose, Juliana, Andrica and Jacinto Seton are children of the spouses Baldomero Seton and Severa Quimada. The said children were left as legitimate heirs of the spouses when the latter died sometime in 1918 and 1940, respectively. Among the properties left was a piece of land covered by Original Certificate of Title No. RO-783 (O-244) issued in the names of the deceased spouses, but in the possession of Jose and Juliana. In May, 1959, Jacinto's son, Ignacio, filed a complaint in the court of first instance of Cebu against Jose, Andrica and Juliana for partition of the piece of land left by the deceased spouses, alleging that he acquired by purchase all the rights and interests of his father therein. In June, 1959, Ignacio also filed a motion in another branch of the court of first instance of Cebu in the original land registration proceedings, praying that Jose and Juliana be ordered to deliver the owner's duplicate of the original certificate of title over the land to the register of deeds so that the deed of sale executed by his father in his favor may be annotated thereon. Opposition to the motion was interposed, oppositors alleging that the deed of sale sought to be registered was fictitious and invoking the pendency of action for partition filed by Ignacio against them. The court of first instance ordered the annotation of the sale on the certificate of title. Hence, this petition for certiorari to annul the said order. *Held*, the order complained of is affirmed. Registration is a mere ministerial act which only operates as a notice of deed, contract or instrument to others, but neither adds to its validity nor converts an invalid instrument into a valid one between the parties. This is so because the effect

or validity of the instrument can only be determined in an ordinary case before the courts, not before a court acting merely as a registration court which has no jurisdiction over the same. It follows that the pendency of partition proceedings wherein the validity of the sale of a piece of land is in issue does not preclude the registration of the sale at the back of the certificate of title covering the land. SETON *v.* RODRIGUEZ, G.R. No. L-16285, December 29, 1960.

LAND TITLES AND DEEDS—COMMONWEALTH ACT NO. 539—TO BE ENTITLED TO THE PRIVILEGE GRANTED BY SECTION I OF COMMONWEALTH ACT NO. 539, ONE SHOULD BE A BONA FIDE TENANT OR OCCUPANT IN THE SENSE THAT HE SHOULD BE UP TO DATE IN THE PAYMENT OF HIS RENTALS TO THE LANDOWNER.—The lot in question forms part of the Tambobong estate and was leased to Mamerta Antonio de Ignacio who sold her leasehold right to Alberto Santos on November 2, 1919. When Alberto Santos died, he left his wife and the plaintiffs as heirs. Plaintiffs took possession and administration of the lot in question When the Tambobong estate was acquired by the government, plaintiffs continued paying the rentals of the lot to the government until 1947. In 1954, the Bureau of Lands, as administrator of the Tambobong estate, notified plaintiffs to enter into a contract of sale of the lot with said Bureau and pay the purchase price within three months. Plaintiffs, however, asked for an indefinite extension of time within which to enter into the required contract of sale and the payment of the back rentals. In the meantime, the province of Rizal offered to purchase the lot for purposes of a fishery site. The land was sold to the province of Rizal by the Secretary of Agriculture and Natural Resources. Plaintiffs brought an action seeking to annul the contract of sale on the ground that they are the ones entitled to purchase the lot in question from the government at such reasonable price, they, being its *bona fide* tenants since their predecessor-in-interest died in 1941, have priority to purchase the same, and since the government sold the same to the province of Rizal in utter disregard of their right of preference, the sale is null and void, it having been made in violation of Sec. 1 of Commonwealth Act 539, which provides, " x x x The President x x x is authorized to acquire lands x x x and to subdivide the same x x x for resale x x x to their tenants x x x." *Held*, Section 1 of Commonwealth Act 539 requires that the recipient of the privilege be a *bona fide* tenant or occupant in the sense that he should be up to date in the payment of his rentals to the landowner. In this case, this condition is not present, for plaintiffs are not *bona fide* tenants of the land in controversy. Plaintiffs having paid their rentals only up to the month of December, 1947 and ceased to pay the same since that year to the time of this litigation, cannot be considered as *bona fide* tenants. JUAT *v.* LAND TENURE ADMINISTRATION, G.R. No. L-17080, January 28, 1961.

LAND TITLES AND DEEDS—MORTGAGES—AN INNOCENT THIRD PARTY HAS THE RIGHT TO RELY ON THE FACE OF THE CERTIFICATE OF TITLE AND HAS NO OBLIGATION TO GO BEYOND THE SAME IN THE ABSENCE OF ANYTHING THEREIN TO EXCITE SUSPICION.—An original certificate of title was issued in the name of the heirs of

Maximiano Blanco who died before the issuance of the patient in his favor. Fructuosa Esquierdo, the common law wife of the deceased, made an extra-judicial partition in her favor of the entire land, claiming in an affidavit that she was Blanco's widow and only heir. After the issuance of a Transfer Certificate of Title (TCT) in her favor, Fructuosa mortgaged the land to the Development Bank of the Philippines. The present action was brought by the brothers and sisters of Maximiano Blanco praying for the annulment of the affidavit and the cancellation of the TCT on the ground that Maximiano Blanco had died single and left no forced heirs except the plaintiffs. The trial court ordered the cancellation of both the TCT and the registration of the mortgage. In its motion for reconsideration, the DBP argued that it was an innocent mortgagee for valuable consideration and as such was protected by law regardless of whether or not the title to the land had been secured fraudulently by the mortgagor. *Held,* the DBP not being a party to the fraud has a right to rely on what appears on the certificate and, in the absence of anything to excite suspicion, is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate. Being an innocent mortgagee for value, its rights or lien must be respected and protected even if the mortgagor obtained her title thereto through fraud. BLANCO *v.* ESQUIERDO, G.R. No. L-15182, December 29, 1960.

LAND TITLES AND DEEDS—SEC. 78, ACT 496—THE RIGHT TO PETITION FOR A NEW CERTIFICATE IS SUBJECT TO OBJECTIONS RELATIVE TO THE VALIDITY OF THE PROCEEDINGS LEADING TO THE TRANSFER OF THE LAND SUBJECT THEREOF, TO BE DETERMINED IN A SEPARATE ACTION.—Teopista Balanga mortgaged to Dr. Augusto V. Ongsiako a parcel of land covered by TCT No. 13363 registered in the name of Teopista B. de Balanga, married to Faustino A. Balanga, together with a house of strong materials standing thereon for the sum of ₱5,000. After paying the debt secured by the mortgage, Teopista obtained a loan of ₱6,050 on November 20, 1948 from the spouses Catalino Clemente and Andrea Reyes, payable within one year from date and promised to execute a deed of mortgage on the land above-mentioned. Teopista failed to comply with her promise. Meanwhile, her husband died. In an action seeking to compel her to execute the dead of mortgage on July 31, 1954, Teopista failed to appear at the hearing and was declared in default and judgment was rendered against her. The Clemente spouses bought the land and building above-mentioned in an execution sale and subsequently sold the same to their counsel Luis Manalang, subject to the right of redemption of the judgment debtor. The latter having failed to redeem the properties, a certificate of sale was issued to the spouses, which, together with the deed of sale in favor of Manalang was registered and annotated on the back of TCT No. 13363. Manalang filed a petition for cancellation of said title and the issuance of another in his name which was opposed by Teopista by impeaching the execution and the sale of the properties in question, alleging that they are conjugal in nature and the house erected thereon was a family home. The CFI and the Court of Appeals decided in Manalang's favor. Hence, this petition for certiorari. *Held,* the right to petition for a new certificate under section 78 of Act 496 is not absolute but subject to the determination of any objection that may be interposed

relative to the validity of the proceedings leading to the transfer of the land subject thereof, which should first be threshed out in a separate appropriate action before entry of a new certificate may be decreed. BALANGA *v.* COURT OF APPEALS, G.R. No. L-15438, January 31, 1961.

POLITICAL LAW—ADMINISTRATIVE LAW—TO BE BENEFITED BY REP. ACT NO. 910, AS AMENDED BY REP. ACT NO. 1057, THE RETIREE MUST HAVE RENDERED AT LEAST 20 YEARS OF GOVERNMENT SERVICE, 10 YEARS OF WHICH MUST HAVE BEEN CONTINUOUSLY RENDERED IN THE JUDICIARY.—Plaintiff has held various government positions since 1901; first as a court stenographer, then as provincial governor of Pangasinan, later as senator, and finally, as Secretary of Justice. On Feb. 7, 1936, he was appointed associate justice of the Court of Appeals, serving until Oct. 31, 1939, when he accepted an appointment as Secretary of National Defense, which he assumed on November 1, 1939. Plaintiff continued serving in the government in different capacities until his retirement at the age of 72 years on June 16, 1952, after rendering a total of 41 years, 4 months and 25 days of government service, 3 years, 8 months and 24 days of which were spent as magistrate of the appellate court. Plaintiff was retired under Rep. Act No. 660, but now claims to be entitled to be retired under Rep. Act No. 910, as amended by Rep. Act No. 1057, this law being more beneficial to him. Defendant, however, rejected the claim, contending that, while plaintiff had rendered more than 20 years of government service, e lacks the 10 continuous years of service in the judiciary that is required under Sec. 1 of Rep. Act No. 910, as amended, plaintiff having been considered resigned from the Court of Appeals at the age of 59 years, when he accepted another government office. *Held,* Rep. Act No. 910 was prospectively confined to cases of retirement of a justice of the Supreme Court or of the Court of Appeals attaining the age of 57 or 70 years, as the case may be, provided the retiree possesses all the conditions prescribed for each case to wit: that he must have rendered at least 20 years' service in either or both the judiciary or any other branch of government, in case of *compulsory retirement* (upon reaching the age of 70 years), or, in the case of optional retirement at the age of 57 years or over, 20 years' service in the government, 10 or more years of which must have been continuously rendered as such justice or judge of a court of record. The amendatory law, Rep. Act No. 1957, did not do away with any of these prerequisite conditions. Thus construed, the amended Rep. Act No. 910 did not cover the case of the herein plaintiff-appellant, who has served a total of only 3 years, 8 months and 24 days in the judiciary. TEOFILO SISON *v.* GSIS, G.R. No. L-15637, February 22, 1961.

POLITICAL LAW—CONSTITUTIONAL LAW—THE DISBURSEMENTS OF PUBLIC FUNDS PURSUANT TO A LAW APPROPRIATING THEM FOR PRIVATE PURPOSES MAY BE CONTESTED BY A TAXPAYER OR ONE WHO REPRESENTS TAXPAYERS.—R. A. No. 920 was approved on June 20, 1953, appropriating ₱85,000 for the construction of feeder roads in the Antonio Subdivision belonging to Jose Zulueta. On December 12, 1953 Zulueta donated to the Government said feeder roads, which

donation was accepted on the same date by the Executive Secretary. Governor Pascual of Rizal instituted an action on the ground that the donation was illegal and R.A. No. 920 was unconstitutional. The CFI of Rizal declared the illegality of the donation but held that the legality thereof may not now be contested by the petitioner because his interests are not directly affected. *Held,* while it is settled that the validity of a statute may be contested only by those who will sustain a direct injury in consequence of its enforcement, it is also settled that disbursement of public funds may be enjoined at the request of a taxpayer upon the theory that the expenditure of public funds by an officer of the State for the purpose of administering an unconstitutional act constitutes a misapplication of such funds. Here, the Governor is not merely a taxpayer; he represents the taxpayers. Likewise, R.A. No. 920 appropriates public funds for a private purpose and hence is null and void regardless of subsequent occurences. PASCUAL *v.* SEC. OF PUBLIC WORKS, G.R. No. L-10405, December 29, 1960.

POLITICAL LAW—CONSTITUTIONAL LAW—THE INCLUSION OF RELIGIOUS INSTITUTIONS UNDER THE SOCIAL SECURITY SYSTEM DOES NOT VIOLATE THE CONSTITUTIONAL PROHIBITION AGAINST THE APPLICATION OF PUBLIC FUNDS FOR RELIGIOUS USES.—This is an appeal by the Roman Catholic Archbishop of Manila from the resolutions of the Social Security Commission denying requests for exemption of Catholic Charities and all religious and charitable institutions and/or organizations, directly or indirectly, wholly or partially, operated by the appellant, from the compulsory coverage of the Social Security Law. The appellant claims that the inclusion of religious organizations under coverage of the Social Security Law violates the constitutional prohibition against the application of public funds for the use, benefit or support of any priest who might be employed by appellant. *Held,* there is no merit to this claim. The funds contributed to the System created by the law are not public funds, but funds belonging to the members which are merely held in trust by the government. Even assuming they are, their payment as retirement, death or disability benefits would not constitute a violation of the Constitution since such payment shall be made to the priest not because he is a priest but because he is an employee. ROMAN CATHOLIC ARCHBISHOP OF MANILA *v.* SOCIAL SECURITY COMMISSION, G.R. No. L-15045, January 20, 1961.

POLITICAL LAW—CONSTITUTIONAL LAW—THE INCLUSION OF RELIGIOUS INSTITUTIONS UNDER THE SOCIAL SECURITY SYSTEM DOES NOT IMPAIR THE RIGHT TO DISSEMINATE RELIGIOUS INFORMATION.—The Roman Catholic Archbishop of Manila appeals from the resolutions of the Social Security Commission denying requests for exemption from the coverage of the Social Security Law of 1954, of Catholic Charities and all religious and charitable institutions and/or organizations, directly or indirectly, wholly or partially, operated by the appellant. It is contended that the enforcement of the Social Security Law impairs appellant's right to disseminate religious information. *Held,* this contention is not tenable. All that is required of appellant is to

make monthly contributions to the System for covered employees in its employ. These contributions are not in the nature of taxes on employment but are intended for the protection of employees against the hazards of disability, sickness, old age and death, in line with the constitutional mandate to promote social justice to insure the well-being and economic security of all the people. The enactment of the Social Security Law is a legitimate exercise of the police power. ROMAN CATHOLIC ARCHBISHOP OF MANILA *v.* SOCIAL SECURITY COMMISSION, G.R. No. L-15045, January 20, 1961.

POLITICAL LAW—ADMINISTRATIVE LAW—THE WORKING DAYS OF THE WORKERS IN THE DEPARTMENT OF PUBLIC SERVICE CAN NOT BE REDUCED IN VIEW OF THE EXIGENCIES OF THE SERVICE. — This is a petition for the enforcement of Republic Act No. 1880, which amended Section 562 of the Revised Administrative Code, fixing, *except in certain cases,* the legal number of hours of labor in every branch of the Government Service as well as in government-owned and controlled corporations at 8 hours a day, for five days a week, or a total of 40 hours a week. The exception which are provided by Section 562 of the Revised Administrative Code, as amended, are those "for school, courts, hospitals and health clinics or where the exigencies of the service so requires." If the members of the petitioning union are required to work seven days a week, as before the enactment of Republic Act No. 1880, it must be because their work is demanded by the "exigencies of the service." Indeed, if the number of their work days is reduced, or if they are given days off on Saturdays and Sundays, including holidays, public health and sanitation would be undermined and endangered by the non-collection of garbage and other refuse matters, not to mention the foul odor that would fill the city's atmosphere in those two or more days. DEPARTMENT OF PUBLIC SERVICE LABOR UNION *v.* CIR. G.R. No. L-15458, January 28, 1961.

POLITICAL LAW—ELECTION LAW—IN ELECTION CASES, A GENERAL DENIAL PUTS IN ISSUE THE MATERIAL ALLEGATIONS OF THE PROTEST. — Jose Pascual filed a protest contesting the election of Claro Ibasco as mayor of Mercedes, Camarines Norte. Protestee failed to file his answer as required by law; he was not however declared in default, but was deemed to have entered a general denial as provided for in section 176 (e) of the Revised Election Code. During the hearing, the protestee questioned the validity of the ballots cast in favor of the protestant, but the trial court ruled that the protestee cannot impugn said ballots because he failed to file an answer with affirmative defenses. The protestee filed a motion for reconsideration contending that, as he has not been declared in default, he has a right to contest the ballots cast in favor of the protestant, provided that they are covered by the protest. It is the theory of the trial court that the failure of the protestee to file an answer is tantamount to an admission on his part of the material allegations of the protest and, therefore, he is no longer in a position to dispute them. *Held,* a general denial puts in issue the material allega-

tions of the complaint, and, consequently, under such denial the protestee may present evidence which may disprove said allegations. But he cannot present evidence to prove any affirmative defense (Francisco, How To Try Election Cases, p. 136). It is in this sense that the term "general denial" should be understood in election cases, for to give it a different meaning would render the provisions of section 176 (e) of the Revised Election Code nugatory and meaningless; that phrase would be purposeless if we were to hold that by "general denial" the protestee would be deemed to have admitted all the material allegations of the protest. CLARO IBASCO *v.* MELQUIADES ILAO. G.R. No. L-17512, December 29, 1960.

POLITICAL LAW—IMMIGRATION LAWS—A PEDDLER UNDER SECTION 12 OF ACT NO. 702 HAS THE STATUS OF LABORER AND NOT OF MERCHANT. — Singh, a citizen of India, was admitted to the Philippines in 1949 upon his representation under oath that he was going to follow the occupation of a dry goods merchant. In 1954 the respondent Board of Commissioners had him arrested for having engaged in employment other than that of merchant. The Board of Special Inquiry investigated the charges against him and recommended that they be dropped. The Board of Commissioners, however, held him guilty as charged. Singh brought a certiorari case before the CFI of Manila which decided for the petitioner. In the investigation of the charges aforementioned Singh admitted employment as a security guard but likewise claimed to have engaged in his own business as a peddler. This led the CFI to hold that "a departure in the course of time from one's commitment after he has lived up to it for three full years does not stamp the said commitment as false and misleading from the start." This decision is here appealed from. *Held*, the lower court was under the belief that the petitioner had lived up for three full years to his commitment to be here solely as a dry goods "merchant". Petitioner had never been, in legal contemplation, a "merchant". As an alleged "peddler", he had, under section 12 of Act No. 702 the status of "laborer" not or "merchant". SINGH *v.* BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION. G.R. No. L-11015, February 25, 1961.

POLITICAL LAW—IMMIGRATION LAWS—A PERSON ADMITTED TO THE PHILIPPINES UPON REPRESENTATION TO BECOME SOLELY A MERCHANT IS SUBJECT TO DEPORTATION UPON VIOLATION OF SUCH REPRESENTATION. — Singh, a citizen of India, was admitted to the Philippines in 1949 upon his representation under oath that he was going to follow the occupation of a dry goods merchant. In 1954 he was arrested by order of herein respondent Board of Commissioners for having engaged in employment other than that of merchant. It appeared in the subsequent investigation that Singh had been employed as a security guard for a certain period. The Board of Commissioners held Singh guilty as charged, so the latter filed a certorari case before the CFI of Manila. The lower court held for the petitioner upon the ground that his representation under oath in 1949 was not shown by evidence to have been false and misleading when made and a subsequent departure therefrom

does not make the same false and misleading. Hence, this appeal. *Held*, the theory of the lower court would defeat the purpose of immigration laws. Had petitioner herein not represented that he intended to be solely a dry goods merchant, he would not and could not have been admitted to the Philippines because the admission of laborers is not favored on account of the resultant competition to local labor. Under the immigration laws of the United States, after which our Immigration Act of 1940 was patterned, persons admitted under a given status become subject to deportation upon change of such status. SINGH *v.* BOARD OF COMMISSION OF THE BUREAU OF IMMIGRATION. G.R. No. L-11015, February 25, 1961.

POLITICAL LAW—IMMIGRATION LAWS—FINDINGS OF FACT OF BOARDS OF SPECIAL INQUIRY ARE NOT FINAL AND CONCLUSIVE UPON THE BOARD OF COMMISSIONERS. — Singh, a citizen of India, was admitted to the Philippines upon his representation under oath before the Board of Special Inquiry on December 21, 1949 to the effect that he was going to follow the occupation of a dry goods merchant. He was subsequently investigated by the Board of Special Inquiry during which he admitted having been employed as guard at the U.S. Army Hospital but he alleged that he was also engaged in his own business as a "peddler". The Board of Special Inquiry recommended that the charges be dropped; however, the Board of Commissioners, considering his admission regarding his employment and his representation under oath in 1949, held him guilty as charged. Singh brought this case for certiorari to the CFI of Manila which rendered a decision holding, *inter alia*, that the decision of the Board of Commissioners adverse to the recommendation of its own finding body, the Board of Special Inquiry, is an indication that said decision has no evidence to support it, hence, rendered in grave abuse of discretion. Hence, this appeal. *Held*, findings of fact of boards of special inquiry are not final and conclusive upon the Board of Commissioners who have the explicit statutory authority to review, on appeal, the decisions—including the findings of fact—of the former (section 27, C.A. 613, as amended). Besides, respondent's decision adopted the facts set forth in the report of the Board of Special Inquiry, although it did not accept the conclusions drawn therefrom. SINGH *v.* BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION. G.R. No. L-11015, February 25, 1961.

POLITICAL LAW—PUBLIC CORPORATIONS—A MUNICIPAL CORPORATION IS LIABLE, WHETHER INCLUDED OR NOT IN THE COMPLAINT FOR THE RECOVERY OF BACK SALARIES DUE TO WRONGFUL REMOVAL FROM OFFICE. — Anacleto Caballero filed with the CFI of Cebu a petition for mandamus against the City Mayor, the Municipal Board, the City Treasurer and the City Auditor, all of Cebu City, for reinstatement to his former position of Caretaker of Cemeteries and for the payment of his back salaries. The CFI ordered his reinstatement and the payment of his back salaries. The Municipal Board of the city passed a resolution appropriating ₱3,244 for the payment of back salaries of Caballero, which amount was paid to him. Caballero not having been reinstated, and his position having been abolished, Judge Piccio issued

an order directing the Municipal Board to recreate Caballero's position. As the Municipal Board did not comply with the order, Caballero filed a motion asking for an order to compel the members of the Board to do so. The City Mayor, members of the Board, the Treasurer and Auditor answering the motion for compliance, alleged that the City of Cebu, not having been made a party to the (mandamus) case, compulsion would be illegal and unwarranted. The lower court, nevertheless, issued an order directing the respondent Municipal Board to recreate Caballero's position. Hence, this petition for certiorari to restrain Caballero and Judge Piccio from executing the judgment. The question posed is: Does the non-inclusion of the City of Cebu in the mandamus case make the payment of the back salaries of Caballero illegal and not binding on said City? *Held*, a municipal corporation, whether included or not in the complaint for the recovery of back salaries due to wrongful removal from office, is liable. When a judgment is rendered against an officer of a municipal corporation who sues or is sued in his official capacity, the judgment is binding upon the corporation, upon the other officers of the municipal corporation who represent the same interest, and the effect of the judgment against a municipal officer is not lost by a change in the occupant of the office (38 Am. Jur. sec. 727, pp. 431-32). THE CITY OF CEBU *v.* PICCIO. G.R. No. L-13012 and L-14876, December 31, 1960.

POLITICAL LAW—PUBLIC CORPORATIONS—THE AMOUNT OF LICENSE FEES THAT MAY BE IMPOSED SHOULD BE APPROXIMATELY COMMENSURATE WITH AND BE SUFFICIENT TO COVER ALL THE NECESSARY OR PROBABLE EXPENSES OF ISSUING THE LICENSE AND OF SUCH INSPECTION, REGULATION AND SUPERVISION AS MAY BE LAWFUL. — The Plaintiffs are owners and operators of automatic phonograph machines, popularly known as juke boxes, in the City of Manila and as such are required to pay ₱50.00 per annum as license fee for the installation and use of each juke box, under the provisions of sections 773 & 774 of Ordinance No. 1600. However, on March 19, 1954, the Municipal Board of the City of Manila enacted Ordinance No. 3628 which amends Sections 773 & 774 of Ordinance No. 1600: thus requiring the plaintiffs to pay the amount of ₱300.00 per annum license fee. The plaintiffs in assailing the validity of Ordinance 3628 contended that the same requires a lincese fee which is exorbitant, excessive, confiscatory and substantially disproportionate to the reasonable expenses of issuing the license for and regulating the said machines. *Held*. It is shown in the record that two of plaintiff's juke box machines, after deducting depreciation and operating expenses, but before the payment of permit and license fees, had an annual income of only ₱211. In view of these circumstances, it is obvious that the amount of ₱300.00 charged as license fee is excessive and cannot be justified. The amount of license fees that may be imposed upon juke box machines and other coin-operated contrivances cannot be prohibitive, extortionate, confiscatory or in an unlawful restraint of trade, but should reasonably meet the necessary and probable expenses of issuing the license and such inspection, regulation and supervision as may be lawful. Any ordinance which imposes a license fee which is substantially in excess of the reasonable expense of issuing the license and regulating the occupation to which it pertains, is invalid. MORCOIN CO. *v.* CITY OF MANILA. G.R. No. L-15351, January 28, 1961.

POLITICAL LAW—TAXATION—ALLOWANCES FOR HOUSE RENTALS, TRAVEL EXPENSE, ETC. WHICH BENEFITED THE EMPLOYER MORE THAN THE EMPLOYEE, DO NOT FORM PART OF THE LATTER'S TAXABLE INCOME. — Arthur Henderson is the president of the American International Underwriters for the Phil., Inc. with a salary of ₱30,000 a year and allowances for house rentals and utilities, etc. His employer furnished him a luxurious apartment, beyond his personal needs, but where he, as president of the said corporation, entertained and put up houseguests. His employer also paid his entrance fee to the Gun Club of ₱200. In 1952, his wife made a trip to New York for the benefit of his employer. In assessing the income tax liability of the Hendersons for the period from 1948 to 1952, the Collector of Internal Revenue included as taxable income the allowances for rental, residential expenses, subsistence, water, electricity, entrance fee to the Gun Club and travelling allowance of Mrs. Henderson. On appeal, the question is whether the Collector made a proper inclusion of the allowances for rentals, travelling, etc. in the taxable income of Henderson. *Held*, Mr. Henderson and his wife had to entertain and put up houseguests in their apartment to enhance the corporation's business. Rental thereof should not therefore be counted as taxable income. (Only the amount of ₱4,800 annually, the ratable value to him of the quarters furnished constitutes a part of the taxable income.) Likewise the travelling expenses of Mrs. Henderson, not having redounded to the benefit of the taxpayer but to the corporation should not be considered as taxable income. THE COLLECTOR OF INTERNAL REVENUE *v* HENDERSON. G.R. No. L-12954 and L-13049, February 28, 1961.

POLITICAL LAW—TAXATION—A PETITION FOR REVIEW FILED WITH THE COURT OF TAX APPEALS ON THE LAST DAY OF THE TWO-YEAR PRESCRIPTIVE PERIOD CONFERS JURISDICTION ON SAID COURT EVEN IF THE COLLECTOR OF INTERNAL REVENUE HAD NOT YET RULED ON THE CORRESPONDING PETITION FOR REFUND. — Respondent domestic corporation filed a petition for refund of an alleged overpayment on its income tax almost two years after having paid the first of two installments therefor. About two months later or on the last day for the two-year prescriptive period if counted from the payment of the first installment, the said corporation filed a petition for review with the Court of Tax Appeals without further waiting for the ruling of the Collector of Internal Revenue on the petition for refund.

The Court of Tax Appeals, in a resolution promulgated after a preliminary hearing, held that it had jurisdiction and ordered that the case be set for hearing on the merits. The Collector appealed by bringing this present petition for certiorari and prohibition with preliminary injunction. *Held*, even if we were to consider the present petition as an independent action for certiorari and/or prohibition, the same must be denied for lack of merit. The petitioner Collector of Internal Revenue has had under

consideration for more than two months the petition for refund but, for unknown reasons, the same had remained undecided. The respondent corporation, therefore had no alternative but to file suit, for otherwise any action it had for refund would have prescribed, since the two-year period for the filing of an appropriate action under Sec. 306 of the National Internal Revenue Code would have expired after the day it filed the petition for review, if we computed the period from the payment of the first installment. COLLECTOR OF INT. REV. *v.* CTA AND HUME PIPE & ASBESTOS CO. INC., G.R. No. L-11494, January 28, 1961

POLITICAL LAW—TAXATION—CLAIMS FOR INDEBTEDNESS INCURRED OUTSIDE THE PHILIPPINES ARE NOT DEDUCTIBLE IN ESTATE AND INHERITANCE TAXATION IN THE ABSENCE OF STATEMENTS AS TO THE EXISTENCE OR NON-EXISTENCE OF PROPERTIES OUTSIDE THE PHILIPPINES.—Walter G. Stevenson, a British subject died in California, his permanent residence, with real and personal properties in the Philippines. Estate and inheritance taxes were assessed on said properties and paid by the estate. A claim for refund of alleged overpayments having been denied, an action for recovery thereof was brought by the Court of Tax Appeals. Respondents, on appeal from the decision of the CTA, contend that the Tax Court erred in disallowing the deduction of an item representing an indebtedness incurred by the decedent during his lifetime in favor of a bank in California. Respondents rely on sec. 89 (b) (1) in relation to sec. 89 (a) (1) (E) and sec. 89 (d) of the National Internal Revenue Code. *Held*, since there is no statement of the value of the estate situated *outside* of the Philippines, or that there exists no such properties outside the Philippines, no part of the indebtedness can be allowed to be deducted pursuant to sec. 89 (d) (1) of the NIRC. COLLECTOR OF INT. REV. *v.* FISHER AND FISHER: FISHER AND FISHER *v.* COLLECTOR OF INT. REV., G.R. No. L-11622 & 11668, January 28, 1961.

POLITICAL LAW—TAXATION—INTERLOCUTORY RULINGS, ORDERS AND DECISIONS OF THE COURT OF TAX APPEALS MAY BE APPEALED FROM TO THE SUPREME COURT ONLY AFTER THE FINAL DECISION IN THE CASE HAS BEEN RENDERED. — Respondent domestic corporation filed a petition for refund of an alleged overpayment of its income tax almost two years after having paid the first of two installments therefore. About two months thereafter or on the last day for the two-year prescriptive period if counted from the payment of the first installment, the said corporation filed a petition for review with the Court of Tax Appeals without waiting further for the ruling of the collector on the petition for refund. The collector filed his answer and alleged by way of affirmative defense that the Court of Tax Appeals had no jurisdiction to entertain the petition for review, for the reason that no decision or ruling has been as yet rendered by him upon the petition for refund. The Court of Tax Appeals, after a preliminary hearing, promulgated a resolution holding that it had jurisdiction over the case and ordered that the same be set for hearing on the merits. Hence, this petition was filed by the collector. *Held*, the present petition for certiorari

and prohibition with preliminary injunction is, according to the petitioner himself, an appeal from the resolution of the Court of Tax Appeals. While, according to R.A. No. 1125, any party adversely affected by any ruling, order or decision of the Court of Tax Appeals may appeal therefrom to the Supreme Court, it must be understood that such appeal must be taken only against final rulings, orders and decisions of said Court. Interlocutory rulings, orders and decisions may be appealed from only after the final decision in the case has been rendered, for otherwise, a single case could give rise to multiple appeals, to the detriment of the administration of justice. Therefore, as an appeal from the resolution of the Court of Tax Appeals and petition under consideration must be dismissed, it being obvious that said resolution was merely interlocutory, for far from putting an end to the case before it, the resolution provided that the case be set for hearing on the merits. COLLECTOR OF INT. REV. *v.* CTA HUME PIPE & ASBESTOS CO., INC., G.R. No. L-11494, January 28, 1961.

POLITICAL LAW—TAXATION—SHARES OF STOCK SHOULD BE VALUED AT THE PRICE PREVAILING IN THE SITUS OF TAXATION. — Walter G. Stevenson, a British subject, died in San Francisco, California, where he was permanently residing. He left considerable real and personal properties in the Philippines, among which were 210,000 shares of stocks in the Mindanao Mother Lode Mines, Inc., a domestic corporation. From a decision of the Court of Tax Appeals involving such properties one of the questions raised on appeal touches on the basis for fixing the valuation of the abovementioned shares of stock. Respondents contend that the basis should be the market quotations obtaining at the San Francisco (California) Stock Exchange, on the theory that the certificates of stock were then held in that place and registered with the said stock exchange. *Held*, we cannot agree with respondent's argument. The situs of the shares of stock, for purposes of taxation, being located in the Philippines as conceded by respondents themselves, and since they are sought to be taxed in this jurisdiction consistent with the exercise of our government's taxing authority, their fair market value should be fixed on the basis of the price prevailing in our country. COLLECTOR OF INT. REV. *v.* FISHER AND FISHER; AND FISHER AND FISHER *v.* COLLECTOR OF INT. REV., G.R. Nos. L-11622 & 11668, January 28, 1961.

POLITICAL LAW—TAXATION—RECIPROCITY IN EXEMPTIONS FROM ESTATE AND INHERITANCE TAXES UNDER SEC. 22 OF THE NIRC MUST BE TOTAL RECIPROCITY. — The decedent Walter G. Stevenson was a British subject who died in San Francisco, California, leaving real and personal properties in the Philippines. He was permanently residing in San Francisco. Among the properties above mentioned were 210,000 shares of stocks in the Mindanao Mother Lode Mines, Inc. In an action for the recovery of allegedly overpaid estate and inheritance taxes, the Court of Tax Appeals held, *inter alia*, that the estate can avail itself of the reciprocity proviso embodied in sec. 122 of the NIRC granting exemption from the payment of estate and inheritance taxes on the abovementioned shares of stocks. Hence, this appeal. *Held*, reciprocity under sec. 122 of the National Internal Revenue Code and under sec. 13851 of

the California Inheritance Tax Law must be *total*, that is, with respect to *transfer or death taxes of any and every character*, in the case of the Philippine Law, and to *legacy, succession, or death tax of any and every character*, in the case of the California law. Since the State of California imposes only inheritance taxes, it being the Federal Law which imposes estate taxes and considering that the latter Federal Law recognizes no reciprocity, there would only result a partial reciprocity if we apply the reciprocity clauses. Since both Philippine Law and Californian Law make such clauses applicable only in cases of total reciprocity or not at all, there could not be any partial reciprocity. COLLECTOR OF INT. REV. *v.* FISHER AND FISHER; FISHER AND FISHER *v.* COLLECTOR OF INT. REV., G.R. Nos. L-11622 &11668, January 28, 1961.

POLITICAL LAW—TAXATION—TAXES ARE NOT SUBJECT TO CONTRACT BETWEEN THE TAXPAYER AND THE TAX OFFICER, UNLESS THERE IS AN ACTUAL COMPROMISE. — The Collector of Internal Revenue assessed against the estate of Dora Anna Wood estate tax amounting to ₱13,670.73 and inheritance tax totalling ₱38,144.91. On petition of the administratrix, the Collector rendered a final decision directing McGrath (the administratrix) to pay ₱30,144.91 as inheritance tax, penalties etc. McGrath filed a petition for review with the Court of Tax Appeals which rendered a decision declaring the estate of Dora Anna Wood exempt from the payment of the inheritance tax, but subject to the estate tax in the amount of ₱13,160.55. Both the Collector and McGrath appealed. In her appeal the petitioner McGrath claims that since the Collector accepted a check tendered by her in full settlement of all death taxes due and payable, the Collector can no longer collect the alleged deficiency taxes, because the acceptance by the Collector of said tender constitutes a compromise on the obligation of the estate of the deceased. *Held,* this contention is untenable. Taxes are fixed by law and are not subject to contract between the taxpayer and tax officer, except when there is an actual compromise, which in the case at bar does not exist. The acceptance of any amount by the employees or officials, which does not constitute a full payment of the amount fixed by law, is no ground for the claim for exemption by the taxpayer from liability for the remaining amount due under the law. Moreover, errors of tax officers do not bind the government or prejudice its rights to the taxes or dues collectible by it from its citizens. THE COLLECTOR OF INTERNAL REVENUE *v.* MCGRATH. G.R. No. L-12710 and L-12721, February 28, 1961.

POLITICAL LAW—TAXATION—WHERE THE TAXPAYER CONSISTENTLY PROTESTED THE ASSESSMENT, HE IS DEEMED TO HAVE WAIVED THE DEFENSE OF PRESCRIPTION. — On November 7, 1950, the Collector of Internal Revenue made an assessment on Yutivo Sons Hardware Co. and demanded from the latter deficiency sales tax from July 1, 1947 to December 31, 1949. The assessment was disputed by the company. On November 15, 1952, after reinvestigation, the Collector countermanded his demand for sales tax deficiency on the ground that no sufficient evidence could be gathered to sustain the assessment. The Secretary of Finance, whose approval was made a condition of the withdrawal and to whom the papers were endorsed, returned them to the Collector for reinvestigation. On December 16, 1954, after another reinvestigation, the Collector redetermined that the aforementioned tax assessment was lawfully due and in addition assessed deficiency sales tax for the four quarters of 1950. The second assessment was contested by Yutivo before the Tax Court which affirmed the assessment made by the Collector. Yutivo brought the present appeal. The petitioner contends that the Collector has lost his right to issue the disputed assessment by reason of prescription. *Held,* the assessment in question was consistently protested by the petitioner, making several requests for reinvestigation thereof. Under the circumstances, the petitioner may be considered to have waived the defense of prescription. YUTIVO SONS HARDWARE CO. *v.* COURT OF APPEALS., G.R. No. L-13203, January 28, 1961.

REMEDIAL LAW—CIVIL PROCEDURE—THE COURT OF FIRST INTANCE MAY AMEND ITS DECISIONS *MOTU PROPRIO* WITHIN THE REGLAMENTARY PERIOD—TO APPEAL IF NO APPEAL HAS YET BEEN TAKEN. — Plaintiff Carlos Moran Sison commenced this action in the Court of First Instance of Manila for damages, attorneys fees and costs. Defendant filed a counterclaim and the court in due course gave judgment on December 10, 1954 for the plaintiff in the sums of ₱5,000 as moral damages and ₱1,000 as attorney's fees, besides the costs. Subsequently, the court *motu proprio* rendered an amended decision, dated December 29, 1954, finding no merit in the defendant's counterclaim and increasing the damages awarded to the plaintiff to ₱15,000 and the attorney's fees to ₱3,000. Defendant appealed therefrom, assailing it as a nullity upon the ground that none of the parties had filed any motion or petition therefor, and that said amendment did not involve a correction of mere clerical mistakes, but a substantial modification, not only of the award for the plaintiff, but also of the findings of fact and reasons for said award. *Held,* there is no merit to this pretense, for the amended decision was rendered nineteen (19) days after the promulgation of the original decision, or within the reglamentary period to appeal therefrom, and before any appeal had been taken by the parties therein, so that the lower court still had jurisdiction and control over the case. Moreover, said amendment is authorized by Rule 124, Section 5, of the Rules of Court, pursuant to which "every court shall have power x x x to amend and control its processes and orders so as to make them conformable to law and justice." SISON *v.* DAVID, G.R. No. L-11268, January 28, 1961.

REMEDIAL LAW—CRIMINAL PROCEDURE—IN COMPLEX CRIMES WHERE ONE IS A PUBLIC CRIME A COMPLIANT SIGNED BY THE FISCAL CAN CONFER JURISDICTION. — Antonio Yu was charged with the crime of rape with murder committed as follows: that on or about November 14, 1957 he raped Delia Abule, age 6, and to prevent her from shouting, strangled her as result of which she died. He pleaded guilty but alleged lack of intent to commit so grave a crime. He was convicted of the complex crime of rape with murder and given the death penalty.

On appeal he claims that the lower court had no jurisdiction because it was the fiscal who signed the complaint. *Held*, the court acquired jurisdiction. In complex crimes where one is a public crime, the complaint can be signed by the fiscal and the court will acquire jurisdiction thereby because public interest is always paramount to private interest. PEOPLE *v.* YU, G.R. No. L-13780, January 28, 1961.

REMEDIAL LAW—CRIMINAL PROCEDURE—THE PROSECUTION MAY APPEAL EVEN IF THE ACCUSED WOULD BE PLACED IN DOUBLE JEOPARDY WHERE THE QUESTIONS INVOLVED ARE PURELY OF LAW AND THE ACCUSED IMPLIEDLY CONSENTS TO THE APPEAL. — This is an appeal by the prosecution from the order of the trial court dismissing the information against the defendant. It appears that, by considering the merits of this case, the trial court erred in dismissing the case, for the defendant did not have as he claimed the right to another preliminary investigation and even if he did the proper remedy was not to dismiss the case but to conduct or order for said investigation. The defendant raised the defense of double jeopardy in opposing the prosecution's motion for reconsideration. However, on appeal the defendant filed a brief contesting the appeal on the merits without mentioning the defense of double jeopardy. Can this Tribunal review this case on appeal by the prosecution? *Held*, yes. First, Rule 118, section 2 of the Rules of Court providing that the People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy cannot, without making it unconstitutional, be construed as exceeding the rule making power of this Court under the Constitution "to promulgate rules concerning pleadings, practice or procedure" (Art. VIII, Sec. 13) and encroaching on the constitutional prerogative of Congress to "define, prescribe and apportion the jurisdiction of the various courts." (Art. VIII, Sec. 2). Furthermore, such rule making power under the Constitution "shall not diminish, increase or modify substantive rights" (Art. VII, Sec. 13). Hence, Rule 118, section 2 of the Rules of Court cannot diminish or modify the "substantive right" of the Supreme Court to "review, revise, reverse, modify or affirm on appeal x x x final judgments or decrees of inferior courts in x x x cases in which only errors or questions of law are involved"—which is statutory (R.A. No. 296, Sec. 17 [6]) as well as constitutional (Art. VIII, Sec. 2)—and the substantive right of both parties in a case to appeal to the Supreme Court and raise only questions of law, as in the case at bar. Second, the immunity from second jeopardy granted by the Constitution is a personal privilege which accused may waive. Defendant has filed a brief in which she limited herself to a discussion of the merits of the appeal. Thus she not only failed to question, in her brief, either expressly or impliedly, the right of the prosecution to interpose the present appeal, but also, conceded, in effect, the existence of such right. She should be deemed, therefore, to have waived her aforementioned constitutional immunity. PEOPLE *v* CASIANO, G.R. No. L-15309, February 16, 1961.

REMEDIAL LAW—CRIMINAL PROCEDURE—WHERE THE ALLEGATIONS IN DIFFERENTLY DESIGNATED PLEADINGS CHARGE THE

SAME OFFENSE, THE ACCUSED HAS THE RIGHT TO ONLY ONE PRELIMINARY INVESTIGATION. — Ricardo Macapagal filed a complaint with the justice of the peace court charging Rosalina Casiano with "estafa". By virtue thereof Casiano was arrested and later released on bail. When the case was called for preliminary investigation, defendant waived her right thereto, and accordingly, the record was forwarded to the CFI. Subsequently, the provincial fiscal filed therein an information for "illegal possession and use of a false treasury or bank note". Upon arrangement defendant entered a plea of not guilty. Trial was commenced and after several postponements defendant, through her new counsel and with leave of court, filed a "motion to dismiss" on the ground that there had been no preliminary investigation of the charge of illegal possession and use of a false bank note which defect affected the jurisdiction of the court. The court dismissed the case. A reconsideration of its order having denied, the prosecution interposed the present appeal. *Held*, the defendant-appellee was not entitled to another preliminary investigation because the allegations in the information filed by the fiscal as well as the allegations in the complaint filed by Ricardo Macapagal charged the same crime regardless of the designations used in the pleadings. PEOPLE *v.* CASIANO, G.R. No. L-15309, February 16, 1961.

REMEDIAL LAW—CRIMINAL PROCEDURE—WHERE THE INFORMATION FOR BIGAMY DOES NOT AVER THAT IT IS THE ACCUSED'S MARRIAGE, BUT IT IS ALLEGED THAT SHE MARRIED HER CO-ACCUSED KNOWING THAT THE LATTER'S FORMER MARRIAGE IS STILL SUBSISTING, SHE CAN BE PROSECUTED THEREUNDER. — Jose Archilla and Alfreda Roberts were charged with the crime of bigamy. It was alleged in the complaint that defendant Archilla, without his previous marriage to the complainant having been first dissolved, contracted a second marriage with Alfreda Roberts, who, likewise "had previous knowledge that her co-accused Archilla's marriage with complainant is still valid and subsisting." After entering a plea of not guilty, Alfreda filed a motion to quash the complaint on the ground that the facts alleged therein do not constitute the offense charged. In sustaining the motion, the trial court ruled that the allegation of the complaint that Alfreda "who likewise has previous knowledge that her co-accused's marriage with the undersigned is still valid and subsisting" is not a sufficient statement of an offense for which she may be prosecuted and convicted. The prosecution appealed. *Held*, with regard to the question whether under the information filed against the appellee she can be prosecuted for bigamy even if it does not allege that her marriage to her co-accused is her second marriage, the authorities are clear that she can be, if it is averred that she married her co-accused knowing that the latter's former marriage is still valid and subsisting (Viada, Codigo Penal de 1870, p. 561, etc.). PEOPLE *v.* ARCHILLA, G.R. No. L-15632, February 28, 1961.

REMEDIAL LAW—CRIMINAL PROCEDURE—WHERE THE DEFENDANT INDUCED THE TRIAL COURT TO COMMIT AN ERROR IN QUASHING THE INFORMATION, SHE IS ESTOPPED FROM INVOKING THE

PLEA OF DOUBLE JEOPARDY. — Defendants Jose Archilla and Alfreda Roberts were charged with bigamy. It was averred in the complaint that defendant Archilla, without his previous marriage to the complainant having first been dissolved, contracted a second marriage with Alfreda Roberts, who, likewise had previous knowledge that her co-accused Archilla's marriage with the complainant was still valid and subsisting. After entering the plea of not guilty, Alfreda filed a motion to quash the complaint with regard to her on the ground that the facts alleged therein do not consitute the offense charged. The lower court sustained the motion and quashed the information. The prosecution appealed. The appellee contends that the quashing of the information amounts to her acquittal which prevents the prosecution from taking appeal as it would place her in jeopardy of being punished for the same offense twice. *Held*, the appellee cannot be allowed to invoke the plea of double jeopardy after inducing the trial court to commit an error which otherwise it would not have committed. Parties to a judicial proceeding may not, on appeal, adopt a theory inconsistent with that which they sustained in the lower court. Consequently, appellee is now estopped from invoking the plea of double jeopardy on the theory that she could still be convicted under an information which she branded to be insufficient in the lower court (see Peo. v. Acierto, No. L-2708 and L-3355-60, January 30, 1953). PEOPLE *v.* AACHILLA, G.R. No. L-15632, February 28, 1961.

REMEDIAL LAW—EVIDENCE—AN EXTRA-JUDICIAL STATEMENT MADE BY AN ACCUSED IMPLICATING ANOTHER WHO DID NOT OBJECT THERETO IS ADMISSIBLE AGAINST THE LATTER. — Appellant was among those charged with the crime of robbery in band with murder and frustrated murder. When the appellant was brought before the city fiscal and confronted by Djalalang (his co-accused), the latter readily identified him as one of those who took direct part in the commission of the crime. Djalalang's statement, pointing to the appellant as a co-perpetrator of the crime, was taken down in writing in the latter's presence and sworn to by the declarant. In the course thereof, the appellant did not protest against the implication. The trial court took Djalalang's statement into consideration in convicting the appellant of the crime charged. On appeal, the admision of the extra-judicial statement in evidence is questioned. *Held*, since appellant did not protest against the implication, said extra-judicial statement is admissible as against him (Peo. v. Atienza, 47 O.G. supp. 12, 200). PEOPLE *v.* AMAJUL, G.R. No. L-14626-27, February 1961.

REMEDIAL LAW—EVIDENCE—FEAR, CONFUSION AND GRIEF ARE CIRCUMSTANCES WHICH SUFFICIENTLY EXPLAIN THE FAILURE OF THE FAMILY OF THE VICTIMS TO NAME ANY OF THE MALEFACTORS IMMEDIATELY AFTER THE KILLING. — Around midnight of June 17, 1952, a group of five armed men converged on the house of the deceased Juan Galaraga. They forcibly brought down with them the deceased Juan Galaraga and his son-in-law Victor Alamar. At a distance of about 40 meters from their house, Juan Galaraga and Victor Alamar were fired upon by their captors, who hit Juan Galaraga mortally and wounded Victor Alamar seriously. Only the defendant-appellant was arrested and charged; the others remained at large. Convicted by the court of first instance of kidnapping with murder and kidnapping with frustrated murder, the defendant appealed. The case hinges on whether appellant was sufficiently identified as one of the aggressors. Much stress is placed on the alleged failure of the family of the victims to name any of the malefactors to different investigators immediately after the killing. The trial court accepted the explanation given by the family of the victims that they feared for their own safety; that they were then very much worried and in deep grief; and they did not want to expose themselves to further trouble at a time when their deceased father had not yet even been interred. *Held*, the trial court did not err in accepting the explanation given by the family of the victims. Fear and confusion, compounded by their distraught condition arising from grief, explain their immediate reactions to their misfortune. At any rate, only four days after the killing, Concepcion and Adriatico Galaraga (children of the deceased Juan Galaraga) revealed that defendant was in the group of five men, a lapse of time which does not seriously militate against their credibility. PEOPLE *v.* SACAYANAN, G.R. No. L-15024-25, December 31, 1961.

REMEDIAL LAW—EVIDENCE—IN RAPE CASES THE ABSENCE OF SPERMATOZOA IS NO INDICATION THAT THERE WAS NO INTERCOURSE. — Defendants were accused and convicted of the crime of robbery with rape committed against the two complainants when the latter were going home to their barrio after working as housemaids in Manila. The accused, on appeal, underscore the fact that in the examination no sign of spermatozoa was present, citing Dr. Anzures to the effect that examination within three days will show signs of it. *Held*, the same author states that the absence of sperm is no indication that there was no intercourse. The girls could have washed themselves to prevent conception. The lacrations and contusions on the wall of the labia minora are evidence enough. PEOPLE *v.* SELFAISON, G.R. No. L-14732, January 28, 1961.

REMEDIAL LAW—EVIDENCE—IT IS THE NATURAL REACTION FOR VICTIMS OF CRIMINAL VIOLENCE TO KNOW THE IDENTITY OF THEIR ASSAILANTS AND THE MANNER IN WHICH THE CRIME WAS COMMITTED. — Defendants were accused and convicted of the crime of robbery with rape committed against the two complainants as the latter were on the way home to their barrio after working as housemaids in Manila. On appeal the accused contend that because of the excitement and horror of the experience, complainants could not have identified their attackers and remember the sequence in which they were raped. *Held*, on the contrary, it is the natural reaction for victims of criminal violence to know the identity of their assailants and the manner in which the crime was committed. PEOPLE *v.* SELFAISON, G.R. No. L114732, January 28, 1961.

REMEDIAL LAW—EVIDENCE—PARTIAL PERFORMANCE TAKES AN ORAL CONTEST OUT OF THE SCOPE OF THE STATUTE OF FRAUDS. — The appellees leased to the appellant a piece of land for 7 years commencing on July 15, 1948. The lease contract was embodied in a notarized document. The lessee bound himself to construct a building of strong wooden materials on the leased premises, which would become the property of the lessors at the termination of the lease. On May 20, 1955, the lessors filed an action to recover from the lessee rentals for several months which have accrued and the building constructed on the leased land. The lessee in his answer averred that the original written contract had been orally extended from 7 to 10 years, in consideration of his erecting a semi-concrete building instead of the wooden one originally agreed on. The lessee actually did constract a semi-concrete building on the leased premises. The lessee tried to prove the oral agreement subsequent to the lease contract by testimonial evidence. Objection to the evidence was interposed and the trial court excluded it on the ground that it was barred by the Statute of Frauds. Hence, this appeal. *Held*, the evidence in question is admissible. Partial performance takes an oral contract out of the scope of the Statute of Frauds (Hernandez v. Andal, 78 Phil, 196). The expenditure of money by a tenant in making improvements on the prmises on the faith of an oral agreement for a lease for a further term may be viewed not only as constituting in itself an act of partial performance, but as furnishing strong if not conclusive evidence that possession is continued under the oral contract and not as a tenant holding over under the original lease (49 Am. Jur. 810). PATERNO *v.* JAO YAN, G.R. No. L-12218, February 28, 1961.

REMEDIAL LAW—EVIDENCE—WHERE THE CIRCUMSTANTIAL EVIDENCE CONSISTS ONLY IN SHOWING THAT THE ACCUSED TRIED TO FLEE WHEN HIS ARREST WAS ATTEMPTED AND WHEN SEARCHED, A SUM OF MONEY WAS FOUND IN HIS POSSESSION, THE ACCUSED CANNOT BE CONVICTED THEREUNDER FOR ROBBERY. — Asakil was among those charged with the crime of robbery in band with murder and frustrated murder. While there is no dispute as to the commission of the crimes charged, the investigations conducted by the authorities failed to bring to light the identity of the culprits, for none of the survivors was able to identify the malefactors. The evidence against the accused only shows when being apprehended he tried to flee; and when searched, ₱16 was found in his right shoe and ₱3 in his left shoe. The trial court convicted him on the basis of the evidence presented. Hence, this appeal. *Held*, the above circumstances, standing alone, do not conclude Asakil's guilt beyond a reasonable doubt. PEOPLE *v.* AMAJUL, G.R. No. L-14626-27, February 28, 1961.

REMEDIAL LAW—EVIDENCE—WHILE EXTRA-JUDICIAL CONFESSIONS MAY BE ADMITTED TO CONFIRM DIRECT TESTIMONIAL EVIDENCE, WITHOUT THE LATTER, THE CONFESSIONS DO NOT WARRANT CONSIDERATION. — Accused were charged with the crime of robbery in band with murder and frustrated murder. While there is

no dispute as to the commission of the offenses charged, the investigations conducted by the authorities failed to bring to light the identity of the culprits, for none of the survivors was able to recognize or identify the malefactors. In the absence of any other identification, the trial court relied exclusively on the extra-judicial confessions of the accused Djalalang, Hamiddin, and Madjid implicating the appellants herein, their co-accused. Neither Djalalang nor Hamiddin was called to the witness stand; and Madjid denied having voluntarily implicated his co-accused (the appellants) in his extra-judicial confession. Admission of the confessions was objected to. Nevertheless, the trial court convicted the appellants as conspirators under par. 1, Art. 294 of the Revised Penal Code. Hence, this appeal. *Held*, the admission of the confessions was duly objected to. A confession made by a defendant is admissible against him but not against his co-defendant with respect to whom said confession is hearsay evidence; for he had no opportunity to cross-examine the former. While voluntary extra-judicial confessions may be admitted to confirm direct testimonial evidence, without the latter, the confessions do not warrant consideration. PEOPLE *v.* AMAJUL, G.R. No. L-14626-27, February 28, 1961.

REMEDIAL LAW—PROVISIONAL REMEDIES—WHERE THE COMPLAINT FOR RECOVERY OF POSSESSION OF LAND ALLEGES NO INTEREST ON THE PART OF THE PLAINTIFF OVER THE CROPS, THE APPOINTMENT OF A RECEIVER IS NOT PROPER. — The plaintiffs filed an action against the defendants for the recovery of the possession of a parcel of land. The complaint alleged that the plaintiff was the owner of the land in question, the same having been adjudicated to him in a project of partition approved by the probate court; that said property had a net yearly produce of 200 *bultos* of rice about to be harvested; and that the appointment of a receiver was necessary to preserve and dispose of the property in question and its harvest. It appeared, however, that the defendants were in possession of the land pursuant to a lease contract signed with them by the plaintiff's daughter, the former administratrix or agent of the plaintiff over the said property. Opposition to the motion for receivership notwithstanding, the lower court issued an order placing the property in litigation and its produce under receivership. The defendants moved for reconsideration of the said order claiming that it did not appear from the complaint that the plaintiff had such interest in the property in litigation and its produce, and that such property is in danger of being materially injured as to justify the appointment of a receiver. This motion having been denied, the defendants filed the present petition for certiorari. *Held*, we see no sufficient cause to justify placing the land in question in receivership. There is no showing here that the property in question and its pending harvest are in danger of being lost, or that defendants are committing acts of waste thereon, or that defendants are insolvent and cannot repair any damage they cause to plaintiff's rights. The complaint alleges no interest on the part of the plaintiff in the crops subjected to receivership. DIAZ *v.* NIETES, G.R. No. L-16521, December 31, 1960.

REMEDIAL LAW—SPECIAL PROCEEDINGS—AN ORDINARY ACTION FOR PARTITION CANNOT BE CONVERTED INTO A PROCEEDING FOR THE SETTLEMENT OF THE ESTATE OF A DECEASED, WITHOUT COMPLIANCE WITH THE PROCEDURE OUTLINED BY THE RULES OF COURT. — This is an action for liquidation and partition of the estate left by the spouses Mariano Bautista and Gertrudes Garcia filed by plaintiffs against the defendants, legitimate grandchildren and children, respectively, of said deceased spouses. The complaint alleged, among others, that Mariano Bautista died intestate on December 5, 1947 and that his properties had already been extra-judicially partitioned among his heirs; that Gertrudes Garcia likewise died intestate on August 31, 1956 leaving as her legitimate heirs plaintiffs and defendants; and that the deceased Gertrudes Garcia left outstanding obligations to the Rehabilitation Finance Corporation and the G.A. Machineries, Inc. On a motion to dismiss filed by the defendants alleging that the action was premature because it is admitted in the complaint that the deceased left certain debts, the lower dismissed the complaint on that ground. From the order of dismissal, plaintiffs appealed. Appellants claim that there is nothing that would prevent the trial court from directing and ordering that the pending obligations of the estate be paid first, or that they should constitute liens on the respective shares to be received by each heir. *Held,* the order appealed from is affirmed. What the appellants propose is that the administration of the estate for the purpose of paying off its debts be accomplished right in the partition suit. Obviously, and ordinary action for partition cannot be converted into a proceeding for the settlement of the estate of a deceased, without compliance with the procedure outlined by Rules 79-90 of the Rules of Court. GUICO *v.* BAUTISTA, G.R. No. L-14821, December 31, 1960.

REMEDIAL LAW—SPECIAL PROCEEDINGS—DOMICILIARY AND ANCILLARY ADMINISTRATIONS ARE TWO SEPARATE AND INDEPENDENT PROCEEDINGS.— Walter G. Stevenson, a British subject, died in California with real and personal properties in the Philippines. Principal or domiciliary administration in California and ancillary administration in the Philippines resulted. In this appeal from a decision of the Court of Tax Appeals one of the questions raised is whether a claim for indebtedness of the decedent incurred during his lifetime must be approved by the Philippine probate court regardless of its prior admission and approval by the California provate court before such claim may be allowed as a deductible item for purposes of Estate and Inheritance taxation. *Held,* the approval of the Philippine probate court is necessary. This distinction between domiciliary administration serves *only* to distinguish one administraton from the other, for the two proceedings are separate and independent. The Philippine probate court in this case is therefore, a regular court of administration with power to admit and approve claims, for the Rules of Court could not have intended that our Courts be subordinate to foreign courts over which we have no control. COLLECTOR OF INT. REV. *v.* FISHER AND FISHR; FISHER AND FISHER *v.* COLLECTOR OF INT. REV., G.R. Nos. L-11622 & 11668, January 28, 1961.

REMEDIAL LAW—SPECIAL PROCEEDINGS—UNTIL ALL THE DEBTS OF THE ESTATE ARE PAID, AN ACTION FOR PARTITION AND LIQUIDATION IS PREMATURE. — This is an action for liquidation and partition of the estate left by the spauses Mariano Bautista and Gertrudes Garcia filed by plaintiffs against the defendants, legitimate grandchildren and children, respectively, of said deceased spouses. The complaint alleged that Mariano Bautista died intestate on December 5, 1947 and that his properties had already been extra-judicially partitioned among his heirs; that Gertrudes Garcia likewise died intestate on August 31, 1956 leaving as her legitimate heirs plaintiffs and defendants and that the deceased Gertrudes Garcia left outstanding obligations to the Rehabilitation Finance Corporation and the G.A. Machineries, Inc. On a motion to dismiss filed by the defendants alleging, among other things, that the action was premature because it is admitted in the complaint that the deceased left certain debts, the lower court dismissed the complaint on that ground. From the order of dismissal, plaintiffs appealed, urging that their action for partition and liquidation may be maintained notwithstanding that there are pending obligations of the estate, subject to the taking of adequate measures either for the payment or the security of its creditors. *Held,* until all the debts of the estate in question are paid, appellant's action for partition and liquidation is premature. Where the deceased left pending obligations, such obligations must be paid first or compounded with the creditors before the estate can be divided among the heirs; and unless they reach an amicable settlement as to how such obligation should be settled, the estate would inevitably be submitted to administration for the payment of such debts. GUICO *v.* BAUTISTA, G.R. No. L-14921, December 31, 1960.

COURT OF APPEALS CASE DIGEST

CIVIL LAW—DAMAGES—NEGLIGENCE MUST BE THE PROXIMATE CAUSE OF THE DAMAGE IF LIABILITY IS TO ATTACH. — Gloria Valdez was a student in the school of midwifery owned and operated by the defendant and at the same time was a boarder in the school's dormitory located adjacent to the defendant's hospital. Gloria occupied the upper bunk of the wooden double decker bed which she shared with another student. The upper bunk was some 46 inches above the cement floor, 75 inches long 30 inches wide. To reach it one had to use a chair as a stepping board. All the beds provided for the student boarders were of the same make and had no railings on the sides. While in the act of getting down, Gloria slipped and lost her footing, resulting in the accident which caused her death. The plaintiffs filed an action to recover damages from the defendant corporation for the death of their daughter Gloria. The plaintiff's claim for damages is predicated on the alleged negligence of the defendant in having violated its contractual obligation with the deceased to furnish her reasonably safe accommodations, particularly a