# CASE DIGEST

## SUPREME COURT

**CIVIL LAW — CONTRACTS — "10 PER CENT" CONTRACTS FOR THE FOLLOW-UP OF FOREIGN EXCHANGE APPLICATIONS ARE CONTRARY TO LAW, GOOD CUSTOMS, PUBLIC ORDER, AND PUBLIC POLICY, HENCE VOID AB INITIO.**—The defendant requested the plaintiff to prepare, file and work for the approval of a foreign exchange application, the exchange to be used for the purchase of machineries. In their agreement, the defendant promised the plaintitiff 10% of the amount of the allocation. The Central Bank granted an allocation of $243,500.00. The plaintiff demanded payment of the 10% from the defendant but the latter refused to pay. Hence, this action for recovery. **Held,** a contract to work for the approval of a foreign exchange application for a commission, including the following up of the papers in the different government offices, is void and inexistent, as being contrary to law, good customs, public order, and public policy. **Tee v. Tacloban Electric & Ice Plant Co.**, G. R. No. L-11980, February 14, 1959.

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**CIVIL LAW — CONTRACTS — WHEN THE TERMS OF AN AGREEMENT ARE UNCONSCIONABLE OR INIQUITOUS, THE COURT MAY DISREGARD SAID AGREEMENT AND EXERCISE THE DISCRETION GRANTED IT BY ARTICLE 1229 OF THE CIVIL CODE.**—The plaintiff leased two parcels of land to the defendant for the construction of a building in which the latter was to maintain and operate a cabaret. The contract provided that upon termination of the lease, either upon the expiration of its term, or for any other cause, the lessor will become absolute owner of the building. The building was worth ₱80,000.00. Due to mistake in the agreement as to the operation of the cabaret, the terms and conditions of the lease were not complied with. Hence, this action to rescind. **Held,** the error being attributable to both lessor and lessee, to require the latter to lose the improvement valued at ₱80,000.00 would be unconscionable, if not iniquitous. The court may therefore exercise the discretion granted it by Article 1229 of the Civil Code. Instead of enforcing the contract, Article 1678 of the same code should be applied, i.e., that the lessor should pay half the value of the building, or, if he refuses to pay, that the lessee be allowed to remove the building at his own expense. **Domingo v. Chua Man,** G. R. No. L-9998, February 28, 1959.

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**CIVIL LAW — LEASE — THE OCCUPATION BY THE JAPANESE FORCES OF LEASED PREMISES DURING THE WAR IS NOT MERE ACT OF TRESPASS BUT TRESPASS UNDER COLOR OF TITLE SUS-**





**PENDING THE LESSEE'S OBLIGATION TO PAY RENTS DURING THE PERIOD OF DEPRIVATION.**—The plaintiffs leased certain buildings to the defendant in October, 1940. They were paid the stipulated rentals until the Japanese invasion in 1941. From June, 1942 to March, 1945, the leased premises were used as quarters by the Japanese forces ousting the lessee therefrom. The lessee paid no rentals for that period. Hence, this action for recovery. The plaintiffs contended that the ouster of the defendant by the Japanese forces, though it deprived it of the enjoyment of the premises, was a mere act of trespass which did not exempt it from paying the rentals. **Held,** the ouster of the lessee by the Japanese forces is not a mere act of trespass, but trespass under color of title. The lessee's obligation to pay rentals ceased during the period of deprivation. **Villaruel v. Manila Motor Co.**, G. R. No. L-10394, December 13, 1958.

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**CIVIL LAW — PERSONS & FAMILY RELATIONS — A VICE-MAYOR WHO RIGHTFULLY ASSUMES THE POWERS AND DUTIES OF THE MAYOR, WHETHER AS** ACTING MAYOR **OR** ACTING AS MAYOR, **MAY VALIDLY SOLEMNIZE MARRIAGE.**—Appellant Bustamante, while still married to Maria Perez, contracted a second marriage with Demetria Tibayan, before Francisco Nato, the vice-mayor then **acting as mayor** of Mapandan, Pangasinan. Subsequently, he left Tibayan. The latter became desperate and upon learning of the first marriage prosecuted him for bigamy. Convicted, Bustamante appealed contending that the marriage celebrated before Francisco Nato was invalid, the latter not having the power to solemnize marriage as he was only **acting as mayor,** as distinguished from **acting mayor,** then. **Held,** the contention is untenable. When the issue involves the assumption of powers and duties of the office of mayor, by the vice-mayor, and not the title to the office, the distinction of being **acting mayor** and **acting as mayor** is immaterial, for in both instances, the vice-mayor discharges all the duties and wields the powers appurtenant to said office. **People v. Bustamante**, G. R. No. L-11598, January 27, 1959.

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**CIVIL LAW — PERSONS & FAMILY RELATIONS — THE CONJUGAL PARTNERSHIP IS LIABLE FOR OBLIGATIONS CONTRACTED BY THE HUSBAND UNDER THE OLD CIVIL CODE, EVEN THOUGH THEY DID NOT REDOUND TO THE BENEFIT OF THE FAMILY, SINCE ARTICLE 161 OF THE NEW CIVIL CODE CANNOT IMPAIR VESTED RIGHTS.—** The plaintifs obtained a judgment for money against the defendants totalling ₱11,500.00 representing the value of several promissory notes and jewelry delivered for sale on commission. When the loans, evidence by the promissory notes, were granted, and the jewelry were delivered, the law in force was Article 1408 of the old Civil Code which made the conjugal partnership liable. The action was filed after the effectivity of the New Civil Code, Article 161 of which provides that the conjugal partnership shall be liable for debts and obligations contracted by the husband only when they were for the benefit of the conjugal partnership. The obligations in this case did not benefit the partnership. **Held,** the conjugal partnership is liable. The plaintiffs acquired a vested right at the very moment the obligations were contracted under the provisions of the old Civil Code. **Laperal v. Katigbak,** G. R. No. L-11418, December 27, 1958.

**CIVIL LAW — SUCCESSION — THE RESERVATORIO IS NOT THE RESERVISTA'S SUCCESSOR MORTIS CAUSA, NOR IS THE RESERVABLE PROPERTY PART OF THE RESERVISTA'S ESTATE, HENCE THE UNNECESSARINESS OF ESTATE PROCEEDINGS TO DECREE OWNERSHIP.** —A decree of registration of two lots in the name of Cano (reservista), subject to reserva troncal in favor of Guerrero (reservatorio), became final. Upon the death of Cano, Guerrero asked that a new transfer certificate of title be issued in her favor. The heirs of the reservista opposed the motion contending that the ownership cannot be decreed in a mere proceeding under Section 112 of Act 496, but that it required estate proceedings. **Held,** estate proceedings are not necessary because the reservatario is not the reservistas successor mortis causa, nor is the reservable property part of the reservista's estate; the reservatario receives the property as a conditional heir of the descendant, said property merely reverting to the line of origin from which it had temporarily and accidentally strayed during the reservista's lifetime. **Cano v. Director Of Lands,** G. R. No. L-10701, January 16, 1959.

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**COMMERCIAL LAW — PUBLIC SERVICE COMMISSION — A PRIVATE CORPORATION OPERATING A GOVERNMENT-OWNED ICE PLANT COMES UNDER THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION.**—Defendant Ice & Cold Storage Industries of the Philippines was granted several certificates of public convenience to operate ice plants in Manila and certain specified municipalities in the provinces of Rizal, Bulacan and Cavite. By virtue thereof, it operated ice plants in Manila, including the government-owned Insular Ice Plant under a contract of lease. In a dispute before the Public Service Commission, the defendant claimed that as lessee of the government ice plant, it could not come under its jurisdiction. **Held,** what the Public Service Act has withdrawn from the control of the Public Service Commission is not a particular ice plant but those operated by the government of the Philippines. The exemption is not in favor of government ownership but of government operation, and the operation of government property by a lessee is not a government operation protected by the mantle of governmental immunity. **Castro v. Ice & Cold Storage Industries,** G. R. No. L-10147, December 27, 1958.

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**COMMERCIAL LAW — UNFAIR COMPETITION — SELLING OF ICE, DIRECTLY OR INDIRECTLY, IN PLACES NOT COVERED BY THE CERTIFICATE OF PUBLIC CONVENIENCE CONSTITUTES UNFAIR COMPETITION.**—Defendant Ice & Cold Storage Industries of the Philippines was granted several certificates of public convenience to operate ice plants in Manila and certain specified municipalities in the provinces of Rizal, Bulacan and Cavite. The two other defendants, Beato and Capena, are duly licensed ice dealers selling ice in the towns of Calamba, Los Baños and Bay, Laguna. The bulk of the ice they sell come from their co-defendant. Plaintiffs are grantees of a certificate of public convenience to operate an ice plant in Calamba and to sell the ice produced by them in said municipality, Los Baños and Bay, Laguna. For continuously incurring losses, which they attributed to the acts of the defendants in selling ice within plaintiffs' authorized territory, they brought this suit for the recovery of damages. **Held,** while the defendants at no time represented that the ice they sold was manufactured by the plaintiffs and are not therefore guilty of unfair competition



defined by the Trade Marks Act (R. A. No. 166), still their unauthorized invasion of plaintiffs' franchised territory constitutes unfair competition within the purview of Article 28 of the New Civil Code. They are liable for damages. **Castro v. Ice & Cold Storage Industries,** G. R. No. L-10147, December 27, 1958.

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**LABOR LAW — COURT OF INDUSTRIAL RELATIONS — ON APPLICATION OF ANY OF THE PARTIES AND AFTER DUE HEARING, THE COURT OF INDUSTRIAL RELATIONS MAY ALTER, MODIFY, OR SET ASIDE ANY AWARD, ORDER, OR DECISION RENDERED BY IT, DURING ITS EFFECTIVENESS.**—In 1953, the Court of Industrial Relations rendered a partial decision in a case involving the PRISCO Workers' Union and the PRISCO, ordering the latter to pay the 58 laborers involved 25% additional compensation for overtime. Subsequently, the union filed a petition seeking to extend the benefits of the decision to other workers similarly situated as the 58 laborers who filed the original petition. The Court modified its decision and extended the benefits thereof to other workers of the PRISCO. Hence this petition for review. **Held,** the Court of Industrial Relations may alter, modify, or set aside any award, order, or decision it may render, during its effectiveness, after due hearing. An award, order or decision is deemed effective for three years. **Prisco v. Prisco Workers' Union,** G. R. No. L-9288, December 29, 1958.

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**LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS HAS NO JURISDICTION TO HEAR CHARGES OF UNFAIR LABOR PRACTICE FILED AGAINST AN ENTITY CREATED FOR THE BENEFIT AND SERVICE OF ITS MEMBERS.**— The petitioner owns the Elks Club which runs and operates a dining room, kitchen and bodega for the benefit and service of its members. Due to heavy losses, the petitioner discharged 14 employees of the club, 12 of whom are members of the respondent union. Whereupon, the respondent filed in the Court of Industrial Relations charges of unfair labor practice against the petitioner. The issue is whether or not the Court of Industrial Relations has jurisdiction to hear and determine charges of unfair labor practice filed against an entity like the petitioner. **Held,** where an entity, like a club or lodge, is not a business proposition, run for profit but is created for the benefit and service of its members, the Court of Industrial Relations has no jurisdiction to hear and determine the charges of unfair labor practice filed against it. **Manila Elks Club v. United Laborers & Employees,** G. R. No. L-9747, February 27, 1959.

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**LABOR LAW — DISMISSAL — THE TRADITIONAL RIGHT OF AN EMPLOYEE OR LABORER TO QUIT SINGLY OR COLLECTIVELY AT ANY TIME WITHOUT CAUSE, AND THE RIGHT OF THE EMPLOYER TO DISMISS HIM AT ANY TIME WITHOUT CAUSE STILL EXIST ALTHOUGH QUALIFIED AND RESTRICTED.**—The plaintiff was employed by the defendant under probation. After working for over a year, he was given 15 days vacation leave to undergo medical treatment for tuberculosis. Thereafter, he reported back for work but was refused not having a med-

ical clearance by the company physician. On the strength of clearances issued by two physicians of the National Chest Center, he again asked for reinstatement but to no avail. Unable to control himself, he wrote the defendant a letter which gave rise to his dismissal for grave insubordination and insult against the management. He filed this action for reinstatement and recovery of back wages. **Held,** in the absence of a contract fixing the period of employment, the employee may quit at any time and the employer may dismiss him at any time, in either case even without cause, by giving one month notice in advance. This traditional right is properly recognized in Republic Act No. 1052. **Gutierrez v. Bachrach Motor Co.,** G. R. No. L-11298, January 19, 1959.

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**LABOR LAW — EIGHT-HOUR LABOR LAW — EMPLOYEES OF THE PRICE STABILIZATION CORPORATION ARE COVERED BY THE EIGHT-HOUR LABOR LAW.**—Upon petition of 58 workers, the Court of Industrial Relations ordered the Price Stabilization Corporation to pay them 25% additional compensation for overtime. Subsequently, the union of which the 58 petitioning workers were members filed a petition seeking to extend the benefits of the order to other workers who were similarly situated as the petitioners in the original petition. The corporation contended that the Eight-Hour Labor Law was not applicable to it. The Price Stabilization Corporation acts independently of the national government and is vested with all the powers of a corporation, including that of acting as a juridical entity. **Held,** the Eight-Hour Labor Law applies to all persons employed in any industry or occupation, whether public or private. There is no doubt that the PRISCO is engaged in an industry within the purview of said law considering the nature of its organization and functions. **Price Stabilization Corporation v. PRISCO Workers Union,** G. R. No. L-9288, December 29, 1958.

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**LABOR LAW — WAGE ADMINISTRATION SERVICE — THE FILING OF A CLAIM BEFORE THE WAGE ADMINISTRATION SERVICE IS A VOLUNTARY RECOGNITION AND ADMISSION OF ITS AUTHORITY AND JURISDICTION; FAILURE TO APPEAL FROM ITS DECISION WITHIN THE PERIOD PROVIDED BY LAW FORFEITS THE CLAIM.**—The plaintiff here presented a claim before the Wage Administration Service against his employer the defendant for alleged overtime and differential pay. Failing to arrive at an amicable settlement, the parties entered into an "arbitration" and presented their evidence before the acting chief of the legal division of the WAS, who ruled out the claim as without merit. Two years later the plaintiff filed this action with the Municipal Court for the payment of the same claim. Defendant was absolved. On appeal to the Court of First Instance, the action was dismissed on the ground that the decision of the WAS had become final, binding and conclusive upon the parties. Hence, this appeal. **Held,** the filing by the appellant of his claim before the Wage Administration Service is a voluntary recognition and admission of the latter's authority and jurisdiction. Having failed to appeal within 15 days after entry and publication of the decision, he has forfeited his claim. **Ortiz v. Pacific Engineering Co.,** G. R. No. L-12086, January 30, 1959.



**LABOR LAW — WORKMEN'S COMPENSATION ACT — THE CONDUCTOR OF A BUS OPERATING UNDER THE "BOUNDARY" SYSTEM IS AN EMPLOYEE UNDER THE WORKMEN'S COMPENSATION ACT, AND AS SUCH IS ENTITLED TO THE COMPENSATION PROVIDED THEREIN.**—Under the "boundary" system, a bus driver and his conductor give to the operator a fixed amount out of their daily earnings. After deducting the cost of gasoline and the "boundary", the balance, if any, is then divided between them. One day the respondent conductor was injured in an accident in the course of the operation of the bus. He filed with the Workmen's Compensation Commission a claim for compensation against the operator for the injuries suffered. The issue was whether an employer-employee relationship existed between the bus operator and the conductor, considering that the latter worked under the "boundary" system and not paid directly by the former. **Held,** a conductor who works under the "boundary" system is an employee under the Workmen's Compensation Act. As such the operator is liable for the compensation prescribed in the Act. **Doce v. Workmen's Compensation Commission,** G. R. No. L-9417, December 22, 1958.

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**LAND TITLES & DEEDS — FORGED TITLE — A SUBSEQUENT REGISTRATION PROCURED BY THE PRESENTATION OF A FORGED TITLE IS NULL AND VOID.**—Two parcels of land owned by Emilie Adams were sold to Felisa de Jesus by Joseph E. Doepker, impersonating the husband of Adams and under a forged power of attorney. The Register of Deeds of Manila, upon being presented the duplicate certificates of title of the lands, cancelled the old certificates and issued new ones in the name of de Jesus, not knowing that the two duplicate certificates of title were tampered with. Adam filed this action to annul the sale and have the certificates of title restored in her name on the grounds of fraud and forgery. De Jesus pleaded ignorance and claimed to be a purchaser in good faith for value under Section 55 of the Land Registration Act. **Held,** the sale, cancellation, and registration were all done in one day. The broker who mediated in the transaction was de Jesus' agent. De Jesus could not have been an innocent purchaser. The registration consequent upon the presentation of the forged certificates of title is null and void. **Adams v. de Jesus,** G. R. No. L-8658, December 29, 1958.

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**LAND TITLES & DEEDS — LAND REGISTRATION ACT — A LESSEE OF A PUBLIC LAND MAY NOT ASSERT TITLE JUST AS GOOD AS THE HOLDER OF A TORRENS TITLE ISSUED PURSUANT TO A SALES PATENT ON THE SAME LAND.**—The plaintiff had his property relocated. A portion turned out to be in the possession of the heirs of the defendant. The latter refused to surrender the lot, hence the action. The plaintiff claimed title to the lot upon an original certificate of title issued on July 11, 1927 pursuant to a sales patent inscribed in the office of the Register of Deeds. The defendant based his title on a contract of lease executed with the Bureau of Lands in June. 1916 and registered with the Register of Deeds. He claimed that the registration of the lease produced the force and effect of registered properties under Section 122 of the Land Registration Act (Act 496), and since it was prior to the issuance of the torrens

title, he claimed ownership. **Held,** the documents mentioned in Section 122 of the Land Registration Act, wherein lands are alienated, granted or conveyed, are documents transferring ownership — not documents of lease transferring mere possession, so that a lessee of a public land may not assert title just as good as the holder of a torrens title issued pursuant to a sales patent on the same land. **Dagdag v. Nepomuceno,** G. R. No. L-12691, February 27, 1959.

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**LAND TITLES & DEEDS — PUBLIC LAND LAW — WHERE FRAUDULENT AND FALSE STATEMENTS ARE MADE IN THE APPLICATION FOR FREE PATENT WITHOUT THE KNOWLEDGE OF THE ACTUAL POSSESSORS AND OCCUPANTS OF THE PROPERTY APPLIED FOR, THE ONE-YEAR PERIOD, WITHIN WHICH APPEAL MAY BE MADE UNDER THE PUBLIC LAND LAW, DOES NOT APPLY, BUT ARTICLE 1146 OF THE CIVIL CODE PROVIDING FOR A FOUR-YEAR PERIOD WITHIN WHICH ACTION MAY BE INSTITUTED.**—The defendant, by means of fraudulent and false statements made in his application, was issued a free patent by the Bureau of Lands on October 17, 1951. The land covered by the patent was previously owned and possessed by one Esperidiona Caramihan. After her death, through the ignorance of her heirs, the land was declared public in the cadastral proceedings in the years 1925 to 1927. The plaintiff had previously bought the land from the deceased Caramihan. In the action filed for reconveyance of the property, the defendant moved to dismiss on the ground of prescription, it being filed more than two years after issuance of the patent, or more than one year beyond the period provided by law. **Held,** the action is based on fraud and under the law it can be instituted within four years from discovery of the fraud. This is not a petition seeking reconsideration of the grant of patent but for conveyance of land. The land patent having been issued, the land is registered in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the injured party by fraudulent registration is an action for reconveyance. **Roco v. Gemida,** G. R. No. L-11651, December 27, 1958.

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**LEGAL ETHICS — ATTORNEY'S FEES — A CHARGING LIEN FOR PERSONAL SERVICES CANNOT BE ANNOTATED ON THE BACK OF CLIENT'S TRANSFER CERTIFICATE OF TITLE, FOR THE LIEN DOES NOT ATTACH TO THE PROPERTY IN LITIGATION BUT IS AT MOST A PERSONAL CLAIM ENFORCEABLE BY A WRIT OF EXECUTION.**—Petitioner Vda. de Caiña, represented by respondent Flaviano T. Dalisay, Jr., obtained judgment in an ejectment case against Ricardo Nabong. Because the petitioner, notwithstanding the services the respondent had rendered to her and her children, failed to pay him his attorney's fees, respondent Dalisay filed a motion in the ejectment case for annotation of his attorney's lien on the back of petitioner's transfer certificate of title. The motion was granted. Petitioner appealed. **Held,** a charging lien for personal services rendered in a case, which has already been entered in the record of the case, cannot be ordered annotated on the back of the client's transfer certificate of title, for the lien is not of a nature which attaches



to the property in litigation but is at most a personal claim enforceable by a writ of execution. **Caiña v. Victoriano,** G. R. No. L-12905, February 26, 1959.

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**LEGAL ETHICS — PRACTICE OF LAW — MEMBERS OF THE PHILIPPINE BAR IN GOOD STANDING MAY PRACTICE BEFORE THE PATENT OFFICE WITHOUT TAKING THE QUALIFYING EXAMINATION GIVEN BY THE DIRECTOR OF THAT OFFICE.**—The respondent Director of the Patent Office issued a circular announcing an examination for the purpose of determining those qualified to practice as patent attorneys before the Philippine Patent Office. The Philippine Lawyers Association petioned for prohibition and injunction against the respondent contending that his act of requiring members of the Philippine Bar in good standing to take and pass the examination was in excess of jurisdiction and in violation of law. The respondent maintained that the prosecution of patent cases involves scientific and technical knowledge and training, so that not all lawyers may be qualified. **Held,** the practice of law includes appearances before the Patent Office, the representation of applicants, oppositors, and other persons, and the prosecution of their applications for patent, their opposition thereto, or the enforcement of their rights in patent cases. Hence, members of the Philippine Bar authorized by the Supreme Court to practice law in the Philippines, and in good standing, may practice before the Patent Office, without taking the qualifying examination given by the director of said office. **Philippine Lawyers Association v. Agrava,** G. R. No. L-12426 February 16, 1959.

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**POLITICAL LAW — ADMINISTRATIVE LAW — AN APPOINTMENT REINSTATING A CIVIL SERVICE ELIGIBLE DOES NOT VEST IN THE APPOINTEE IMMEDIATELY UPON ISSUANCE, BUT IS SUBJECT TO THE APPROVAL OF THE CIVIL SERVICE COMMISSIONER WITHOUT WHICH THE APPOINTING POWER MAY RECALL THE APPOINTMENT.**—The petitioner, an employee of the Bureau of Posts, being found guilty of grave misconduct by the Civil Service Commissioner, was ordered dropped as of the date of suspension, but without prejudice to reinstatement. Subsequently, he was extended an appointment, but the same was disapproved by the Commissioner, and later withdrawn by the appointing power. Whereupon, he filed a petition for mandamus in the Court of First Instance praying that defendants reinstate him. Petition denied, hence this appeal. **Held,** under Section 79(d) and Section 662 of the Revised Administrative Code, and under the Civil Service Rules, an appointment reinstating an employee in the service must be submitted for approval to the Commissioner of Civil Service. Consequently, the appointing official may recall the appointment where there is no certificate of approval by the Commisioner. **Gorospe v. Secretary of Public Works,** G. R. No. L-11090, January 31, 1959.

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**POLITICAL LAW — ADMINISTRATIVE LAW — A VOLUNTARY APPEAL FROM AN ADMINISTRATIVE DECISION CONSTITUTES DELAY WHICH PREVENTS REINSTATEMENT.**—Alacar was suspended as a member of the police force of Baguio City because of a complaint filed for mis-

conduct. After due investigation, the city council found him guilty. Within the reglamentary period, Alacar appealed to the Commissioner of Civil Service. The 60-day period provided in R. A. No. 557 for reinstatement having expired, Alacar requested for his immediate reinstatement. He was reinstated but, subsequently, the order of reinstatement was revoked and he was considered dismissed from the service. Hence he instituted the present petition for mandamus to reinstate him with back pay until the administrative case shall have been finally terminated. Section 3 of R. A. No. 557 provides: "x x x If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall **ipso facto** be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided." **Held,** the case was not finally disposed of because of the petitioner's appeal to the Commissioner of Civil Service, which amounted to a petition for review. This constitutes a delay which prevents his reinstatement. **Alacar v. City Mayor,** G. R. No. L-10020, December 29, 1958.

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**POLITICAL LAW — ADMINISTRATIVE LAW — THE DECISION OF THE PRESIDENT OF THE PHILIPPINES IN A CLAIM FOR SALARIES, WHICH HAS BECOME FINAL AND EXECUTORY, CANNOT BE CIRCUMVENTED BY THE RE-FILING OF THE SAME CLAIM.**—The petitioner Sambo was employed in the Institute of Nutrition. Together with his co-employees, they filed a claim for salaries with the Office of the Auditor General. The Auditor ruled against them and they appealed to the President. In the meantime, they filed a petition for a writ of mandamus with the Supreme Court, but the same was dismissed for lack of merit, and because of their elevation of the denied claim to the President. The President sustained the decision of the Auditor. Subsequently, the petitioner filed another claim with the Auditor, this time for himself alone. Denied. Hence, this petition for review. **Held,** the President having ruled against the claimants, his ruling was final on the merits of the claim. The finality of his decision cannot be circumvented by the mere filing again of the same claim on identical grounds. Hence, the petitioner has no right of review by this Court, the second decision of the Auditor being merely reiterative of the first which has already become final and conclusive. **Sambo v. Auditor General,** G. R. No. L-12548, February 27, 1959.

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**POLITICAL LAW — CIVIL SERVICE — A CITY DETECTIVE, WHO IS A CIVIL SERVICE ELIGIBLE, MAY NOT BE SEPARATED FROM THE SERVICE IN A MANNER CONTRARY TO THE PROCEDURE PRESCRIBED IN R. A. NO. 557.**—On August 16, 1951, Diaz was notified by the respondent mayor of Bacolod City of his separation from the service effective at the close of business hours that day for lack of trust and confidence. Diaz was then holding a permanent appointment as a first class detective of the city, being a civil service eligible. His separation was without benefit of the investigation or trial prescribed by Rep. Act No. 557, and neither was it for any of the grounds enumerated therein. As justification for his



action, the city mayor invoked the provisions of Executive Order No. 264 promulgated by President Quezon on April 1, 1940, believing that petitioner, as a detective occupying a confidential position, could be separated upon a moment's notice for lack of trust and confidence. **Held,** the dismissal of Diaz was illegal having been made in a manner contrary to the procedure prescribed in Rep. Act No. 557. Executive Order No. 264 is no longer in force, the same having been impliedly repealed by Rep. Act No. 557. **Diaz v. Amante,** G. R. No. L-9228, December 26, 1958.

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**POLITICAL LAW — CONSTITUTIONAL LAW — SECTION 51 OF REPUBLIC ACT NO. 296, AS AMENDED, AUTHORIZING A JUDGE TO PREPARE AND SIGN HIS DECISION IN A CASE TOTALLY HEARD BY HIM ANYWHERE IN THE PHILIPPINES, AND TO SEND THE SAME BY MAIL TO THE CLERK OF COURT, EVEN AFTER HE HAS BEEN TRANSFERRED OR ASSIGNED TO ANOTHER COURT OF EQUAL JURISDICTION, DOES NOT IMPAIR THE INDEPENDENCE OF THE JUDICIARY.**—In the elections held on November 8, 1955, Aquino was declared mayor-elect of Malabon, Rizal with a plurality of 75 votes over his opponent, Gutierrez. The latter protested. After the case was submitted for decision, the judge who heard it was assigned to another court of equal jurisdiction. Thus, the decision was rendered after his transfer, and he declared Gutierrez mayor-elect. Whereupon, Aquino appealed. He assailed the constitutionality of Section 51 of Republic Act No. 296, as amended by Republic Act No. 1404, under which the decision was rendered, as constituting an impairment of the independence of the judiciary. **Held,** section 51 of Republic Act No. 296, as amended by Republic Act No. 1404, which authorizes a judge to prepare and sign his decision in a case totally heard by him anywhere in the Philippines, and to send the same by registered mail to the clerk of court, even after said judge has left the province by transfer or assignment to another court of equal jurisdiction, does not impair the independence of the judiciary. **Gutierrez v. Aquino,** G. R. No. L-14252, February 28, 1959.

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**POLITICAL LAW — DEPORTATION — DEPORTATION PROCEEDINGS ARE ADMINISTRATIVE AND SUMMARY IN NATURE, AND NEED NOT BE CONDUCTED STRICTLY IN ACCORDANCE WITH ORDINARY COURT PROCEEDINGS.**—The petitioners, Chinese citizens, overstayed their visitors' permit in the Philippines. The Commissioner issued a warrant for their arrest. Detained, they filed a petition for a writ of habeas corpus. The lower court, declaring their detention illegal on the ground that no proper action had been filed before the judicial authorities, granted the writ. **Held,** it was improper for the lower court to grant the petition. Proceedings for the deportation of aliens are not criminal proceedings; they are administrative and summary in nature, and need not be conducted strictly in accordance with ordinary court proceedings. **Hai v. Commissioner of Immigration,** G. R. No. L-10009, December 22, 1958.

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**POLITICAL LAW — ELECTION LAW — SECTIONS 177 AND 178 OF THE REVISED ELECTION CODE ARE DIRECTORY AND THE LAPSE OF THE PERIODS PROVIDED THEREIN CANNOT DEFEAT THE SYSTEM**

**OF JUDICIAL SETTLEMENT OF PROTESTS.**—In the elections held on November 8, 1955, Aquino was declared mayor-elect of Malabon, Rizal. On November 23, 1955, his opponent filed a protest to which Aquino filed an answer and counter-protest on November 29, 1955. The case was submitted for decision on Dec. 26, 1956. The decision, rendered on August 10, 1957, declared the protestant mayor-elect. Aquino appealed. He claimed that Section 177 of the Revised Election Code, which requires the trial court to decide protests within six months after submission, and Section 178 of the same code, which requires appeals in election contests to be decided within three months after filing, are mandatory, and, therefore, the decision rendered on August 10, 1957, nearly eight months after submission, had no validity, the court having already lost jurisdiction. **Held,** sections 177 and 178 of the Revised Election Code are directory. The lapse of the periods provided therein cannot defeat the system of judicial settlement of protests. **Gutierrez v. Aquino,** G. R. No. L-14252, February 28, 1959.

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**POLITICAL LAW — EXPROPRIATION — EXPROPRIATION, TO BE JUSTIFIED, MUST BE FOR PUBLIC PURPOSE AND PUBLIC BENEFIT.**—The Archbishop of Manila purchased 66 hectares of land from the Hacienda Esguerra. He leased the property to the intervenors, who in turn subleased smaller portions to the occupants. Owing to difficulties in dealing with the tenants, the Archbishop decided to sell the land. None of the intervenors or tenants offered to buy the portion respectively leased or occupied by them. Thus the land was sold to the defendant who had it surveyed and subdivided into smaller lots for sale on installment. The plaintiff was persuaded by the occupants to institute expropriation proceedings that they might thereby purchased the lots at a lesser price. **Held,** to justify expropriation it must be for public purpose and public benefit; just to enable the tenants of a piece of land to own portions of it, even if they and their ancestors had cleared and cultivated it for their landlord for many years, is no valid reason or justification to deprive the owner of his property by means of expropriation. **Rizal v. San Diego, Inc.,** G. R. No. L-10802, January 22, 1959.

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**POLITICAL LAW — EXPROPRIATION — THE RESULTING PARCELS OF A LANDED ESTATE BROKEN UP AND DIVIDED INTO REASONABLE AREAS, EITHER THRU VOLUNTARY SALES BY THE OWNER OR OWNERS, OR THRU EXPROPRIATION, ARE NO LONGER SUBJECT TO FURTHER EXPROPRIATION.**—The Archbishop of Manila purchased about 66 hectares of land from the Hacienda Esguerra. The Archbishop leased most of the property to some of the intervenors, who in turn subleased smaller portions to the present occupants. Subsequently, the Archbishop decided to sell the land but neither the occupants nor intervenors offered to buy the lots respectively held by, or leased to, them. The Archbishop then sold the land to the defendant, and the latter surveyed and subdivided the same and offered the lots for sale. The intervenors, believing that said lots might be purchased at a lesser price, if the property were expropriated, persuaded the plaintiff to institute expropriation proceedings. **Held,** the government may expropriate only landed estates with extensive areas, specially those embracing the whole or a large part of a town or city; once a landed estate is broken up and divided into parcels of reasonable areas, either thru voluntary sales by the owner or owners, or thru expropriation, the resulting parcels can no longer be expropriated. **Rizal v. San Diego, Inc.,** G. R. No. L-10802, January 22, 1959.



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**POLITICAL LAW — NATURALIZATION — ACTIVE PARTICIPATION OR INTEREST IN LOCAL ELECTIONS, EITHER BY VOTING OR BY ATTENDING POLITICAL RALLIES, DISQUALIFIES AN ALIEN FOR NATURALIZATION.**—The petitioner filed a petition for naturalization. In the proceedings, it was shown that he took active participation or interest in the local elections. He attended political rallies, and even voted. The Government contended that this behavior constituted a violation of Section 56 of the Revised Election Code. **Held,** a foreigner is prohibited by law from taking part in any local elections, directly or indirectly, so much so that the same is considered a serious offense which is penalized, if proven, not only by imprisonment but also by deportation. Having violated this prohibition, the petitioner is disqualified for naturalization. **Go v. Republic,** G. R. No. L-12101, January 24, 1959.

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**POLITICAL LAW — NATURALIZATION — THE PUBLICATION OF THE NOTICE OF HEARING, ONCE A WEEK FOR 3 CONSECUTIVE WEEKS IN THE OFFICIAL GAZETTE, REQUIRED UNDER SECTION 9 OF THE REVISED NATURALIZATION LAW, IS JURISDICTIONAL.**—The Court of First Instance of Rizal granted the petition of Kui for naturalization. The Solicitor General sought a review of the court's decision, on the ground that although the petitioner had all the qualifications and none of the disqualifications mentioned by law, Section 9 of the Revised Naturalization Law, requiring the publication of the notice of hearing of the petition, once a week for three consecutive weeks in the Official Gazette, was not complied with. The notice was published for that period in the Voz de Manila, but it appeared only once in the Official Gazette. **Held,** the notice of hearing of the application for citizenship under Section 9 of the Revised Naturalization Law must be published in the Official Gazette once a week for three consecutive weeks. Only one publication of the notice is insufficient to confer jurisdiction on the court. **Kui v. Republic,** G. R. No. L-11172, December 22, 1958.

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**POLITICAL LAW — PUBLIC CORPORATIONS — THE PRESIDING OFFICER OF THE MUNICIPAL BOARD OF CABANATUAN CITY MAY VOTE EVEN IN THE ABSENCE OF A TIE.**—The petitioners, minority members of the municipal board of Cabanatuan City, sought to enjoin the respondent board president, who was bent on voting, from casting his vote on a proposed ordinance on the ground that under the rules of the board, he may only vote in case of a tie. The respondent answered that his election to the presidency of the board did not deprive him of his right to vote as a member thereof on any ordinance, resolution or motion. Both the unamended and amended provisions of Section 11 of the Charter of the City of Cabanatuan provide that the presiding officer of the municipal board is a member thereof. The charter is silent on whether the presiding officer may vote

as a member on any proposed ordinance, resolution, or motion, or only in case of tie, or after voting as a member, may as presiding officer, again vote in case of tie. The rules of the board state that in case of a tie, he may vote to break the tie. **Held,** the presiding officer of the municipal board of Cabanatuan City, being a member thereof, duly elected by popular vote, may exercise his right to vote as member on any proposed ordinance, resolution or motion. To limit his right to vote to deadlocks or ties would curtail his right and prerogative as a member of the board. **Bagasao v. Tumangan,** G. R. No. L-10772, December 29, 1958.

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**POLITICAL LAW — TAXATION — AFTER THE LAPSE OF FIVE YEARS FROM THE TIME OF ASSESSMENT OF A TAX, THE COLLECTOR OF INTERNAL REVENUE IS DIVESTED OF THE RIGHT TO EFFECT COLLECTION.**—The Collector assessed an inheritance tax on the property of the respondent on July 12, 1941. The respondent protested the assessment. It was referred for investigation to the proper office, but due to the outbreak of the war, the contemplated examination did not take place. The Collector attempted to enforce the tax in February, 1954, and, again, on April 14, 1954. The respondent contested its enforcement on the ground of prescription. The Court of Appeals sustained the respondent's view. The Collector appealed. He contended that since the law in force at the time of the decedent's death did not provide any prescriptive period, collection cannot now be negated merely on account of the general period of limitation under the National Internal Revenue Code. **Held,** the five-year period of limitation started to run on July 12, 1941. The running of the period although interrupted from December 8, 1941 to February 28, 1946, started anew on March 1, 1946 to February, 1956, when the Collector filed its answer with the Court of Appeals, a period of more than five years. A collection beyond this period is without authority of law. **Collector v. Clement,** G. R. No. L-12194, January 24, 1959.

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**POLITICAL LAW — TAXATION — ALL THAT THE LAW REQUIRES OF AN UNMARRIED INDIVIDUAL TO BE CONSIDERED HEAD OF A FAMILY IS THAT THE RELATIVES ENUMERATED THEREIN BE DEPENDENT UPON HIM FOR THEIR CHIEF SUPPORT; THE FACT THAT THEIR FATHER IS STILL ALIVE AND CONTINUES TO EXERCISE PARENTAL AUTHORITY OVER THE DEPENDENTS IS OF NO MOMENT.** Calsado, single, filed his income tax returns for 1949 and 1950. In 1949 he had a taxable net income of ₱2,339.50, and in 1950, ₱2,892.00. He paid the tax assessments for the 2 years under protest claiming the benefits of personal exemption as head of a family. Calsado had a brother, 19 years of age, and a sister of legal age, who lived with and fully dependent on him for education and support. During these years, Calsado's father, who lived in the province, seldom, if at all, sent money to his son and daughter living with petitioner Calsado. The Collector of Internal Revenue denied the petitioner's claim for exemption. He argued that the petitioner did not actually maintain a house and exercise family control over his dependents. **Held,** all that the law requires in order that an unmarried individual may be considered head of a family is that the relatives enumerated therein be dependent upon him for their chief support. Th fact that the father still lives and continues to exercise parental authority over the dependents is of no moment. **Collector v. Calsado,** G. R. No. L-10293, February 27, 1959.



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**POLITICAL LAW — TAXATION — A LUMBER DEALER WHO MERELY BUYS LOGS AND HAVE THEM PROCESSED INTO LUMBER OF VARIOUS SIZES BY SAWMILL OPERATORS WHOM HE PAYS FOR THEIR SERVICES IS NOT AN OPERATOR OF A SAWMILL UNDER PARAGRAPH 2 OF SECTION 186 OF THE NATIONAL INTERNAL REVENUE CODE.**—The petitioner owns and operates the Manila Lumber with C-13 privilege tax receipt for buying and selling logs and lumber, and C-14 privilege tax reecipt for buying logs intended to be sold after having been cut into standard sizes by operators of sawmills in Manila whom he pays for their services. On May 21, 1954, respondent Collector demanded from the petitioner the payment of deficiency sales tax covering the period from 1949 to 1953. Said deficiency assessment was computed by the respondent on the basis of 5% sales tax on the gross sales of lumber less cost of logs converted into such lumber, in accordance with paragraph 1 of Section 186 of the National Internal Revenue Code, as amended. The petitioner questioned the computation claiming that being a sawmill operator, he should have been treated under the provisions of paragraph 2 of said Section 186. **Held,** an operator of a sawmill, as used in Section 186 of the NIRC, is one who actually supervises, manages and controls the operation of a sawmill after having secured the necessary permit from the Director of Forestry as required by Republic Act No. 460. The petitioner is not an operator of a sawmill, and, therefore, he should pay the percentage sales tax under paragraph 1 of Section 186 of the National Internal Revenue Code, as amended. **Tiong v. Court of Tax Appeals,** G. R. No. L-19641, February 27, 1959.

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**REMEDIAL LAW — CIVIL PROCEDURE — AN ORDER OF EXECUTION DOES NOT BIND A SURETY WHERE THE JUDGMENT DOES NOT CONTAIN ANY PRONOUNCEMENT AGAINST IT, AND WHERE THE CLAIMANT DOES NOT FILE HIS CLAIM BEFORE ENTRY OF FINAL JUDGMENT.**—In an action of replevin, the plaintiff secured from the court an order of seizure and delivery of personal property after filing the required bond. The defendant filed a counterbond and the order of seizure was lifted and the property returned. After trial, the court absolved the defendant and required the plaintiff to pay damages due to the seizure. On appeal, the Court of Appeals affirmed the decision, and a writ of execution issued but was returned unsatisfied, the plaintiff having no leviable property. Whereupon, the defendant prayed for an alias writ of execution against the surety company which subscribed the replevin bond. Over its objection, the court decreed execution against the company. Hence, this appeal. **Held,** inasmuch as the judgment under execution contained no pronouncement against the surety, and the defendant failed to file a claim against it before the judgment became final, the order must be revoked. **Abelon v. de la Riva,** G. R. No. L-12271, January 31, 1959.

**REMEDIAL LAW — CIVIL PROCEDURE — COSTS AND INCIDENTAL EXPENSES OF SUITS ARE PART OF THE JUDGMENT, AND IT IS INCUMBENT UPON THE PREVAILING PARTY IN WHOSE FAVOR THEY ARE AWARDED TO SUBMIT THE ITEMIZED BILL TO THE CLERK OF COURT WITHIN FIVE YEARS AFTER ENTRY OF JUDGMENT, OTHERWISE, BARRED FOREVER.**—In an election protest, judgment was rendered in favor of the protestant. The order directed the protestee to pay the costs and incidental expenses of the protest. The protestee appealed to the Court of Appeals, filing an appeal bond by mortgaging real property. The Court affirmed the judgment with costs against the appellant-protestee. Whereupon, he filed a petition for review. The Supreme Court denied his petition and judgment was entered on August 6, 1940. On April 2, 1946, the protestant filed his bill of costs in the court of origin and in the Court of Appeals. The protestee objected. For sometime, neither party took any step to have their conflicting claims on costs adjudged. Meanwhile, the protestee petitioned for the release of his appeal bond and the cancellation of the memorandum of encumbrances on the title covering the property mortgaged. The protestant filed an objection thereto and prayed that his bill of costs previously filed be approved. **Held,** the protestant slept on his right and neglected to execute the judgment rendered in his favor within five years from its entry. The bill of costs is barred. **Estayo v. de Guzman**, G. R. No. L-10920, December 29, 1958.

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**REMEDIAL LAW — CIVIL PROCEDURE — EVEN WHERE NO MOTION FOR DISMISSAL IS FILED, A COMPLAINT MAY BE DISMISSED WHERE ONE OR MORE GROUNDS OF DISMISSAL ARE PLEADED AS AFFIRMATIVE DEFENSES, SINCE THE LATTER MAY BE REGARDED AS HAVING THE EFFECT OF A MOTION TO DISMISS.**—Defendants Ongsiapco and his wife Macaso are the owners of Lot 1709 of the San Jose Cadastre, Nueva Ecija, with the corresponding Transfer Certificate of Title. Plaintiffs Chioco and his wife claimed a portion of Lot 1709 alleging that said portion had been inadvertently included in defendants' transfer certificate of title. In the action for conveyance, Macaso filed a motion to dismiss. Her husband Ongsiapco filed an answer, instead of a motion to dismiss, with special defenses of lack of cause of action, prescription and estoppel. The court dismissed the action and the plaintiffs appealed. They contended that since Ongsiapco did not file a motion to dismiss, the trial court erred in dismissing the complaint. **Held,** even if no motion for dismissal is filed, a complaint may be dismissed where one or more grounds of dismissal are pleaded as affirmative defenses, since the latter may be regarded as having the effect of a motion to dismiss under Section 5 of Rule 8 of the Rules of Court. **Chioco v. Ongsiapco**, G. R. No. L-11317, February 28, 1959.

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**REMEDIAL LAW — CIVIL PROCEDURE — REAL PROPERTY MORTGAGED TO THE DEFUNCT AGRICULTURAL AND INDUSTRIAL BANK, WHICH WAS SUCCEEDED BY THE REHABILITATION FINANCE CORPORATION, IS EXEMPT FROM LEVY ON EXECUTION ALTHOUGH EXEMPTION UNDER SECTION 26 OF COM. ACT 459 REFERS ONLY TO ATTACHMENT.**—In a previous case, the Court of First Instance of Manila issued a writ of execution to enforce its judgment in favor of the plaintiff.



Acting on the writ, the corresponding sheriff filed with the proper Register of Deeds the notice of levy upon defendant's property, said notice stating that the levy would be subordinated to the mortgage lien of the Rehabilitation Finance Corporation as successor of the Agricultural and Industrial Bank. The notice of levy was refused registration on the ground that the property was exempt under Section 26 of Com. Act 459. **Held,** although Section 26 of Com. Act 459 refers only to attachment, the idea of the exemption is to free the property from any other encumbrance to protect the Government's investment. The exemption embraces levy on execution because a different interpretation would defeat the purpose of the law which is to maintain the value of the property. Section 12 of Rule 39 of the Rules of Court does not exempt property mortgaged to the RFC but contains the qualification, "except as otherwise provided by law", which may be deemed to include Section 26 of Com. Act 459. **Associated Insurance & Surety Co. v. Register of Deeds**, G. R. No. L-11932, January 30, 1959.

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**REMEDIAL LAW — CIVIL PROCEDURE — THE DISMISSAL OF AN ELECTION PROTEST WITHOUT NOTICE TO THE PROTESTANT VIOLATES THE DUE PROCESS REQUIREMENT OF NOTICE AND HEARING.**—Valencia who was defeated by Mabilangan in the 1955 elections for the office of Mayor, filed an electoral protest. Mabilangan filed a motion to dismiss which was granted, after an ex parte hearing, on the ground of lack of interest on the part of the protestant Valencia, although the records showed that the commissioners of Valencia needed more time to finish the revision of ballots. His motion for reconsideration being denied, hence this appeal. **Held,** the dismissal of an election protest by the court without notice to the protestant violates the due process requirement of notice and hearing. **Valencia v. Mabilangan,** G. R. No. L-13059, January 31, 1959.

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**REMEDIAL LAW — CIVIL PROCEDURE — THE JURISDICTION OF A COURT IS DETERMINED BY THE AMOUNT CLAIMED, AND NOT BY THE AMOUNT WHICH MAY BE RECOVERED UNDER THE COMPLAINT.**—According to the schedule of payment submitted by the defendants to the plaintiff, the outstanding balance of ₱5,865.00 was to be paid in six monthly installments, the first three at ₱500.00 each. The plaintiff accepted the proposal conditioned that upon the defendants' failure to comply with the schedule, it would immediately refer the balance to its lawyer for collection without further notice. The defendants paid the first installment, but paid only ₱450.00 on the second. Whereupon, the plaintiff brought this action the following month to recover the whole balance. The defendants contended that inasmuch as at the time of the filing of the action, the sum due was only ₱550.00, ₱500, corresponding to the third month, and ₱50, to the second, the Court of First Instance had no jurisdiction. **Held,** the jurisdiction of a court is determined by the amount claimed in the complaint, not by the sum which may be recovered under it. The amount demanded in the complaint is ₱4,915.62 with interest, the total of which is well within the jurisdiction of the Court of First Instance. **Firestone v. Delgado,** G. R. No. L-11162, December 4, 1958.

**REMEDIAL LAW — CRIMINAL PROCEDURE — A BONDSMAN IS BOUND TO PRODUCE THE PERSON OF THE ACCUSED WHEN HIS APPEARANCE IS REQUIRED BY THE COURT AND MUST MAKE EVERY EFFORT TO SEE THAT HE ACTUALLY MAKES HIS APPEARANCE.**—The Alto Surety & Insurance Co. posted a bail bond in favor of the accused. At the hearing the accused failed to appear notwithstanding the notice given to his bondsman, whereupon the court ordered the confiscation of the bond. The bondsman filed a motion to lift the order of confiscation. In the meantime, the case was dismissed. But this notwithstanding, the court denied the motion to lift the order of confiscation. The court merely reduced the liability of the bondsman to 20% of the original bond. The bondsman appealed. **Held,** a bondsman is bound to produce the person of the accused when his appearance is required by the court. The fact that the bondsman notified the accused long before the hearing, requiring him to appear before the court at a certain date, is not sufficient compliance with its commitment under the bond. **People v. Gonzales,** G. R. No. L-12056, January 24, 1959.

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**REMEDIAL LAW — CRIMINAL PROCEDURE — AN ACCUSED WHO, AWARE OF A PENDING PRELIMINARY INVESTIGATION AGAINST HIM, MOVES OUT FROM HIS LAST KNOWN ADDRESS WITHOUT ADVISING THE FISCAL OF HIS NEW ADDRESS, IMPLIEDLY WAIVES HIS CHANCE TO BE HEARD IN THE PRELIMINARY INVESTIGATION.**—The petitioner was charged with bigamy. On the date fixed for the preliminary investigation, the petitioner appeared but no preliminary investigation was conducted because the fiscal was absent on account of illness. The case was then assigned to another fiscal who set another date for preliminary investigation. Served with a subpoena at his known address, petitioner could not be found. He had moved to another place without notifying the fiscal of his new address. On the day set for the preliminary investigation, the fiscal proceeded without the petitioner. Three days thereafter, the fiscal filed the information with a certification at the foot thereof that a preliminary investigation had been conducted. Petitioner filed a motion for reinvestigation on the ground that he was denied a chance to be heard, invoking Section 38-c of R. A. No. 1201. **Held,** petitioner was not denied a chance to be heard. A subpoena was issued to him by the fiscal at his known address. Aware of a pending preliminary investigation against him, petitioner's act of moving out from his last known address without advising the fiscal of his new address impliedly waived his chance to be heard. **Nombres v. People,** G. R. No. L-11437, February 28, 1959.

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**REMEDIAL LAW — CRIMINAL PROCEDURE — THE PROVISIONAL DISMISSAL OF A CASE, GRANTED UPON MOTION OF THE ACCUSED, IS NOT A BAR TO A SUBSEQUENT PROSECUTION FOR THE SAME OFFENSE INVOLVED, THE MOTION HAVING THE EFFECT OF WAIVING HIS DEFENSE OF DOUBLE JEOPARDY.**—Charged with qualified theft, the accused on arraignment pleaded not guilty. Hearing was postponed several times, once **motu propio** by the court, once at the instance of the prosecution, and several times at the instance of the defense. On the next date set for hearing, the fiscal asked again for postponement reasoning that he had only one witness available. The accused objected and moved for the provisional dismissal of the case. Granted. Subsequently, the fiscal again charged the accused with the same offense, reproducing practically the same information. The accused filed a motion to quash on the ground of double jeopardy. **Held,** where, upon motion of the accused, the case is provisionally dismissed, the dismissal is not a bar to a subsequent prosecution for the same offense, because the motion of the accused constitutes a waiver of his defense of double jeopardy. Under Section 9 of Rule 113 of the Rules of Court, double jeopardy sets in if the case is dismissed without his consent. **People v. Togle,** G. R. No. L-13709, January 30, 1959.



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**REMEDIAL LAW — CRIMINAL PROCEDURE — WHERE THE INFORMATION AVERS FACTS CONSTITUTING AN OFFENSE OTHER THAN THAT CHARGED, AND SUCH OFFENSE CONSISTS IN THE IMPUTATION OF A CRIME NOT PROSECUTABLE DE OFICIO, THE COURT DOES NOT ACQUIRE JURISDICTION.**—The information filed against the accused stated that she was charged with violation of Article 364 of the Revised Penal Code. However, the information averred facts constituting an imputation of the crime of adultery. On motion of the accused, the trial court quashed the information on the ground of lack of authority to prosecute. Hence, the appeal. **Held,** considering that, under Article 360, par. 4 of the Revised Penal Code, no criminal action for defamation which consists in the imputation of a crime not prosecutable de oficio can be brought except upon complaint filed by the offended party, and the crime of adultery is one that cannot be so prosecuted, it is obvious that the information filed in this case is insufficient to confer jurisdiction upon the court of origin. **People v. Padilla,** G. R. No. L-11575, January 24, 1959.

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**REMEDIAL LAW — EVIDENCE — A PLEA OF GUILTY REMOVES ALL NECESSITY OF PRESENTING EVIDENCE OF THE CRIME CHARGED AND IS SUFFICIENT TO SUSTAIN A CONVICTION, EVEN OF A CAPITAL OFFENSE.**—The accused were charged with murder attended by aggravating circumstances. They pleaded guilty and the trial court sentenced them to death. On elevation of the case to the Supreme Court for review, the counsel de oficio contended that the trial court erred in considering against the accused the aggravating and qualifying circumstances stated in the information, on the ground that there has been no hearing upon the facts alleged as giving rise to those circumstances. **Held,** a plea of guilty when formally entered is sufficient to sustain a conviction of any offense charged in the information, even of a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof. **People v. Santos,** G. R. No. L-12448, January 22, 1959.

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**REMEDIAL LAW — EVIDENCE — EXCLUSIVE POSSESSION OF A FALSIFIED DOCUMENT, COUPLED WITH THE OPPORTUNITY AND MOTIVE TO FALSIFY THE SAME, CONSTITUTES CIRCUMSTANTIAL EVIDENCE INFERENTIAL OF THE POSSESSOR BEING THE FORGER.**—Upon being apprehended for traffic violation, the accused, instead of a license, presented a Traffic Violation Receipt which has been falsified making

it appear that the accused had only one previous traffic infraction, when in fact the TVR had been issued for the third time. At the investigation, the accused signed a written confession admitting that he falsified the TVR to conceal his previous violations in order to avoid immediate arrest upon a fourth violation. On trial, he repudiated his extrajudicial confession. Notwithstanding, he was found guilty of falsification. Hence, this appeal. **Held,** being the only person who could have made the alterations on the document, and being the only one to benefit from such falsification, the possessor of the forged document is presumed to be the forger. **People v. Manansala,** G. R. No. L-13142, January 30, 1959.

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**REMEDIAL LAW — SPECIAL PROCEEDINGS — IN PARTITION PROCEEDINGS, WHERE THE COURT FINDS THAT THE RELATIONS AMONG CO-OWNERS ARE STRAINED, AND NO SATISFACTORY ARRANGEMENT FOR ADMINISTRATION CAN BE REACHED, IT MAY PROPERLY APPOINT A RECEIVER PENDENTE LITE.**—Pending testamentary proceedings, the heirs submitted to the court an agreement extrajudicially partitioning the decedent's estate and asking that the testamentary proceedings be dismissed. The court dismissed the proceedings and confirmed the agreement which established two co-ownerships. In a petition for partition of the estate owned by one of the co-ownerships, it was prayed that a receiver be appointed pendente lite, on the ground that the managing co-owner was unwisely administering the property to the detriment of the co-owners. The lower court granted the petition designating the deputy clerk of court as receiver. Hence, this petition for review. **Held,** although the appointment of a receiver in partition proceedings is not necessary, it is not an abuse of discretion for the court to appoint a receiver where it finds that the relations among the co-owners are strained, and no satisfactory arrangement for administration can be reached. **Chunaco v. Quicho,** G. R. No. L-13774, January 30, 1959.

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**REMEDIAL LAW — SPECIAL PROCEEDINGS — THE WRIT OF HABEAS CORPUS MAY ISSUE TO SECURE THE RELEASE OF A MINOR HAVING AN ILLICIT RELATION WITH A MAN, NOTWITHSTANDING HER CHOICE TO LIVE WITH HIM.**—Teofilo Macazo, eldest brother of Susana, requested the respondent to employ his sister as a laundry-woman. Susana was 18, single, orphan, and a deaf-mute. While in the employ of the respondent, a married man, Susana gave birth to a child. At the hearing for the issuance of the writ of habeas corpus, the respondent admitted the paternity of the child. In the course of the trial, Susana intimated to the court, in sign language, her desire to stay with the respondent. The court denied the petition for the issuance of the writ. **Held,** the court below should not have overlooked that by dismissing the petition, it was virtually sanctioning the continuance of an adulterous and scandalous relation between the minor and her married employer, against all principles of law and morality. It is no excuse that the minor has expressed preference for remaining with said respondent, because the minor may not choose to continue an illicit relation that morals and law repudiate. **Macazo v. Nuñez,** G. R. No. L-12772, January 24, 1959.



## COURT OF APPEALS

**CIVIL LAW — PERSONS & FAMILY RELATIONS — VOLUNTARY ACTS OF COHABITATION HAVE THE EFFECT OF RATIFYING A MARRIAGE CONTRACT ENTERED INTO UNDER DURESS.**—Upon his return from military service in Korea, the plaintiff went back to his native town, where he met and subsequently fell in love with the defendant. Marriage between the two was celebrated on September 29, 1953 before the justice of the peace of the town. They lived together until October 16, 1953. This is an action to annul the marriage contract, the plaintiff alleging that he entered into it under duress. **Held,** a man who is forced into marriage without his consent and against his will cannot take advantage of the woman he has married under such conditions by having sexual relations with her after the threat or violence has disappeared. **Fajardo v. Galao,** (CA) G. R. No. 16533-R, April 15, 1958.

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**COMMERCIAL LAW — USURY — AN EXPRESS STIPULATION BETWEEN THE PARTIES THAT INTEREST DUE AND UNPAID, CAPITALIZED AND ADDED TO THE PRINCIPAL, EARNS NEW INTEREST IS NOT ILLEGAL, AND SHALL NOT BE CONSIDERED IN THE DETERMINATION OF WETHER OR NOT THEIR AGREEMENT FALLS WITHIN THE USURY LAW.**—This is an action to recover the principal amount of ₱2,000.00 paid by the plaintiff, as surety to the creditor of the defendants, together with interest, attorney's fees and costs. The indemnity agreement, executed jointly and severally by the defendants in favor of the plaintiff, provided that any and all sums of money paid by the plaintiff would bear interest at the rate of 12 per cent per annum which interest, if not paid, would be accumulated and added to the capital quarterly to earn the same rate of interest. The lower court found for the plaintiff. The issue is whether or not the provision of the indemnity agreement calling for the quarterly capitalization of interest is usurious. **Held,** it is already settled in this jurisdiction that an express stipulation between the parties to an agreement that interest due and unpaid, capitalized and added to the principal, earns new interest is not illegal, and shall not be considered in the determination of whether or not such agreement falls within the usury law. **Luzon Surety Co. v. Payawal,** (CA) G. R. No. 19428-R, April 16, 1958.

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**CRIMINAL LAW — EVIDENCE — BURDEN OF PROOF OF EXEMPTING CIRCUMSTANCES LIES WITH THE ACCUSED.**—This is an appeal from a judgment of the Court of First Instance of Antique convicting the accused, Rodrigo Bucio, of the crime of illegal possession of firearm and ammunitions, and sentencing him to an indeterminate penalty of five to seven years of imprisonment. On April 25, 1956, the accused was arrested on a charge of robbery. Upon investigation in connection with the robbery, the accused admitted that he had in his possession a carbine and five rounds of ammunitions, and the said articles were in a place near his hut. Three constabularymen accompanied the accused to said place where they retrieved the articles. The defense alleged that the prosecution failed to establish that the appellant had no authority to possess firearm. **Held,** it is well settled in this jurisdiction that in prosecutions for violations of statutes

which, like the Firearm Law, contain excepting clauses, the fact that the accused does not fall within the exceptions need not be alleged in the information nor proved by the prosecution. Such fact being a negative one which lies peculiarly within the knowledge of the accused, the burden of proving the same as a defense lies with the latter. **People v. Bucio,** (CA) G. R. No. 18333-R, May 7, 1958.

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**CRIMINAL LAW — MALTREATMENT OF PRISONERS — TO JUSTIFY CONVICTION 4 ESSENTIAL ELEMENTS MUST BE PRESENT.**—In a message from the Motor Vehicle Office to the Police Chief of a town, the former office asked the latter to require a detention prisoner to produce the authority given him by the said office to clarify the nature of the operation of his truck on the public highways. The town mayor to whom the message was turned over made the necessary inquiry which, however, led to an altercation between the two. The foregoing incident triggered mutual criminal accusations by one against each other. The mayor was subsequently found guilty of maltreatment of prisoners. **Held,** to justify conviction of the appellant, the following essential elements must be present: (1) that the offender is a public officer or employee; (2) that the prisoner or detention prisoner is under the charge of the said public officer or employee; in this connection, when the law uses the term "under the charge", it contemplates actual charge, not one which is so merely by legal fiction, that is, the fact of actual custody must be present; (3) that the public officer or employee imposed punishment in the correction or handling of the prisoner; and (4) that the punishment was not authorized by regulations or was inflicted in a cruel and humiliating manner, or for the purpose of extorting a confession or to obtain some information from the prisoner. **People v. Javier,** (CA) G. R. No. 14585-R, May 6, 1958.

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**CRIMINAL LAW — ORAL DEFAMATION — ORAL DEFAMATION IS ADDRESSED TO THE SENSE OF HEARING, NOT TO THE SENSE OF SIGHT.**—Complainant and her friends were awakened one night by a group of serenaders. Hearing an unwholesome dedication addressed to her, the complainant reprimanded the group. The accused who was with the serenaders shouted at her offensive and scurrilous remarks intimating that she was a girl of ill-repute. Thereafter, the accused went to the window, peeped inside and introduced himself as an old acquaintance. Convicted of oral defamation, he appealed contending that the complainant and her witnesses could not have recognized him because of the darkness. **Held,** where the complainant is conversant with the voice of the author of the scurrilous remarks by reason of having known him long before the incident in question, the fact that the defendant could not be seen because of darkness will not be sufficient to exculpate him. And this is because oral defamation, as the term suggests, does not concern itself so much with the opportunity of seeing the movement of the lips of the author thereof as with the chance of hearing the defamatory statements uttered. **People v. Formanes,** (CA) G. R. No. 18687-R, March 28, 1958.

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**CRIMINAL LAW — PENALTIES — AN ACT WHICH, IF INTENTIONAL, AMOUNTS TO A LIGHT FELONY, IS NOW PUNISHABLE UNDER ART-**



**ICLE 365 OF THE REVISED PENAL CODE, AS AMENDED BY R. A. NO. 1790.**—On September 21, 1954, a jeepney full of passengers collided with a cargo truck. Three passengers were injured. The truck driver was charged with and found guilty of multiple physical injuries thru reckless imprudence under Article 365, in relation to Article 263, of the Revised Penal Code. On appeal, he contested the findings of the lower court on the nature of the injuries suffered by the three passengers. **Held,** one of the injured passengers was hospitalized merely for six days. In other words, he only suffered slight physical injuries which if caused by an intentional act would be a light felony. Though such act was not formerly punishable, it is now under Article 365 of the Revised Penal Code, as amended by Rep. Act No. 1790. **People v. Abangco,** (CA) G. R. No. 19305-R, May 10, 1958.

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**LAND TITLES & DEEDS — PUBLIC LAND LAW — THE SALE OF A HOMESTEAD WITHIN FIVE YEARS FROM ISSUANCE OF PATENT IS VOID AND NOT SUSCEPTIBLE OF CONFIRMATION OR RATIFICATION.**—On May 15, 1934, a homestead patent was issued in the name of Margarita Rivera, covering a parcel of land in Bagabag, Nueva Vizcaya. On April 7, 1939, in consideration of an unpaid obligation of ₱1,500.00, Margarita Rivera executed in favor of Emiliano Par a notarial deed of sale, whereunder the former conveyed unto the latter, by way of absolute sale, the homestead. Attempts of the plaintiffs to redeem the land having failed, they filed this case on January 4, 1950. **Held,** there is no question that the homestead in question was sold four years, ten months and twenty-two days following the issuance of the patents therefor. Section 116 of Act No. 2874, now section 118 of Com. Act No. 141, specifically prohibits sale of homestead within five years after the issuance of the patent. Being in contravention of public policy, it cannot be ratified. And neither the homesteader nor his successors-in-interest could waive the right to recover the said homestead. **Domingo v. Par,** (CA) G. R. No. 18248-R, March 24, 1958.

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**REMEDIAL LAW — CIVIL PROCEDURE — AFTER THE SALE BY THE JUDICIAL ADMINISTRATOR OF PROPERTY UNDER ADMINISTRATION, DULY APPROVED BY THE PROBATE COURT, SAID PROPERTY CEASES TO BE IN CUSTODIA LEGIS, AND THE PROBATE COURT LOSES JURISDICTION OVER IT.**—The property involved in this case was a parcel of land owned by the late Gregoria Tongco whose estate was under judicial administration in the CFI of Manila. The property was sold for ₱25,000.00 with the approval of the probate court. Pending issuance of the transfer certificate of title to the vendee, the property was offered for sale for ₱50,000.00. A probable buyer, upon learning of the sale of ₱25,000.00, filed with the probate court application to buy the property for ₱45,000.00 and prayed that the first sale be annulled as being in fraud of the estate. **Held,** by virtue of the deed of absolute sale over the property executed by the judicial administrator, duly approved by the probate court, the property had ceased to be in **custodia legis,** and the probate court has lost control and jurisdiction over said property. **Guanzon v. Viola,** (CA) G. R. No. 15794-R, May 12, 1958.

**REMEDIAL LAW — CIVIL PROCEDURE — COURTS OF FIRST INSTANCE ACTING AS COURTS OF GENERAL JURISDICTION HAVE SUFFICIENT LEGAL AUTHORITY TO CORRECT AN ERRONEOUS STATEMENT OF THE AREA OF A REGISTERED LAND MADE IN A DEED OF SALE AND TRANSFER CERTIFICATE OF TITLE.**—A parcel of land covered by Original Certificate of Title No. R-620 with an original area of 33,460 square meters was subdivided for cadastral purposes into lots Nos. 2765, 2766 and 2768. Lot No. 2765 was purchased by Julian from the heirs of its original owner. A subsequent sale was made to Valencia and Visaya of the parcel of land covered by Original Certificate of Title No. R-620 by making it appear that said property was composed only of Lot No. 2766 with an area of 1.6788 hectares and Lot No. 2768 with an area of 1.6618 hectares or a total of 3 hectares, 34 ares and .06 centares, exactly the area of the original parcel. Title No. R-620 was cancelled by Transfer Certificate of Title No. T-331 in the name of Visaya for 1.6788 hectares and Valencia for another portion of 1.6618 hectares. Action was brought by Julian for amendment of the deed of sale in favor of Visaya and to exclude therefrom Lot No. 2765. Visaya questioned the jurisdiction of the CFI claiming that the question should be the subject of proper proceedings in the cadastral case where the title was issued. **Held,** Courts of First Instance acting as courts of general jurisdiction have sufficient legal authority to correct an erroneous statement of the area of a registered land made in a deed of sale and transfer certificate of title. **Julian v. Visaya,** (CA) G. R. No. 16348-R, April 10, 1958.

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**REMEDIAL LAW — SPECIAL PROCEEDINGS — EXPENSES INCURRED BY THE GUARDIAN IN PROSECUTING AN ACTION FOR THE BENEFIT OF ALL THE HEIRS OF THE DECEASED WARD ARE CHARGEABLE AGAINST THE FUNDS OF THE GUARDIANSHIP.**—In a civil case instituted by the seven heirs of the deceased ward and Victorino Reynes, duly appointed guardian of the estate of the ward, to annul the sale of three parcels of land executed by the ward in favor of the therein defendants, Antonio Ma. Cui and Mercedes Cui de Ramas, co-heirs of the heirs-plaintiffs, the plaintiffs incurred as legal and incidental expenses the total amount of ₱5,858.35 which the lower court ordered to be charged against the funds of the guardianship. The co-heirs Antonio and Mercedes opposed said order. **Held,** where an action is for the benefit of all the heirs of the incompetent under guardianship, although the guardian was joined as party-plaintiff for convenience, the reasonable expenses incurred in prosecuting the same is a proper charge against the funds of the guardianship. **Guardianship of Reynes v. Cui,** (CA) G. R. No. 11177-R, May 9, 1958.

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**REMEDIAL LAW — SPECIAL PROCEEDINGS — THE COMMISSIONER'S REPORT UNDER RULE 34 OF THE RULES OF COURT HAS LIMITED APPLICATION TO SPECIAL PROCEEDINGS.**—Liwanag died intestate leaving behind him six children and his second wife. A manifestation and claim was filed by the widow with the administrator, in which she asked for the reimbursement of various sums of money said to have been paid by her after the death of her husband. This was opposed by the administrator and the children. As no agreement was reached between the parties,



the judge appointed the clerk of court as commissioner "to receive the evidence of the claimant in support of her claim and of the oppositors, if any there be." The court issued an order denying most of the claims of the widow for which this appeal was made. The appellant contested the ruling of the probate court on the ground that the commissioner failed to submit a formal and written report on the reception of evidence, with copies furnished to the parties therein as required by law. **Held,** when an order appointing a commissioner is explicit "to receive the evidence of the claimants in support of their claims and of the oppositors, if there be any," submission of a written report of the evidence received by him is not necessary. It is enough that the stenographic notes were transcribed and the transcription attached to the record. The report required of a commissioner to be submitted as provided in Sections 9, 10 and 11 of Rule 34 of the Rules of Court has limited application to special proceedings. **Liwanag v. Limcaco,** (CA) G. R. No. 20054-R, March 17, 1958.