REMEDIAL LAW — CRIMINAL PROCEDURE — THE JURISDICTION OF THE COURTS IN CRIMINAL OFFENSES IS DETERMINED BY THE PENALTY PROVIDED BY LAW FOR THE OFFENSE AND NOT THAT IMPOSED ON THE ACCUSED AFTER TRIAL. — The defendant was charged in the Court of First Instance with violating article 277 of the Revised Penal Code, which imposes upon parents who shall neglect their children by not giving them the education which their station in life requires and financial condition permits, *arresto mayor* and a fine not exceeding ₱500. According to the defendant, as the penalty imposed for the violation of article 277 is *arresto mayor* and a fine not exceeding ₱500, pursuant to section 87 (b) R. A. No. 296 (the Judiciary Act of 1948, as amended) it is the municipal court that has jurisdiction of the case. The defendant was found guilty as charged (his motion to dismiss having been denied) and sentenced to suffer 2 months and 1 day of *arresto mayor* and to pay a fine of ₱200, with subsidiary imprisonment in case of insolvency. The defendant appealed, again raising the question of jurisdiction. *Held,* since the penalty imposed for the violation of article 277 of the Revised Penal Code is both imprisonment and fine, the penalty cannot be split into two: the municipal court which has jurisdiction of an offense in which the penalty provided by law is imprisonment for not more than 6 months, imposing the imprisonment and the Court of First Instance which has jurisdiction of a case in which the penalty imposed by law is fine of more than ₱200, imposing the fine. Consequently, as the jurisdiction of the courts in criminal cases is determined by the penalty provided by law for the offense and not that imposed on the accused after trial, the Court of First Instance has jurisdiction of the case and correctly took cognizance of it. PEOPLE *v.* CUELLO, G. R. No. L-14307, March 27, 1961.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE LAW DOES NOT IMPOSE UPON THE COURT THE DUTY TO APPRISE THE ACCUSED OF THE NATURE OF THE PENALTY TO BE METED OUT TO HIM IN CASE HE PLEADS GUILTY TO THE CHARGE WITH THE ASSISTANCE OF COUNSEL. — This is a review of a sentence of death imposed upon the defendant by the CFI of Rizal. It appears that the defendant with two others, while serving their respective sentences in the New Bilibid Prison, conspired and confederated together in stabbing one Almario Bautista, from the wounds of which the latter died. All the three accused pleaded not guilty but appellant herein moved at the hearing that he be permitted to withdraw his former plea of not guilty and substitute one of guilty. After pleading guilty, the counsel for the accused moved that the minimum penalty be imposed in view of said plea of guilty. The prosecution objected to the motion contending that since the special aggravating circumstance of quasi-recidivism is present, which cannot be offset by the mitigating circumstance of plea of guilty, the imposable penalty should be death. Sustaining the objection of the prosecution, the court sentenced the appellant to death. *Held,* there is no merit in this appeal. When an accused is

arraigned in connection with a criminal charge, the only duty of the court is to inform him of its nature and cause so that he may be able to comprehend it, as well as the circumstances attendant thereto. And when the charge is of a serious nature it becomes the imperative duty of his counsel not only to assist him during the reading of the information but also to explain to him the real import of the charge so that he may fully realize the gravity and consequences of his plea. But there is nothing in the law that imposes upon the court the duty to apprise him of what the nature of the penalty to be meted out to him might be if he would plead guilty to the charge, its duty being limited to having him informed of the nature and cause thereof. PEOPLE *v.* AMA, G. R. No. L-14783, April 29, 1961.

COURT OF APPEALS CASE DIGEST

CIVIL LAW — COMPROMISE — AN AMICABLE SETTLEMENT ENTERED INTO BY A PARTY LITIGANT IS VALID THOUGH THE SIGNATURE OF HIS COUNSEL DOES NOT APPEAR IN THE COMPROMISE AGREEMENT. — A motion for leave to file typewritten record on appeal and brief was filed by counsel for Fernandez in the Supreme Court on allegation of poverty which the court denied, finding the allegation unmeritorious. A second motion was filed asking for extension of time within which to deposit the estimated cost of printing, for in the meantime an amicable settlement was being negotiated. Finally, a third motion was filed some time later praying that the appeal be considered withdrawn since a compromise has been reached, attaching to such motion the agreement made. The signature of the counsel of Fernandez, however, did not appear in said compromise agreement. *Held,* that although the signature of counsel of the defendant is missing in the compromise, such is nevertheless valid by virtue of articles 2023 and 2037 of the new Civil Code. An amicable settlement entered into by a party litigant is valid although the signature of his counsel does not appear, for a party to a case may, at any time before final judgment, enter into compromise with the adverse party even without the knowledge and consent of his attorney. However, the withdrawal of the appeal cannot be permitted for that would, under secs. 2 and 4 of Rule 52, Rules of Court, have the effect of reviving the appealed decision and thus contravene the intention of the parties. Judgment rendered according to the compromise. SISON *v.* FERNANDEZ, (CA) No. 24943-R, November 23, 1959.

CIVIL LAW — CREDIT TRANSACTIONS — MANDAMUS WILL NOT LIE TO COMPEL THE SHERIFF TO RELEASE PROPERTY SEIZED IN AN EXTRA-JUDICIAL FORECLOSURE OF A CHATTEL MORTGAGE ON PETITION OF A THIRD-PARTY CLAIMANT. — C. N. Hodges owned a jeep which he sold on

April 15, 1957 to Florentina Jereza on installment, who in turn mortgaged the vehicle to vendor as security for the full payment of the purchase price. On April 29, 1957, Florentina's husband mortgaged the same vehicle to Bienvenido Tolosa without her (Florentina's) consent. As Florentina's husband was not able to pay the obligation for which the vehicle was placed as security, Tolosa foreclosed the mortgage extrajudicially. The mortgaged vehicle was accordingly seized by the provincial sheriff and advertised for sale. Hodges, upon being informed of the seizure of the motor vehicle, filed a third-party claim with the provincial sheriff, but the latter refused to release the vehicle. Hodges then filed a petition seeking a writ of mandamus to compel the sheriff to release the motor vehicle and to pay damages in the sum of ₱2,800. Hodges also prays that an order be issued to order forthwith the respondent sheriff to release or deliver the motor vehicle to the petitioner (Hodges) for which the petitioner is willing to file bond in such amount as the court may determine. The Court of First Instance dismissed the petition. Hence, this appeal. The question asked is: Whether or not the provincial sheriff can be compelled by mandamus to release property seized in an extrajudicial foreclosure of chattel mortgage on petition of a third-party claimaint. *Held,* the Chattel Mortgage Act does not provide a rule for the disposition of a third-party claim, if one is eventually presented, regarding a property seized in an extrajudicial foreclosure. The alleged legal duty which the petitioner would like the court to compel the respondent to do is not specifically pointed out either by Rules 39 and 59 (of the Rules of Court) or the Chattel Mortgage Act, and we are not aware of any other law imposing such duty on respondent. There being no law clearly imposing a ministerial duty on the part of the foreclosing officer in such case, the remedy of mandamus will not lie. HODGES *v.* THE PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS, (CA) No. 23372-R, September 28, 1959.

CIVIL LAW — DAMAGES — WHERE THE PLAINTIFF IS GUILTY OF CONTRIBUTORY NEGLIGENCE, THE LIABILITY OF THE DEFENDANT SHOULD BE MITIGATED. — In the evening of Dec. 26, 1954, the offended party was driving his car southward along the west lane of Dewey Blvd. Defendant was also driving a taxi along the east lane of the same Blvd. northwards. Upon reaching the intersection of Dewey Blvd. and Isaac Peral St. the offended party turned left to enter the latter street and in the middle of the east lane the offended party's car was bumped at the right side by the taxi and damaged to the extent of ₱5,876.16. The defendant was accused of damage to property through reckless imprudence. In the trial, each party claimed to have exercised due care and attributed the incident to the negligence of the other. The defendant was convicted of said crime and sentenced to pay the full amount of the damages suffered by the offended party. Hence, this appeal. *Held,* that the appellant is responsible for the occurence of the incident at bar. His liability, however, is mitigated by the contributory negligence of the plaintiff. Both parties were negligent. The offended party was guilty of negligence because of

his miscalculation. Having seen, as he admitted, vehicles approaching at a distance of 50 yards, he should have refrained from crossing the path of the incoming vehicles driven at a fast clip or if he had to cross, he should have increased his speed to avoid being caught by the incoming vehicles. Appellant is also guilty of negligence. If he had exercised the care required of him as a driver of a public utility by the circumstances of the place and time, he could have seen the offended party while it was about to cross the lane and thus take the necessary precautions. This is not a case of the application of the emergency rule in which the driver, in order to save himself, has to injure someone. This is rather an application of the last clear chance rule. PEOPLE *v.* DE JOYA, (CA) No. 22963-R, January 28, 1960.

CIVIL LAW — PERSONS — IRREGULARITIES IN THE APPLICATION FOR AND ISSUANCE OF THE MARRIAGE LICENSE DO NOT NECESSARILY VITIATE THE MARRIAGE, IF ALL THE ESSENTIAL REQUISITES FOR THE VALIDITY OF THE SAME ARE COMPLIED WITH. — Anita de Leon and her son filed a complaint for support and damages against Pablo San Gabriel, Jr. The latter in his answer denied the allegations in the complaint regarding the fact that Anita was his wife and that the child was begotten out of their relationship, filing as a counterclaim an action for the annulment of marriage, on the ground of irregularities in the application and issuance of the marriage license; that his signature in the application was forged; that the license was not signed by the assistant Civil Registrar as subcribing officer but by a clerk in the same office; that he was not a resident of Binangonan, Rizal, at the time of filing of the application but of Manila so that the application should have been made in Manila or in Pasay, Anita's residence. As to the complaint of Anita a stipulation of facts was reached and what is left for judicial determination is the counterclaim for annulment of marriage. The trial court dismissed such counterclaim. Pablo appealed. *Held,* that the dismissal is correct. As to the forged signature, aside from Pablo's bare statements, no other evidence can be found to substantiate his claim. Besides, his forged signature when compared with his admitted signature was strikingly similar. The other irregularities do not necessarily vitiate the marriage if all the essential requisites for the validity of the same were complied with. Lack of residence alone or that the application contained false statements would not affect the validity of the marriage. Along the same vein, lack of authority on the part of the subscribing officer would not render a marriage void since such irregularity is primarily the look-out of such subscribing officer especially more in this case when said clerk had been signing the name of the Assistant Civil Registrar in marriage licenses with the tolerance and acquiescence of the latter. SAN GABRIEL *v.* SAN GABRIEL, (CA) No. 23727-R, November 27, 1959.

CIVIL LAW — PERSONS — THE PROSECUTING OFFICER, IN CASE OF NON-APPEARANCE OF THE DEFENDANT IN AN ACTION FOR ANNULMENT

OF MARRIAGE, SHALL INQUIRE WHETHER OR NOT COLLUSION EXISTS; IN THE ABSENCE THEREOF, HE SHALL INTERVENE FOR THE STATE TO TAKE CARE THAT THE EVIDENCE FOR THE PLAINTIFF IS NOT FABRICATED. — Plaintiff Anita de Leon and her son filed a complaint for support and damages against Pablo San Gabriel, Jr. The latter denied in his answer that Anita was his legal wife or the boy his son, and prayed in a counterclaim for the annulment of the marriage on the ground of duress and irregularities in the application for the issuance of the marriage license. All these allegations have been traversed by the former. The parties entered into a stipulation of facts in which Pablo recognized the child begotten by Anita as his son and bound himself to give a monthly support of ₱50, while Anita renounced her claim for damages. Left for judicial determination is the annulment of marriage. Anita through counsel manifested in open court that she would not oppose such action for annulment. Thus, the court ordered the City Attorney to inquire into the possibility of collusion. Finding no collusion, the said officer intervened to ascertain that the evidence of Pablo was not fabricated. After trial, the court dismissed the counterclaim for the annulment of marriage. Pablo appealed, assigning the City Attorney's intervention as erroneous. *Held,* untenable. Article 88 of the new Civil Code says, "no judgment annulling a marriage shall be promulgated upon a stipulation of facts or by confession of judgment. In case of non-appearance of the defendant, the provisions of Art. 101 par. 2 shall be observed." Article 101 par. 2 says, "in case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that evidence for the plaintiff is not fabricated." The law is broad enough to authorize the prosecuting officer to oppose the action for annulment through the presentation of evidence of his own finding, if in his opinion, the proof adduced by the plaintiff is dubious or fabricated. SAN GABRIEL *v.* SAN GABRIEL, (CA) No. 23727-R, November 27, 1959.

COMMERCIAL LAW — INSURANCE — SEC. 2 OF R. A. NO. 487 IMPLIEDLY REPEALED SEC. 91-B OF THE INSURANCE ACT, ORDAINING THE PAYMENT OF 12 PER CENT OF THE AMOUNT OF THE CLAIM DUE THE INSURED, AND WHICH PROVIDES THAT "THE LAPSE OF TWO MONTHS FROM THE OCCURENCE OF THE INSURED RISK WILL BE CONSIDERED PRIMA FACIE EVIDENCE OF UNREASONABLE DELAY IN PAYMENT, UNLESS SATISFACTORILY EXPLAINED." — On Aug. 9, 1948, defendant issued an open policy in favor of the plaintiff, whereby the former undertook to insure, in an amount not exceeding $30,000.00 all shipments made on and after Aug. 5, 1948 "by the assured for their own accounts as principals or agents for others or by others for account of the assured wherever assured has insurable interest." Shipments were to be "valued at: amount declared. In the event of loss or damage prior to declaration the interest insured shall be deemed to be valued at the amount of invoice including all charges

therein plus, unless included in the invoice, any prepaid or advanced freight and/or freight payable vessel lost or not lost plus insurance premium plus ten (10) per cent." On Mar. 26, 1953 100 gross 400 cartoons of Johnson talcum powder were shipped on board M. S. Menestheus from Brooklyn, N.Y., U.S.A. for Aguinaldo Bros. Co. Inc., Manila. On April 16, 1953, the ship caught fire and its cargoes were declared a total loss, including those of plaintiffs. On the 22nd, plaintiff declared the shipment for ₱8,376, and the defendant issued a declaration certificate. Premiums and documentary stamps were paid by the insured and accepted by the insurer. The shipping documents required by the insurer were presented on June 2, 1953, and the insurance company rejected and disallowed the insured's claim. Thus, this action. One of the questions arising here is whether or not the unreasonable delay in payment of claims would entitle the insured to payment of 12% interest in a form of damages. *Held,* Sec. 91-B of the Insurance Act has been impliedly repealed by Sec. 2 of R.A. 487 which ordains the payment of 12 per cent of the claim due the insured, and which provides that, "The lapse of two months from the occurrence of the insured risk will be considered *prima facie* evidence of unreasonable delay in payment, unless satisfactorily explained." AGUINALDO BROS. CO. INC. *v.* METROPOLITAN INSURANCE CO., (CA), 56 O.G. 4238, January 11, 1960.

CRIMINAL LAW — ACTS OF LASCIVIOUSNESS — THE ACT OF MERELY TOUCHING A GIRL'S PRIVATE PART AND NOTHING MORE, WITHOHT THREAT OR FORCE OR ANY CONSEQUENT PAIN OR HUMILIATION, DOES NOT CONSTITUTE ACTS OF LASCIVIOUSNESS. — On her way back from an errand, the offended party, a girl 8 years old, was called by the defendant who was in his store. He lifted her, placed her on the window sill of the store, lifted her dress and touched her private part over her panty. The accused was charged with and convicted of the crime of acts of lasciviousness. On appeal, it is asked whether or not the accused's act of touching once or three times the private part of the offended party over her panty constitutes the crime of acts of lasciviousness penalized by article 336 of the Revised Penal Code. *Held,* it is obvious that the act complained of consisted in appellant's merely touching once or three times the private part of the offended party, and nothing more. It was committed without the presence of anybody as to cause humiliation to the offended party, without the employment of any threat, force or violence, and without any consequent pain or injury. While this act is censurable it seems to us that such was not sufficient to conclusively imply lewd design, an essential requisite in acts of lasciviouness. We like to believe that the act was done merely to satisfy a "silly whim." The act does not fall within the purview of article 336 of the Revised Penal Code penalizing acts of lasciviousness. Rather, it is our opinion that the appellant's acts fall under article 287, paragraph 2, of the same Code, which penalizes the crime of light coercion or unjust vexation. PEOPLE *v.* BERNALDO, (CA) No. 26102-R, October 31, 1959.

CRIMINAL LAW — ACTS OF LASCIVIOUSNESS — THE FATHER OF THE OFFENDED PARTY, THE LATTER BEING A MINOR, IS COMPETENT TO FILE A COMPLAINT FOR ACTS OF LASCIVIOUSNESS. — The offended party, Angelina Magat, 8 years old, and appellant Bernaldo, 57 years old, are residents of Kabalutan, Orani, Bataan. On October 19, 1957, Angelina was sent on an errand by her mother. On her way back, Angelina was called by Bernaldo who was in his store. He then lifted her and placed her on the window sill of the store. While thus seated, he lifted her dress and touched her private part over her panty once according to her written statement and three times according to her testimony in court. On October 22, 1957, the father of Angelina filed a complaint with the JP of Orani, Bataan, for acts of lasciviousness. The appellant having waived his right to preliminary investigation, the case was forwarded to the CFI of Bataan where the corresponding information was filed. The question was raised as to whether or not the father of the offended party was competent to file the complaint. *Held,* that it was the father of the offended party and not she who filed the complaint is, nevertheless, a sufficient compliance with the law, for article 344 of the Revised Penal Code does not say that the complaint should be filed exclusively by the offended party although he or she is a minor, and that if the offended party does not file it, his parents, grandparents or guardians cannot do so. What this article means is that if the minor does not or cannot file the complaint, the persons named therein may do so in the order named. PEOPLE *v.* BERNALDO, (CA) No. 26102-R, October 31, 1959.

CRIMINAL LAW — AGGRAVATING CIRCUMSTANCES — THE FACT THAT THE OFFENDED PARTY WAS IN THE 6TH MONTH PERIOD OF PREGNANCY WHEN RAPED, DOES NOT CONSTITUTE THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH. — Hermogena Kalaw, the offended party, was in the sixth month of pregnancy when she was raped by the accused, Brigido Lindo. The accused was charged with and convicted of rape. On appeal, this question is raised: Whether or not there was the aggravating circumstance of abuse of superior strength considering that the offended party was in a state of pregnancy when sexually attacked. *Held,* there is no evidence that her condition made her really any weaker than she already was by reason of her sex; and her being a woman is of course an essential element of the crime and hence does not constitute an aggravating circumstance. PEOPLE *v.* LINDO, (CA) No. 23315-R, November 13, 1959.

LAND REGISTRATION — LAND REGISTRATION ACT — THE OWNER OF RIPARIAN ESTATE COVERED BY A TORRENS TITLE OBTAINS A REGISTRABLE TITLE TO THE ACCRETION FORMED ON THE ESTATE BY THE CURRENT OF THE RIVER. — Etorma applied for the registration in his name of two lots. The lots lie towards the banks of the Batasan and Navotas rivers, flanking and on even level with the applicant's titled property on the northeast and southwest, although stonewalls separate the applicant's land

from these two lots. Previously Etorma also filed an application for lease of these two lots with the Bureau of Lands. The Bureau of Lands Director opposed the registration of these two lots in favor of Etorma on the ground that they were part of the public domain. The CFI made the finding that the lots came into being through sedimentation or accretion and, therefore, belong to the applicant as owner of the land adjoining them pursuant to article 366 of the old Civil Code or article 457 of the new Civil Code. Appeal was taken. *Held,* the circumstance that an applicant has filed with the Bureau of Lands a miscellaneous lease application over certain parcels of land does not operate to create the property public land when it is not so. When a person applies to lease a parcel of land on the mistaken belief that it is a public land, such circumstance alone does not convert the land applied for into a public land. As the law provides that the accretion which the banks of rivers gradually receive from the effects of their currents belong to the owners of the estates bordering thereon and as the strips of land object of this case have been shown to have been formed by accretion, the same belong to the applicant, the miscellaneous application notwithstanding. Considering that in the instant case, the riparian estate has previously been brought under the operation of the Land Registration Act, the applicant as owner of this registered riparian estate, has acquired a registrable title to the two lots applied for. ETORMA *v.* THE DIRECTOR OF LANDS, (CA) No. 23525-R, September 9, 1959.

LAND REGISTRATION — PUBLIC LAND LAW — A HOMESTEADER WHO SELLS HIS HOMESTEAD AND LATER ON REDEEMS IT IS OBLIGED TO REIMBURSE THE VENDEE FOR THE NECESSARY AND USEFUL EXPENSES AND THE EXPENSES OF THE CONTRACT. — The plaintiff-appellees sold a piece of land acquired under the homestead and free patent provisions of C.A. No. 141 to the defendant-appellant. By virtue of section 119 of said Act, the vendors exercised the right of redemption before the lapse of the five-year period fixed by law. The vendee asked for reimbursement of the necessary and useful expenses and expenses of the contract. *Held,* the provisions of the Civil Code pertaining to the right of reimbursement shall supplement the provisions of the Public Land Law. Consequently, a homesteader, his wife or his legal heirs who exercises the right of redemption granted to him by section 119 of the Public Land Law (C.A. No. 141) must reimburse the vendee for the necessary and useful expenses and the expenses of the contract aside from the consideration. But he (the vendor) shall not be liable for the land taxes paid by the vendee. RESPONSA AND ACACIO *v.* SILVERIO, (CA) No. 22255-R, November 28, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — ACTIVE PARTICIPATION IN THE TAKING OF A DEPOSITION AFTER OBJECTING THERETO IS A WAIVER OF THE OBJECTIONS. — Plaintiff sued defendant corporation for his architect's fees regarding a factory building and for supervision of the cons-

tructions thereof. During the hearing of the case on June 14, 1957, upon verbal motion of the defendant the court directed the taking of manager Wilson's deposition at the factory site in Polo, Bulacan. Plaintiff objected thereto but his objection was overruled.. Subsequently, such deposition was admitted in evidence and judgment was rendered from which plaintiff appeals, assailing the admission of the deposition on the ground that Wilson is residing in Manila and the deposition site was only 15 kilometers away. *Held,* the taking and use of the deposition is proper under sec. 4, par. c (5) of Rule 18 of the Rules of Court. The lower court wanted to avoid unnecessary delay in the termination of the case. Appellee's factory was new. Wilson was a busy man; twice the case had been postponed because Wilson was unavailable. On June 14, 1955 he was not present again. Wilson, whose assistant left for the United States, could not leave the factory. Appellant having personally and by counsel appeared at the taking of the deposition and his counsel having taken active part in the proceedings, such subsequent participation is a waiver of their objections to the taking thereof. FERNANDEZ *v.* ROXAS-KALAW TEXTILE MILLS, INC., (CA) No. 21924-R, February 27, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — DISAPPROVAL OF A RECORD ON APPEAL ON THE SOLE GROUND THAT IT IS TYPEWRITTEN IN SINGLE SPACE CONSTITUTES GRAVE ABUSE OF DISCRETION. — In a civil case judgment was entered against the petitioner Javier in favor of the respondent Insurance Company for collection of a debt. The petitioner submitted his record on appeal for approval. The lower court disapproved the record on appeal on the ground that it did not comply with the provision of the Rules of Court, it being in single space and not in printed form. *Held,* the disapproval by the court of the record on appeal on the sole ground of its being typewritten in single space constituted grave abuse of discretion and is prejudicial to the substantial rights of the petitioner. JAVIER *v.* PHIL. PHOENIX SURETY AND INSURANCE INC., (CA) No. 25371-R, December 29, 1959.

REMEDIAL LAW — PROVISIONAL REMEDIES — A NOTICE OF GARNISHMENT OF BANK DEPOSITS DOES NOT VIOLATE R. A. 1405, FOR IT DOES NOT ORDER AN INQUIRY OR EXAMINATION OF THE AMOUNT DEPOSITED. —In a civil case brought before the CFI of Manila, Chua Tiong Chia asked for the sum of ₱9,812 plus damages against Ceferina Samo, as the price of certain goods which the defendant ordered from the plaintiff, but which she failed to pay. Since after filing her answer, she did not ever appear before the court, and considering that no copy of the decision or judgment subsequently rendered was served upon her because of her change of address, a petition for a writ of attachment was filed by plaintiff and granted by the herein respondent judge. The sheriff served a notice of garnishment on the Philippine Bank of Communications which had in its possession a deposit of some money in the name of Ceferina S. Argallon, the alias of Ceferina Samo. An attorney made a special appearance for Ceferina S. Argallon and filed a motion to dissolve the attachment and lift the garnishment. This motion having been denied, this petition for certiorari was filed praying that the order of attachment including the garnishment of the defendant's deposit in the bank be declared null and void on the ground that the respondent judge herein acted without or in excess of jurisdiction or with grave abuse of discretion in issuing said order. One of the issues raised is whether the notice of garnishment to the Philippine Bank of Communications is in violation of R. A. No. 1405. *Held,* as regards counsel's argument as to the garnishment being in violation of R. A. 1405, for the reason that if judgment is executed the amount of the deposit will necessarily be disclosed and its confidential nature thereby violated — this argument is fallacious and misleading. What the law prohibits is the examination, inquiry or investigation of the deposits. The notice of garnishment does not order any inquiry or examination of the amount deposited by the petitioner but simply orders that said amount be left intact for the time being until further order of the court. If in the end, the judgment in favor of the respondent is executed and all or part of the amount deposited is paid to the judgment creditor, and of course the total amount of the deposit will be known, the disclosure of said amount is purely a necessary incident to the payment of the indebtedness. ARGALLON. *v.* HON. LANTIN and CHUA TIONG CHIA (CA) No. 25419-R, November 28, 1959, 56 O.G. 4449.