SUPREME COURT CASE DIGEST

CIVIL LAW — CREDIT TRANSACTIONS — A CHATTEL MORTGAGE CONSTITUTED ON A VEHICLE MUST BE RECORDED NOT ONLY IN THE CHATTEL MORTGAGE REGISTRY, BUT ALSO IN THE MOTOR VEHICLES OFFICE, IN ORDER TO BIND THIRD PERSONS. Presentacion de Catera was the operator and owner of several passenger trucks in the province of Iloilo. One of the said buses fell into a ditch through the negligence of its driver resulting in the death of three persons and injury to one. A writ of attachment, during the pendency of the civil action for damages, was issued by the court, attaching one of the buses owned by de Catera. The Southern Motors Company filed a motion to intervene in the civil case, setting up a counterclaim that said motor company be declared the owner of the bus attached by the sheriff to answer for damages which may be awarded to the plaintiffs. The motor company contended that it had a preferred right to the bus attached because the same was mortgaged to said company and recorded in the Chattel Mortgage Registry. *Held,* untenable. In Borlough v. Fortune Enterprises Inc. (53 O.G. 4070), this Court held that "a mortgage in order to affect a third person should not only be registered in the Chattel Mortgage Registry, but the same should also be recorded in the Motor Vehicles Office as required by section 5 (e) of the Revised Motor Vehicles Law." Here the motor company did not record in the MVO the mortgage executed on the bus. Its rights or interests, therefore, in the truck cannot prevail over that of the appellee who though mere judgment creditors may be deemed innocent purchasers, deriving their right from an innocent purchaser, the bus owner-operator de Catera who had her purchase recorded in the MVO. ALEMAN *v.* DE CATERA, G. R. Nos. L-13693 and 13694, March 25, 1961.

CIVIL LAW — OBLIGATIONS AND CONTRACTS — LEASE — A CHATTEL MORTGAGE ASSIGNED TO THE LESSOR TO GUARANTEE PAYMENT OF RENTALS DOES NOT OPERATE TO DEPRIVE THE LESSOR OF REMEDIES OTHER THAN FORECLOSURE OF SUCH MORTGAGE IN CASE OF NON-PAYMENT OF SUBSEQUENT RENTALS. — On July 11, 1955 herein plaintiff Leonor and herein defendant Sycip entered into a contract of lease of a two-story building belonging to the plaintiff, for a period of two years, defendant agreeing to pay a monthly rental of ₱350 on or before the fifth of every month. Subsequently, defendant failed to pay the rentals, so plaintiff brought an action for unlawful detainer against defendant. As one Coronado agreed to guarantee the payment of the rentals due from defendant Sycip by assigning to plaintiff his rights under a deed of chattel mortgage executed prior thereto by Sycip in Coronado's favor, Leonor moved for the dismissal

of the ejectment case, which was granted by the court. As Sycip kept on defaulting in the payments of rentals, Leonor requested the sheriff to cause the personal property subject of the chattel mortgage to be foreclosed extrajudicially. But Sycip refused to surrender said property. Leonor again sued Sycip for unlawful detainer. Judgment was rendered against Sycip, immediate execution was granted but a balance still remained due. Sycip appealed to the CFI which affirmed the lower court so that Sycip appeals to this Court contending, *inter alia,* that Coronado's deed of assignment aforementioned novated the lease contract and constituted a compromise agreement having the effect of *res judicata. Held,* the deed of assignment, stipulating that the sum of ₱2,450 due from Sycip was payable on December 31, 1956 was executed on October 6, 1956. Hence, this new period for payment affects only sums due up to the date of assignment and not rentals accruing subsequently thereto. The latter come within the provisions of the lease contract, payable "on or before the fifth of every month" although the payment of these rentals are also guaranteed by the chattel mortgage thus assigned. The acceptance of the assignment of the chattel mortgage not having novated the lease contract for the period subsequent to October 6, 1956, such assignment merely gave plaintiff additional rights rather than deprived him of existing rights, substantive and procedural, for the non-payment of rentals accruing subsequent to the assignment. LEONOR *v.* SYCIP, G. R. No. L-14220, April 29, 1961.

CIVIL LAW — OBLIGATIONS AND CONTRACTS — A VENDOR A RETRO CANNOT EXERCISE THE RIGHT OF REDEMPTION WITHOUT PAYMENT OF THE VALUE OF USEFUL IMPROVEMENTS. — This is an appeal by the defendants from a decision of the CFI of Iloilo ordering them to vacate and deliver to the plaintiff a parcel of land. It appears that the plaintiff sold to the defendants with *pacto de retro* a parcel of land with improvements thereon. Plaintiff verbally notified the defendants for the redemption of the property but the defendants refused. Plaintiff then deposited the redemption price with the court.. Defendants claim that plaintiff definitely promised to sell the land to them and on the strength thereof defendants made improvements on the land. Plaintiff refused to pay the value of the improvements. The lower court rendered a decision in favor of the plaintiff, reasoning that the plaintiff did not exercise the option given by par. 2 of Art. 546 of the new Civil Code, namely, to refund the expenses of the defendants and to pay the increase in the value of the land, and in accordance with Art. 547 of the same, the defendants as possessors in good faith are not entitled to the land, but only to remove the improvements thereon if the same can be done without damage thereto. *Held,* Art, 546 of the new Civil Code regarding possession is not applicable. Instead, Art. 1616 of the same applies, dealing with conventional redemption. Under Art. 1616 the vendor *a retro* is given no option to require the vendee *a retro* to remove the useful improvements on the land, unlike that granted under Arts. 546 and 547. Under Art. 1616, as a prerequisite to the right of redemption, the vendor *a retro* must pay for useful improvements introduced by

the vendee *a retro*. Otherwise, the latter may retain possession of the land until reimbursement is made. Since the plaintiff is unwilling to reimburse the defendants, the latter may not lawfully be ordered or compelled to vacate and deliver the land. GARGOLLO *v.* DUERO and ESPEJO, G. R. No. L-15973, April 29, 1961.

CIVIL LAW — OBLIGATIONS AND CONTRACTS — RESCISSION OF COMPROMISE AGREEMENT — WHERE ONE OF THE PARTIES BREACH THE COMPROMISE AGREEMENT BY REFUSAL OR FAILURE TO ABIDE THERETO THE OTHER PARTY MAY TREAT THE AGREEMENT AS RESCINDED WITHOUT NEED OF JUDICIAL DECLARATION OF RESCISSION. — Defendant Sycip is the lessee of a building belonging to plaintiff Leonor, pursuant to a contract of lease executed on July 11, 1955. Having defaulted in the payment of rentals, defendant Sycip was sued by the plaintiff for unlawful detainer. However, one Coronado guaranteed the payment of rentals due from Sycip by an assignment of a deed of chattel mortgage, so plaintiff dismissed the case. Sycip kept on defaulting in the payment of rentals. Plaintiff requested the sheriff to cause the personal property subject of the chattel mortgage to be foreclosed extrajudicially. But Sycip refused to surrender said property and was therefore sued again for unlawful detainer. Judgment was rendered against Sycip and execution immediately followed. Sycip appealed to the CFI which affirmed the prior judgment. Hence, this appeal by Sycip contending, among others, that the second action by the plaintiff cannot be taken to mean as a rescission of their compromise agreement. *Held,* owing to the breach of the compromise agreement between the parties resulting not only from the defendant's refusal to deliver the mortgaged property to the sheriff but also from his failure to pay on time as *per* agreement, plaintiff has under Art. 2041 of the Civil Code of the Philippines the right either to "enforce the compromise or regard it as rescinded and insist upon his original demand." No action for rescission is required in Art. 2041 as contrasted from Art. 2039. The aggrieved party need not seek a judicial declaration of rescission, for he may regard the compromise agreement as already rescinded. LEONOR *v.* SYCIP, G. R. No. L-14220, April 29, 1961.

CIVIL LAW — PERSONS — A PROMISE BY THE SECOND WIFE TO HER HUSBAND, IN CONSIDERATION OF HIS GIVING HER IN HIS WILL 1/2 OF THE CONJUGAL PROPERTIES ACCUMULATED IN THE TWO MARRIAGES, TO CONVEY TO THE TESTATOR'S HEIRS BY HIS FIRST MARRIAGE 1/2 OF HER SHARE IS NOT A PROMISE TO CONVEY FUTURE INHERITANCE. — Simeon Blas, after the death of his first wife and without the liquidation of the conjugal properties, contracted a second marriage with Maxima Santos. Before his death, he executed a will declaring all his properties as conjugal and giving 1/2 thereof to his second wife. At his instance, his second wife, in a document, declared that she had read the will and knew the contents thereof; that she promised to convey, by will, 1/2 of her share to the heirs and legatees named in her husband's will. After the death of Maxima Santos, the children of Blas in his first marriage brought an action against the administratrix of Maxima Santos' estate, praying for the adjudication of 1/2 of her estate to them. It was contended that the promise by Maxima Santos is void, being a promise to convey future inheritance. *Held,* Maxima Santos' promise to convey her share in the conjugal properties is not one to convey a future inheritance because the conjugal properties were already in existence at the time she made the promise. BLAS *v.* SANTOS, G. R. No. L-14070, March 29, 1961.

CIVIL LAW — SALES — ART. 1479 OF THE NEW CIVIL CODE DOES NOT APPLY WHERE THE ACCEPTANCE IS WITHOUT CONSIDERATION NOR WHERE BOTH OFFER AND ACCEPTANCE DO NOT PROVIDE FOR THE MANNER OF THE PAYMENT OF THE PURCHASE PRICE. — On September 19, 1956, defendant offered to plaintiff the sale of from 15,000 to 20,000 metric tons of molasses at ₱50.00 *per* metric ton, giving him up to noon of September 24, 1956 within which to accept the offer. Five minutes before noon of September 24, plaintiff accepted the offer of sale. The next day, defendant requested plaintiff to make clarification of the acceptance. Plaintiff did this and offered payment by opening a domestic letter of credit. Defendant, however, insisted on a cash payment of 50% of the purchase value upon signing of the contract. Plaintiff agreed provided the price was reduced. Defendant rejected the counter-offer and informed plaintiff that it would not continue with the sale. Claiming breach of contract, plaintiff brought action for damages. Defendant moved to dismiss on the ground of lack of cause of action. The motion was granted by the lower court, holding that the option was not valid because it was not supported by any consideraion apart from the price, citing the case of Southwestern Sugar & Molasses Co. v. Atlantic Gulf & Pacific Co., 51 O. G. 3447. Appellant now argues that what was involved in the Atlantic Gulf case was a mere option, while here the transaction is a bilateral promise to sell and buy, which requires no consideration distinct from the selling price. *Held,* not borne out by the allegations in the complaint, where plaintiff himself referred to the transaction as an option, which he repeated in his memorandum. It was this offer, the option, that was accepted by plaintiff. This acceptance, without consideration, did not create an enforceable obligation on defendant's part. The offer, as well as the acceptance both lacked a most essential element — the manner of payment of the purchase price. In the circumstances, there was no complete meeting of the minds of the parties necessary for the perfection of a contract of sale. Consequently, appellee was justified in withdrawing the offer to sell the molasses in question. NAVARRO *v.* SUGAR PRODUCTS COOPERATIVE, G. R. No. L-12888, April 29, 1961.

CIVIL LAW — SUCCESSION — A HALF-SISTER, IN THE ABSENCE OF OTHER SISTERS OR BROTHERS OR OF CHILDREN OF BROTHERS OR SISTERS, EXCLUDES ALL OTHER COLLATERAL RELATIVES IN INTESTATE SUCCESSION PURSUANT TO ARTICLES 1003-1009 OF THE NEW CIVIL CODE. —

This is an appeal from a decision of the CFI of Iloilo, declaring that the parcels of land in litigation are properties of the intervenor Jacoba Marbebe. The land in question originally belonged to Bonifacia Lacerna. Upon her death it passed by succession to her only son, Juan Marbebe, who subsequently died intestate, single and without issue. Bonifacia had two brothers, Catalino and Marcelo and a sister, herein defendant; both Catalino and Marcelo had died and are survived by their children, herein plaintiffs. Intervenor Jacoba Marbebe is the half-sister of the deceased Juan Marbebe. The lower court awarded the parcels in question to the latter. Hence, this appeal. *Held,* the main flaw in appellant's theory is that it assumes that said properties are subject to the *reserva troncal,* which is not a fact. Art. 891 of the new Civil Code applies only to properties inherited under the conditions therein set forth, by an ascendant from a descendant, and this is not the case before us, for the lands in dispute were inherited by a descendant, Juan Marbebe, from an ascendant, his mother Bonifacia Lacerna. Said legal provision is, therefore, not in point, and the transmission of the aforementioned lands, by inheritance, was properly determined by the trial judge in accordance with the order prescribed for intestate succession, particularly Arts. 1003-1009 of the new Civil Code pursuant to which a sister, even if only a half-sister, in the absence of other sisters or brothers or of children of brothers or sisters, excludes all other collateral relatives regardless of whether or not the latter belongs to the line from which the property of the deceased came. LACERNA *v.* PAURILLO VDA. DE CORCINO, G. R. No. L-14603, April 29, 1961.

CIVIL LAW — SUCCESSION — IN RESERVA TRONCAL THE RESERVEES MAY, BEFORE THE DEATH OF THE RESERVOR, ALIENATE THEIR RIGHT TO THE RESERVABLE PROPERTY, SUBJECT TO A CONDITION. — Saturnino Yaeso had four children with her first wife and a son, Francisco, with his second wife. Saturnino gave each of his five children a parcel of land. In 1932 Francisco died at the age of 20, single, without descendant. His mother Andrea, inheriting his parcel of land, sold the same to the Seines spouses. Subsequently, before Andrea died in 1951, the half-sisters of Francisco sold the same land to the Esparcia spouses who obtained a transfer certificate of title. Action to declare this second sale null and void and for reconveyance was brought by the Seines spouses. The court decided that the land was reservable, the first sale by the reservor was void, the second sale by the reservees, for lack of title of the reservees, was also void and ordered the reversion of the reservable property to the estate of half-sister Cipriana as lone surviving reservee at the death of the reservor in 1951. Only the Seines spouses appealed. *Held,* the *reserva* instituted by law in favor of the reservee constitutes a real right which the reservee may alienate and dispose of conditionally, the condition being that the alienation shall transfer ownership to the vendee only if and when the reservee survives the person obliged to reserve. This condition having been fulfilled in this case the Esparcia spouses became the absolute owner of the reservable property upon Andrea's death, at the same time that it operated to revoke the conditional

ownership conveyed by the reservor to the Seines spouses. However, the appealed decision, insofar as it orders the reversion of the property in question to the estate of Cipriana, cannot now be reversed, for the Esparcia spouses did not appeal therefrom. SEINES *v.* ESPARCIA, G. R. No. L-12957, March 24, 1961.

COMMERCIAL LAW — PRIVATE CORPORATIONS — THE SEPARATE AND DISTINCT CORPORATE ENTITY MAY BE DISREGARDED WHEREVER CIRCUMSTANCES HAVE SHOWN THAT SUCH CORPORATE ENTITY IS BEING USED TO DEFEAT PUBLIC CONVENIENCE OR PERPETRATE FRAUD. — The Park Rite Co. Inc., a Philippine corporation, leased a vacant lot on Juan Luna St., which it used for parking motor vehicles for a consideration. It turned out, however, that in this business, the corporation used not only the leased lot but also an adjacent lot belonging to the Padilla spouses. Thus, a complaint for rentals for the use and occupation of the lot was filed and judgment was accordingly rendered in favor of the complainant, but the claim remained unsatisfied, for the corporation was without sufficient funds and assets. Hence, another suit, this time to recover from the stockholders jointly and severally, was instituted, denied by the Court of First Instance but granted by the Court of Appeals on appeal. *Held,* the individual stockholders may be held liable for the obligations contracted by the corporation wherever circumstances show that the corporate entity is merely an *alter ego* or business conduit for the sole benefit of the stockholders or else to defeat public convenience, justify wrong, protect fraud and defend crime. That the corporation was a mere *alter ego* of the stockholders' personality is shown by the fact that the offices of Paredes (a principal stockholder) and the corporation were in the same building, same floor and the same room; that the funds of the corporation were kept in Paredes' own name. MCCONNEL *v.* COURT OF APPEALS, G. R. No. L-1510, March 17, 1961.

CRIMINAL LAW — MALVERSATION OF PUBLIC FUNDS — WHERE THE ACCUSED IS ACQUITTED IN A CRIMINAL CASE FOR MALVERSATION OF PUBLIC FUNDS THE TRIAL COURT IS WITHOUT POWER TO ORDER PAYMENT OF BACK SALARY DURING THE PERIOD OF SUSPENSION. — In a criminal action charging Daleon with the crime of malversation of public funds, the lower court after trial found the accused innocent of the charge and acquitted him accordingly, ordering, as well, the payment of his salary during the period of suspension, and his reinstatement. The prosecution appealed assigning the following legal error: that the court erred in ordering the payments of salary of the accused during his suspension from the office. *Held,* that the trial court erred. The trial court in a criminal case for malversation of public funds wherein the accused is acquitted is without power to order the payment of his salary during the period of his suspension because the only issue joined by the plea of not guilty is whether or not the accused committed the crime charged, and so the only judgment that such court is

legally authorized to render is either acquittal or conviction with indemnity to the injured party and the accessory penalty provided by law. The relief of the accused would properly lie not in the same criminal case wherein he was acquitted, but in the proper administrative or civil action prescribed by law for that purpose. PEOPLE *v.* DALEON, G. R. No. L-15630, March 24, 1961.

CRIMINAL LAW — RAPE WITH MURDER — WHERE THE RAPE IS SEPARATE FROM THE CRIME OF MURDER THE TRIAL COURT HAS NO JURISDICTION OVER THE FORMER WHERE THE VICTIM IS A MINOR AND THE COMPLAINT IS NOT SIGNED BY HER PARENTS, GRANDPARENTS OR GUARDIAN. — On December 24, 1957 the dead body of Marcela Garcia, a 12 year old housemaid, was found inside an army duffel bag floating near the Del Pan bridge in Tondo, Manila. Printed on the duffel bag was the name of the defendant herein, thus, "B. Obaldo F Co. 2nd BCT PEFTOK, US TAT. NO. 1140203." After being investigated by Capt. Lazaro of the M.P.D. the defendant made a subscribed statement confessing that on or about the evening of December 23, 1957 he saw the girl, Marcela, near the river beside Fort Wm. McKinley and then and there he raped her; that after raping the girl the latter lost consciousness, and not knowing what to do he placed her inside a duffel bag which he was carrying with him and left it on the bank of the river.

On appeal the defendant contends, among others, that the trial court erred in holding that he is guilty of the alleged complex crime of Rape with Murder and questions its jurisdiction to try the case of Rape with Murder. *Held,* the prosecution was able to establish the commission of both offenses. There is evidence that after the carnal assault, the victim lost consciousness and was in this condition when she was placed inside the duffel bag. So, it was not a complex crime but two separate crimes were committed for which the appellant could be convicted.* Being separate crimes, and the complaint for rape not having been signed by the parents, grandparents or guardian of the deceased, the trial court could not have acquired jurisdiction over the Rape case (Art. 344, R.P.C.; U.S. v. de la Santo, 9 Phil. 22; People v. Palubao, G.R. No. L-8077, Aug. 31, 1954). Appellant, therefore, cannot be convicted of the crime of Rape but only of the crime of Murder. PEOPLE *v.* OBALDO, G. R. No. L-13976, April 29, 1961.

LABOR LAW — COURT OF AGRARIAN RELATIONS — THE CAR HAS THE POWER TO EXTEND THE PERIOD FOR FILING A MOTION FOR RECONSIDERATION OF ITS ORDERS OR DECISIONS UPON MOTION OF THE AGGRIEVED PARTY. — It appears that petitioner filed with the lower court petitions to eject his tenants from their landholdings on varied grounds. The tenants denied the charges and set up a counterclaim for recovery of rentals paid in excess of what was agreed upon. On their part, the tenants filed a separate petition for liquidation of the harvest on their landholdings. The court rendered a consolidated decision dismissing both petitions. Petitioner moved for an extension of 15 days within which to file a motion for reconsideration but the Agrarian Court denied the same on the ground that under the law it has no power to extend the period for the filing of such a motion. Hence this petition for review. *Held,* a party in an agrarian case is given by law the right to appeal from an order or decision of the CAR to the Supreme Court by filing in such court within 15 days from receipt of notice of such order or decision a written petition praying that it be modified or set aside (Sec. 13, Act 1267, as amended). And if at the expiration of said 15 days no appeal is taken from said order or decision, it shall become final unless during said 15 days the aggrieved party moves for a reconsideration of the order or decision (Sec. 12 *id.*). It thus appears that an aggrieved party may file a motion for a reconsideration within the period of 15 days before a decision of the agrarian court may become final. If such is the right that the law gives to an aggrieved party it is obvious that he can ask for an extension of said period when such becomes necessary. To that effect he may file a motion stating his reasons therefor which generally is addressed to the sound discretion of the court. That the agrarian court has such power cannot be denied considering that it has all the prerogatives of a court of justice. The filing of a motion for reconsideration is desirable in order to give the lower court a chance to correct whatever error it may have committed before the aggrieved party may invoke the supervisory jurisdiction of an appellate court. Petition granted. GONZALES *v.* HON. SANTOS, *et. al.,* G. R. Nos. L-16355-56, April 28, 1961.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — SEC. 16-C OF R. A. 602 REQUIRING THE CIR TO ACT IN BANC IN CERTAIN CASES DOES NOT PRECLUDE THE ASSIGNMENT OF ONE JUDGE FOR THE RECEPTION OF EVIDENCE. — In 1956, a dispute arose between the herein petitioner, the Benguet Consolidated, Inc. and the respondent Coto Labor Union, on certain demands made by the said union. When the Secretary of Labor failed to settle the case amicably, he certified the case to the CIR and it was taken cognizance of by its Presiding Judge. Petitioners filed a motion to dismiss on the ground of lack of jurisdiction for the reason that the case having been endorsed by the Secretary of Labor pursuant to the Minimum Wage Law, it should be heard not by a single judge, but by the court *in banc.* The motion was denied and its appeal to the CIR *in banc* having been denied, petitioner elevated the case to the Supreme Court. On May of 1959, this Court promulgated a decision sustaining petitioner. Upon receipt of this decision, the trial judge set the case for hearing. Having found that no formal complaint and answer were filed therein, petitioner filed a supplemental motion raising the question of lack of jurisdiction. The respondent judge denied the motion and proceeded with the trial, manifesting that he will receive the evidence only as a trial court or representative of the court *in banc.* This prompted the petitioner to interpose the present petition. *Held,* as held by us in the former controversy between the same

* Rape with homicide is now a complex crime: Art. 335 R.P.C. as amended by R.A. 2632 (effective June 18, 1960). —*Ed.*

parties, in cases of this nature the Industrial Court shall act *in banc* in rendering the decision as provided by Sec. 16-c of R.A. 602. But this does not necessarily mean that all the judges should sit for the reception of the evidence, or that the evidence should be received by the court *in banc*. It is enough that one judge be assigned to receive the evidence who will submit his report to the court *in banc* for deliberation and decision. BENGUET CONSOLIDATED, INC., *v.* LABOR UNION (NLU), *et. al.*, G. R. No. L-17202, April 29, 1961.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — WHEN IN THE OPINION OF THE PRESIDENT A LABOR DISPUTE EXISTS IN AN INDUSTRY INDISPENSABLE TO THE NATIONAL INTERESTS AND HE CERTIFIES IT TO THE CIR, THE LATTER ACQUIRES JURISDICTION TO ACT THEREON IN THE MANNER PROVIDED FOR BY LAW. — I a voluntary certification election conducted by the Department of Labor, the PASUDECO Workers' Union was chosen as the exclusive bargaining representative of all employees of Pampanga Sugar Development Co., as against the other union, Sugar Workers' Association. A collective bargaining agreement was entered into between the winning union and the company, which was approved by the CIR. By the 1955-56 milling season, members of the defeated union declared a strike as a result of the company's refusal to entertain the former's demands. The strike affected the sugar industry, hence the President of the Philippines wrote respondent court and pursuant to Sec. 10, R. A. No. 875, he certified to said court "the labor dispute between the management of the PASUDECO and *its employees,*" and requested the court to take immediate steps in the exercise of its powers granted by law. The PASUDECO requested the court not to assume jurisdiction as thus certified contending that since the Sugar Workers' Association is merely a minority union, which lost in the certification election, it has no right to represent the employees of the company nor to present demands and as such, cannot create a labor dispute that may give jurisdiction to the industrial court, even if the same is certified. *Held,* untenable. The question whether a minority union may create a labor dispute or not cognizable by the CIR in disregard of the representative chosen in a certification election and the collective bargaining agreement entered into by said representative and the company is a legal matter and does not affect the court's jurisdiction. What matters is that by virtue of the certification made by the President, the case was placed under the jurisdiction of said court. PASUDECO *v.* CIR, *et. al.,* G. R. No. L-13178, March 25, 1961.

LAND REGISTRATION — PUBLIC LAND LAW — SECTION 118 OF C. A. No. 141 EXPLICITLY PERMITS THE ENCUMBRANCE, BY MORTGAGE OR PLEDGE, OF THE IMPROVEMENTS AND CROPS ON THE LAND, WITHOUT ANY LIMITATION IN POINT OF TIME. — On August 14, 1940, Angel Baltazar's homestead application was approved by the Director of Lands. On April 1, 1941, he mortgaged the present and future improvements on said land

to Pastor Tolentino. After the death of Angel in 1945, his widow and children conveyed to his son Basilio Baltazar their rights and interest in and to said land. On August 28, 1946, Basilio filed with the Bureau of Lands a petition praying that the homestead application in his father's name be cancelled, and that in lieu thereof, his own application be admitted. Petition was granted. Tolentino instituted an action against the estate of Angel, against Basilio and the Director of Lands for the cancellation of the Original Certificate of Title on the ground that Basilio had secured it by fraud. Basilio denied the allegation of fraud and maintained that Tolentino had no cause of action except against the deceased Angel. *Held,* a mortgage constituted on said improvements must be susceptible of registration as a real estate mortgage and of annotation on the certificate of title to the land of which they form part, although the land itself may not be subject to said encumbrance, if the debt thereby was contracted from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant. Even if Basilio Baltazar had not been guilty of fraud, he knew, before he got the said patent and certificate of title, that the present and future improvements on the land were subject to a valid and subsisting mortgage in favor of Pastor Tolentino and acknowledged the same. He must be deemed to have secured such patent and title subject to a subsisting trust, insofar as the plaintiff's mortgage is concerned. Under the plaintiff's prayer for such relief as may be deemed just and equitable, this action may be considered as one to compel the defendant to execute the instrument necessary for the registration of said mortgage and its annotation of the plaintiff's certificate of title. TOLENTINO *v.* BALTAZAR, G. R. No. L-14597, March 27, 1961.

LAND REGISTRATION — TORRENS CERTIFICATE OF TITLE — WHERE A CERTIFICATE OF TITLE COVERS A PARCEL OF LAND AND A NEW CERTIFICATE OF TITLE IS ISSUED TO COVER LOTS SUBSEQUENTLY SEGREGATED THEREFROM, AND THERE BEING NO CANCELLATION OF THE FIRST NOR ANY ANNOTATION THEREIN OF THE SEGREGATION, THE FIRST CERTIFICATE STILL COVERS THE SEGREGATED LOTS AND ANNOTATIONS THEREON BIND SAID LOTS. — On October 20, 1955 the PHHC sold to the DBP (then the RFC) 159 lots which formed part of a larger parcel of land covered by TCT No. 1356. Subsequently, without the knowledge of the DBP, the 159 lots were segregated and a new title, TCT No. 36533 was issued. The subdivision was not annotated on the bigger title, TCT No. 1356, nor was such title cancelled by the new one. On January 15, 1959 the DBP registered its deed of sale and it was inscribed in TCT No. 1356. Subsequently, on February 16, 1959, the Nicandro spouses presented for registration deeds of sale executed by the PHHC involving lots covered by TCT No. 36533 which were among the lots already sold to the DBP. Since the consent of a mortgagee, the GSIS, did not appear on the deed, registration was denied. Discovering that the lots it had purchased were already covered by TCT No. 36533 the DBP, on March 6, 1959, caused the annotation of its

sale thereon. The Register of Deeds transferred the annotation of the DBP sale appearing on TCT No. 1356 to TCT No. 36533. Upon opposition by the Nicandro spouses to the issuance of a new title certificate to the DBP the matter was referred to the Land Registration Commissioner who held in his resolution that the annotation on TCT No. 1356 of the sale to the DBP did not constitute registration sufficient to bind innocent third parties. Hence, this appeal. *Held,* meritorious. It must me remembered that on January 15, 1959, TCT No. 1356 which originally covered the whole tract of land, including the 159 lots, was yet uncancelled and no inscription appeared thereon to the effect that a new certificate of title was already issued in respect to the said 159 lots. Evidently, when he DBP presented the deed of sale for registration, there were two subsisting titles covering the 159 lots subject of the sale. As TCT No. 1356, being uncancelled, did, for all intents and purposes still cover the 159 lots, the annotation thereon of the sale to the DBP is valid and subsisting. REGISTER OF DEEDS, *et al., v.* NICANDRO and NICANDRO, G. R. No. L-16448, April 29, 1961.

LEGAL ETHICS — CONTEMPT OF COURT — WHERE IT APPEARS THAT ON THE SAME DAY THE JUDGE SIGNED TWO DECISIONS IN REGARD TO A CRIMINAL CASE, ONE OF CONVICTION AND ONE OF ACQUITTAL, COUNSEL FOR LOSING PARTY COULD NOT BE BLAMED FOR FILING A COMPLAINT FOR MISCONDUCT AGAINST SAID JUDGE. — Atty. Añosa filed a complaint for misconduct against Judge Emilio Benitez of Samar, charging him with having promulgated an unjust decision acquitting Pantaleon Elpedes in a criminal case. According to the complaint said judge "changed the sentence of conviction into acquittal after more than one month from the day he wrote the sentence of conviction." Considering the charges to be serious, the Supreme Court required Judge Benitez to comment thereon. Subsequently, Judge Benitez issued an order requiring the defendant to appear and explain why he should not be held in contempt of court. Pursuant to this order the defendant made a written explanation but did not appear on the day required, on which day Judge Benitez promulgated the judgment for contempt against Atty. Añosa, holding that the explanation was not satisfactory. Hence, this appeal. *Held,* Judge Benitez signed a decision convicting the accused Elpedes; such decision dated January 31, 1959 was never promulgated. On February 9, 1959, the decision in the case was set for promulgation, but the accused asked for postponement which was granted up to March 9, 1959, and later, presumably on the last date, a decision also dated January 31, 1959 was promulgated acquitting the accused. It happens sometimes that a judge after preparing a "draft" of a decision acquitting or convicting a defendant, upon further deliberation afterwards signs and promulgates another decision convicting or acquitting the defendant. Possibly some judge after signing a judgment of conviction, has afterwards signed and promulgated a judgment of acquittal. Yet, it is unheard of, verging on the suspicious, that on the same day a judge should sign two decisions, one of conviction and one of acquittal, and on extremely irreconcilable terms. This was what happened in the Elpedes case. Therefore, counsel for the losing party, Añosa, could not be blamed for implying something wrong, and for resorting to this Court against Judge Benitez and enclosing in support of his accusation a copy of the unpromulgated decision. PEOPLE *v.* ELPEDES and AÑOSA, G. R. No. L-16535, April 29, 1961.

LEGAL ETHICS — DISBARMENT — DOUBLE JEOPARDY IS NOT A PROPER DEFENSE IN DISBARMENT PROCEEDINGS BECAUSE THEY DO NOT PARTAKE OF THE NATURE OF A CRIMINAL CASE. — Attorney Vailoces, in his capacity as notary public, acknowledged the execution of a document purporting to be the last will and testament of one de Jesus. In the probate court it was found out that the document was a forgery. A criminal action was consequently brought against him and he was convicted. While serving sentence, disbarment proceedings were instituted against him. He claimed double jeopardy. *Held,* that there is no double jeopardy. The defendant is not placed in the predicament of being prosecuted for the same offense, disbarment proceedings not being a criminal case. DE JESUS-PARAS *v.* VAILOCES, Admin. Case No. 439, April 12, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — A JUSTICE OF THE PEACE SUSPENDED BY ADMINISTRATIVE ORDER IS NOT ENTITLED TO PAYMENT OF SALARY DURING SUSPENSION UNLESS SO PROVIDED IN THE ORDER OF SUSPENSION OR OF REINSTATEMENT. — This is a petition for review seeking reversal of respondent's decision denying the claim of petitioner Rufino Abuda for payment of his salary as Justice of the Peace of Gen. MacArthur in Quinapundan, Samar, during the period of his suspension. Petitioner was convicted by final judgment of the crime of libel by the CFI of Samar. Subsequently, an administrative order dated 3 November 1952 was issued ordering his indefinite suspension from office by virtue of the conviction. The order was followed by a letter asking petitioner to resign or face dismissal. Petitioner filed a petition for reinstatement and likewise sought absolute pardon, which were either denied or not acted upon. Petitioner tendered his resignation but withdraw the same later and agreed to submit to administrative investigation by the judge of the CFI.

Finding the criminal offense insufficient as a ground for suspension the judge of the CFI recommended exoneration from the administrative complaint. Upon the foregoing recommendation the President ordered petitioner's reinstatement on March 6, 1956 without salary during the period of suspension, on the ground that, although the offense committed was neither serious nor directly connected with his office, still "his conviction reflected on his fitness for the position in view of which he should be punished accordingly." *Held,* petitioner is not entitled to back salaries, applying sec. 260, par. 2 of the Revised Administrative Code: "In case of a person suspended by the President of the Philippines, no salary shall be paid during the suspension unless so provided in the order of suspension;

but upon subsequent reinstatement or exoneration of the suspended person, any salary so withheld may be paid in whole or in part, at the discretion of the officer by whom the suspension was effected." It is discretionary with the President and that discretion having been exercised, the court is without power to substitute its own for it. ABUDA *v.* AUDITOR GENERAL, G. R. No. L-16071, April 29, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — AUCTIONED PROPERTY OF THE MUNICIPALITY MAY BE REDEEMED BY THE MAYOR WITHOUT MUNICIPAL COUNCIL'S AUTHORIZATION, IN THE EXERCISE OF HIS DUTY TO PROTECT THE INTEREST OF THE MUNICIPALITY. — Pursuant to a writ of execution in a civil case the sheriff sold at public auction on July 16, 1957 a parcel of land belonging to the municipality of Caba, La Union, subject to redemption within one year. Exactly one year thereafter the municipality of Caba, through its mayor redeemed the property and a certificate of redemption was issued and registered. Purchaser Mangaser filed in court a petition for a final deed of sale, contending that the municipality failed to redeem the property sold, for the reason that the mayor cannot redeem in behalf of the municipality without obtaining the consent or authority of the municipal council. The petition was denied. Hence, this appeal. *Held,* the lack of authorization by the council will not invalidate the redemption because the mayor, as chief executive, was duty bound to protect the interest of his municipality. GERONIMO *v.* MUN. OF CABA and MANGASER, G. R. No. L-16221, April 29, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — INJUNCTION BOND RESPONDS MERELY FOR THE RELEASE OF THE MERCHANDISE BUT NOT THE PAYMENT OF ALL THE CHARGES THAT THE IMPORTER MAY BE FOUND CHARGEABLE UNDER SEC. 1397 OF THE REV. ADM. CODE. — 1,000 crates, of imported onion arrived at the port of Manila on May 28, 1954. Due to the importer's failure to make an entry of the importation of the merchandise, the Collector of Customs advertised the merchandise for sale at public auction under the authority of Sec. 1395 (c) of the Rev. Adm. Code. The importer's attempt to reclaim the merchandise was denied, and his appeal to the Secretary of Finance having failed, he filed a petition for mandamus with preliminary injunction to restrain the Collector from selling the merchandise and to compel its delivery to him. Meanwhile, the Collector ordered the seizure of the merchandise for violation of certain customs laws, thus changing the action from sale to forfeiture. Upon filing of a bond, the court granted the petition for preliminary injunction. The remaining 96 crates of onions were already greatly deteriorated, hence petitioner gave notice to the Collector that he was abandoning them pursuant to Sec. 1321 of the Rev. Adm. Code. In view of such abandonment, the case was dismissed. Respondent Collector moved for the forfeiture of the bond, which was denied. On appeal, respondent collector claimed that the court's denial of his motion to forfeit the bond precluded the customs officials from collecting the charges that should be paid by the importer out of the proceeds of the sale of the imported merchandise under Sec. 1397 of the Rev. Adm. Code, which would have been recovered had the trial court not issued the restraining order. *Held,* the contention is unmeritorious. The purpose of the injunction has never been attained, because notwithstanding the issuance of the writ, the merchandise never left the possession of the Collector, and so there is nothing for which the injunction bond would be liable. Although the issuance of the writ temporarily stayed the proceeding regarding forfeiture, this is of no consequence, considering that in case of forfeiture only the merchandise forfeited stands responsible for the payment of the customs liability. In other words, the injunction bond answers for the release of the merchandise, the former merely taking the place of the latter, and if the release is not effected there is no valid reason for forfeiting the bond. MENDOZA *v.* ERIBERTO Y DAVID, *et al.,* G. R. No. L-9452, March 27, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — THE OWNER OF A PIECE OF LAND, WHICH IS PRIVATE PROPERTY, IS NOT REQUIRED TO RESORT TO ADMINISTRATIVE REMEDIES AS A CONDITION PRECEDENT TO A JUDICIAL RECOURSE FOR THE PROTECTION OF HIS ALLEGED RIGHT. — Baladjay instituted this case against the Director of Lands and Balcita on June 3, 1958. In his complaint, he alleged that he is the owner in fee simple of the land in question; that the Director of Lands issued a free patent title over said lot in favor of Balcita; that the registration of the patent is pending in the Office of the Register of Deeds; that the free patent was issued without conducting the necessary investigation and that the plaintiff suffered damages in consequence of these acts. Plaintiff asked for the annulment of the free patent and damages. The Director of Lands filed an answer wherein he admitted that he issued the free patent but averred that the lot was inherited by Balcita from her parents. By way of defense, he alleged that the court has no jurisdiction over the subject matter since the plaintiff has not exhausted nor availed of the administrative remedies. Balcita filed a motion to dismiss on the same ground. The Court of First Instance dismissed the complaint. Hence, this appeal. *Held,* that the doctrine requiring that administrative remedies be first exhausted before a recourse to the court of justice may be had and the legal provision giving the government the exclusive authority to seek cancellation of a title issued in conformity with a homestead patent and reversion of a land to the public domain, are, in the very nature of things, confined in their application to lands of the public domain which have been granted by virtue of such patent in pursuance of the Public Land Act. They are inapplicable to private lands, not even to those acquired by the government by purchase for resale to individuals. Plaintiff alleged in his complaint that the lot was his private property. The complaint does not indicate that the plaintiff derived his title from the government or that said lot had ever been under the jurisdiction of the Director of Lands. As such he was not bound to resort to administrative remedies as a condition precedent to a judicial recourse for the pro-

tection of his alleged right. BALADJAY *v.* CASTRILLO, G. R. No. L-14756, April 26, 1961.

POLITICAL LAW — EXPROPRIATION — THE FAIR MARKET VALUE OF PROPERTY UNDER EXPROPRIATION IS DETERMINED AS OF THE TIME OF THE ACTUAL TAKING OF POSSESSION, IF TAKEN POSSESSION OF BEFORE CONDEMNATION PROCEEDINGS, OTHERWISE AS OF THE TIME OF THE FILING OF THE COMPLAINT. — On January 16, 1950, the government instituted proceedings to expropriate 54 lots needed for the construction of Commonwealth Avenue in barrio Culiat, Q. C. One of the said lots having an area of 14,026 sq. m. which is part of a lot with an area of 42,844 sq. m. belonged to Vicente Francisco and was mortgaged to the Phil. Bank of Commerce for ₱60,000. On Jan. 17, 1952, the CFI of Rizal authorized the plaintiff to take possession of said lot upon deposit of the sum of ₱7,013 as provisional value which sum was withdrawn by the plaintiff on Feb. 17, 1952. Plaintiff's right to expropriate was not questioned. The lower court fixed the compensation at the rate of ₱10 per sq. m. or a total amount of ₱149,420. From this amount must be deducted ₱7,013. Both parties appealed. Plaintiff maintained that the value should be fixed as of Jan. 16, 1950, the date of the filing of the complaint, while the defendant contended that it should be as of March 26, 1952, the date of the actual taking of possession by the plaintiff. *Held,* when the plaintiff takes possession before the institution of the condemnation proceedings, the value should be determined as of the time of the taking of possession, not of the filing of the complaint and that the latter should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings. Indeed otherwise, the provision of Rule 69, sec. 5, Rules of Court, directing that compensation be determined as of the date of the filing of the complaint would never be operative. As intimated in Republic v. Lara (50 OG 5778) said provision contemplates "normal circumstances" under which "the complaint coincides or even precedes the taking of the property by the plaintiff." Therefore, the value of the property should be fixed as of Jan. 16, 1950. REPUBLIC *v.* PHIL. BANK OF COMMERCE, G. R. No. L-14158, April 12, 1961.

POLITICAL LAW — NATURALIZATION — THE DECISION RENDERED IN A NATURALIZATION PROCEEDING IS NOT RES JUDICATA AS TO ANY OF THE REASONS OR MATTERS WHICH WOULD SUPPORT A JUDGMENT CANCELLING THE CERTIFICATE OF NATURALIZATION FOR ILLEGAL OR FRAUDULENT PROCUREMENT. — Go Bon Lee filed his petition for naturalization in 1941. He had five children of school age, four of whom were then living in China, where they were born, and had never been enrolled in any recognized public or private school in the Philippines. Go was granted Philippine citizenship by the Court of First Instance of Cebu. He took his oath of allegiance and naturalization certificate No. 4 was issued to him thereafter. The Solicitor General filed the present petition for cancellation of his certificate of naturalization on the ground that the same was obtained illegally or contrary to law. It is not disputed that Go filed his petition for naturalization before the expiration of one year from the filing of his declaration of intention to become a citizen. The lower court, however, held the view that he had substantially complied with the requirement of Sec. 5 of the Naturalization Law to the effect that petition for naturalization must be filed after one year from the filing of the declaration of intention, because, after all, the hearing of the petition was held more than one year after the filing of his declaration of intention to become a citizen. The issue now is whether the matter of Go's citizenship is *res judicata. Held,* the language of the law in the matter being express and explicit, the ruling of the lower court amounts to a substantial change in the law, something which courts can not do, their duty being to apply the law and not to tamper with it (Cui v. Dinglasan, 47 O.G. No. 12 Supp. 233; Orestoff v. Government, 71 Phil. 240). The doctrine of estoppel or of laches does not apply against the Government suing in its capacity as Sovereign or asserting governmental rights. The Government is never estopped by mistakes on the part of its agents (Pineda v. CFI of Tayabas, 52 Phil. 803), and estoppel cannot give validity to an act that is prohibited by law or is against public policy (Eugenio v. Perdido, L-7083, May 19, 1955). Furthermore, a decision granting citizenship does not really become executory, and a naturalization proceeding not being a judicial adversary proceeding, the decision rendered therein is not *res judicata* as to any of the reasons or matters which would support a judgment cancelling the certificate of naturalization for illegal or fraudulent procurement. As a matter of fact, a certificate of naturalization may be cancelled upon grounds or conditions subsequent to the granting of the certificate of naturalization. (See Bell v. Attorney General, 56 Phil. 667; U.S. v. Spohrer, 175 Fed. 440). REPUBLIC *v.* GO BON LEE, G. R. No. L-11499, April 29, 1961.

POLITICAL LAW — TAXATION — FOR PURPOSES OF COMPUTING THE ADVANCE SALES TAX DUE TO IMPORTED AUTOMOBILES, THE PARTICULAR MARK-UP AS FIXED IN SEC. 183 (B) IN RELATION TO SECTIONS 184 AND 185 OF THE NIRC SHALL BE ADDED TO THE LANDED COST. — The Mayon Motors, Inc. imported automobiles, 13 of which have a total landed cost of less than ₱5,000 each and 4 in excess of said amount. The Commissioner of Internal Revenue assessed against the importer ₱35,353.22 as deficiency advance sales tax on the 17 automobiles. On appeal, the Court of Tax Appeals increased the amount to ₱58,968.43. Hence, this present appeal. *Held,* for purposes of computation of the advance sales tax due to imported automobiles, the corresponding "mark-up" shall be added to the total landed cost to determine whether the gross selling price does not exceed ₱5,000 and hence taxable under sec. 185 or whether the gross selling price exceeds ₱5,000, in which case it shall be taxable under sec. 184 of the NIRC. But before the proper mark-up can be determined, the selling price shall first be determined theoretically by using 50% as the "mark-up" it being the minimum fixed by law. Thus, if the car has a landed cost of ₱4,696.50 and

the 50% "mark-up" is added to that landed cost, the taxable value of the car would be ₱7,044.75. Hence, the car would fall under sec. 184 and the rate of "mark-up" applicable is 100% and not 50% (sec. 183 (B)). MAYON MOTORS, INC. *v.* COMMISSIONER OF INT. REV., G. R. No. L-15000, March 29, 1961.

POLITICAL LAW — TAXATION — R. A. No. 1125 PROVIDES A REMEDY TO THE TAXPAYER, BUT NOT TO THE GOVERNMENT, SO THAT WHERE THE TAXPAYER NEITHER PAYS HIS TAXES NOR CONTESTS ITS VALIDITY BEFORE THE CTA, THE GOVERNMENT CANNOT SEEK RECOURSE TO THE CTA BUT HAS TO ENFORCE COLLECTION IN THE ORDINARY COURTS. — In his income tax return for the year 1951, the defendant claimed certain deductions. These deductions were found to have been improperly made. On Dec. 11, 1951, Dy Chay was assessed in the sum of ₱24,588 as deficiency income tax. This assessment was found to be correct by the Collector of Internal Revenue who demanded the same from Dy. Dy neither appealed to the Court of Tax Appeals nor paid the new tax assessed against him, whereupon, the Collector of Internal Revenue filed an action before the CFI of Rizal for the collection of said income tax. Dy moved for the dismissal of the case on the ground that since the establishment of the Court of Tax Appeals, an ordinary court has no jurisdiction to entertain cases involving the collection of internal revenue taxes. The trial court dismissed the case. Hence, this appeal. *Held,* that the appeal is meritorious. Under secs. 7 and 11 of R. A. No. 1125, the Court of Tax Appeals only assumes jurisdiction (exclusive appellate) over a case involving a disputed assessment if and when the same is brought before it within the reglamentary period of 30 days from the taxpayer's receipt of the decision of the Collector of Internal Revenue and this takes place only when the appeal is by the taxpayer who is adversely affected by the decision. Under sec. 11 the only one who can appeal is the taxpayer adversely affected by the decision of the Collector. No such right is given to the Collector, or to the government. It would therefore appear that R. A. No. 1125 only provides for a remedy to a taxpayer but not to the government and when such a situation arises where the taxpayer neither pays the tax assessed against him nor contests its validity before the CTA, the only remedy left to the government, aside from distraint and levy, is to enforce its collection by judicial action in the ordinary courts. REPUBLIC *v.* DY CHAY, G. R. No. L-15705, April 15, 1961.

POLITICAL LAW — TAXATION — WHERE AN OFFER OF COMPROMISE TO PAY THE TAX LIABILITY IS MADE AND ACCEPTED, BUT THE TAXPAYER FAILS TO PAY THE FULL AMOUNT OF THE TAX SO THAT A CRIMINAL ACTION IS INSTITUTED, AFTER WHICH THE TAXPAYER PAYS THE BALANCE, THE CRIMINAL ACTION WILL NOT PROSPER BECAUSE OF THE COMPROMISE. — Defendant was found in possession of prohibited articles for which he was required to pay specific tax in the sum of ₱24,438.40. He refused to pay it and the Deputy Commissioner of Internal Revenue recommended his criminal prosecution for violation of the National Internal Revenue Code. While the case was being investigated, the defendant wrote to the Commissioner offering to compromise the case and agreeing to pay the full amount of the tax subject to terms. This compromise agreement was approved by the Commissioner who advised the city attorney of the same. The latter agreed thereto and the case was considered closed and terminated. Later, the defendant obtained the Commissioner's approval to pay his tax liability by installments. Defendant made payments accordingly but failed to pay in full his obligation and the sum of ₱1,000 as penalty. In view of this an information for violation of the NIRC was filed against him. One week after its filing, the defendant paid in full his obligation and the penalty. However, the city attorney refused to withdraw the information and the defendant filed a motion to quash which was sustained. Hence, this appeal. It is contended by the city attorney that the Commissioner lost his authority to compromise the case since the information was filed prior to the full payment by the defendant of his obligation and the penalty. *Held,* untenable. The contention might be correct if there was no compromise agreement entered into between the defendant and the Commissioner with the knowledge of and concurrence by the city attorney prior to the filing of the information or that there was non-compliance of the agreement. The case of Rovero v. Amparao (No. L-5482, May 5, 1952) is not applicable. In said case, the court held that the Commissioner of Customs may not compromise decided cases; in the instant case the compromise was made prior to the filing of the information. US v. Chua Pue (22 Phil. 377) is not in point, for it involves an offer of compromise which was rejected by the Collector of Internal Revenue and not approved by the Secretary of Finance; in the instant case the defendant's offer of compromise was duly approved by the Commissioner and the city attorney. Morris v. US (123 Fed. 2d. 957) is irrelevant as it refers to an offer of compromise made after the filing of the complaint; here the compromise was entered into long before the filing of the information. Finally, Rule 123, sec. 9, Rules of Court, is inapplicable because it has reference to a criminal case not allowed by law to be compromised. The instant case involves a tax case which the law expressly allows to be compromised (sec. 309, NIRC). PEOPLE MAGDALUYO, G. R. No. L-16235, April 20, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — THE ACT OF COUNSEL IN ABRUPTLY RESTING THE CASE OF THE DEFENDANT IN THE LATTER'S ABSENCE DOES NOT CONSTITUTE A CONFESSION OF JUDGMENT. — Plaintiff Fernandez is the owner of 30 long tons of scrap iron which were stockpiled at the yard of Tan Tay Chuan. Defendant Tan Tiong Tick filed a replevin suit against Tan Tay Chuian for the recovery of the scrap iron allegedly belonging to him and in the possession of Tan Tay Chuan. Pursuant to an order of seizure, the sheriff of Manila seized the scrap iron belonging to plaintiff. Plaintiff filed a third party claim but because de-

fendant filed an indemnity bond, the scrap iron was not returned to him. Hence, plaintiff brought this action for damages. After the issues have been joined, the case was set for hearing. Plaintiff rested his case, and defendant's counsel presented the sheriff as witness and asked for postponement because the defendant was not present but the trial court would not consent unless counsel would be willing to pay reasonable expenses to plaintiff for his having to come to trial again if postponement were granted. Counsel instead of pressing his request for postponement, abruptly rested the case. Subsequently the court rendered judgment against the defendant. Defendant appeals, contending that his counsel's action in resting the case constituted confession of judgment. *Held,* untenable. At most, it might be considered as a mistake or lack of foresight or preparation on the part of counsel. But a client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced or learned. FERNANDEZ *v.* TAN TIONG TICK, G. R. No. L-15877, April 28, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — A COMPLAINT SEEKING TO REDUCE THE MONTHLY RENTAL FIXED BY A FINAL JUDGMENT OF THE COURT, THERE BEING NO LAW TO THE CONTRARY, STATES NO CAUSE OF ACTION. — Angel Olaes and his wife were registered owner of Lot No. 1095 situated in Rosario, Cavite. Said lot was occupied by Alejandro Quemuel and his wife on which they erected their house. In a complaint filed in the CFI of Cavite, the Olaes spouses sought to recover possession of said lot and rentals therefor. In a verified answer, the Quemuel spouses admitted plaintiff's ownership but contended that their occupation was gratuitous. The court ordered the Quemuel spouses to return possession of the lot to the Olaes spouses and to pay ₱20.00 a month to the latter until they shall have vacated the premises. The Quemuel spouses filed the present complaint in order to forestall ejectment. In said complaint, the Quemuel spouses sought to reduce the monthly rental fixed in the previous civil case and to compel the Olaes spouses to sell the portion of the lot where their house was erected to the former. The Olaes spouses filed a motion to dismiss which was granted by the court. The Quemuel spouses appealed. *Held,* appeal is without merit. The dismissed complaint states no cause of action. A cause of action presupposes a right of the plaintiff and a violation of such right. According to the complaint itself, the rental of ₱20.00 monthly and the order to vacate, were provided in a prior judgment which is final and its validity is not assailed. There being no law that fixes the rental of the same land at 7-1/2% of its alleged market value, the plaintiffs have no right thereto, or a right which could be violated. The defendants are not compelling the plaintiffs to rent the property but wanted them to vacate it. If the rental determined by the court were excessive, plaintiffs are free to vacate the property. QUEMUEL, *et. al., v.* OLAES, *et. al.,* G. R. No. L-11084, April 29, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — A DECISION DIRECTING PARTITION IS NOT FINAL, HENCE NOT APPEALABLE. — On June 5, 1953, respondent Basilia F. Vda. de Zaldarriaga commenced on action against Pedro, Ernesto, Guadalupe and Jesus, all surnamed Zaldarriaga, for the partition of four parcels of land of the Cadastral Survey of Cadiz, Negros Occidental. Judgment was rendered against the defendants. Upon the death of defendant Pedro Zaldarriaga, his widow, petitioner herein, was substituted for the deceased defendant. Upon motion, petitioner was granted five days extension to perfect an appeal from the decision of the court. Meanwhile the other defendants in the case filed their cash appeal bond, notice of appeal and record on appeal which were approved by the court. Within the five days' extension, petitioner filed a pleading asking in effect for leave to adopt the record on appeal filed by the other defendants. She was given instead 20 days within which to file a separate record on appeal. Prior to the filing of said record on appeal, respondent filed a motion to dismiss the appeal of petitioner upon the ground that the record on appeal and appeal bond had not been filed either within the 30-day reglamentary period or within the extension of five days granted by the court, it appearing that what petitioner had done was merely to file a motion asking for leave to adopt the appeal bond and record on appeal filed by the other defendants. The court sustained the motion and declared the decision final as far as the estate of the deceased Pedro Zaldarriaga was concerned. Hence, this petition for mandamus. *Held,* while respondent court erred in not allowing petitioner to adopt the appeal bond and the record on appeal filed by the other defendants and in sustaining the motion to dismiss because the appeal bond and record on appeal filed by the other defendants were sufficient for the purposes of the appeal and because petitioner had filed her separate record on appeal on time, still this Court is constrained to deny the present petition for mandamus to compel the respondent court to give due course to petitioner's appeal, for the reason that the decision from which she and her codefendants are appealing is not final but interlocutory (Fuentebella v. Carrascoso, L-48102, May 27, 1942). A decision or order directing partition is not final because it leaves something more to be done in the trial court for the complete disposition of the case, namely, the appointment of commissioners, submission of their report which, according to law, must be set for hearing. It is only after said hearing that the court may render a final judgment finally disposing of the action (Rule 71, Sec. 7, Rules of Court. VDA DE ZALDARRIAGA *v.* HON. ENRIQUEZ, *et al.,* G. R. No. L-13252, April 29, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — FAILURE TO ANSWER A COUNTERCLAIM WARRANTS AN ORDER OF DEFAULT, EXCEPT AS TO A CAUSE IN THE COUNTERCLAIM WHICH IF ANSWERED WOULD MERELY REQUIRE A REPLEADING OF THE COMPLAINT. — Zambales Colleges, Inc., filed a suit for damages in the CFI of Zambales against Ciriaco Villanueva. The defendant set up a counterclaim with three causes of action. The plaintiff moved to dismiss the counterclaim. The court denied the motion.

After such denial and due to the failure of the plaintiff to answer the counterclaim, an order of default as to the counterclaim was entered upon motion of the defendant. Consequently, a writ of execution was issued. A petition for certiorari and prohibition to set aside and annul the writ was filed. *Held,* that the judgment of default will lie only against those causes of action in the counterclaim which must be answered. But such order of default will not affect those causes of action in the counterclaim of the defendant which if answered would merely require a repleading of the complaint. ZAMBALES COLLEGES, INC. *v.* COURT OF APPEALS, G. R. No. L-16371, March 28, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — THE NEGLIGENCE OF COUNSEL IN NOT INFORMING HIS CLIENT THAT HE HAD RESTED HIS CASE DOES NOT CONSTITUTE EXCUSABLE NEGLIGENCE. — In an action for damages brought by Fernandez against Tan Tiong Tick, defendant's counsel, after plaintiff rested his case, presented the sheriff as witness and then asked for postponement because the defendant was not present. The trial court would not consent unless the counsel would be willing to pay reasonable expenses to the plaintiff for his having to come to trial again in case of postponement. Counsel instead of pressing his request abruptly rested the case. Subsequently, the court rendered judgment against the defendant. Hence, this appeal. Defendant contends that the negligence of his counsel in not informing him that he rested the case and the negligence of defendant himself in not inquiring from his counsel about the status of the case is excusable negligence. *Held,* untenable. Negligence is excusable where it is caused by failure to receive notice of the action by a genuine and excusable mistake or miscalculation, by reliance upon the assurances given by those upon whom the party had a right to depend. Here it appears that appellant himself as well as his counsel were duly notified and had full knowledge that the case was to be heard and his counsel conducted the hearing thereof. Considering that the client is bound by his counsel's conduct, appellant cannot now seriously contend that he was not notif that the case was already submitted for decision. As a client he should have been in contact with his counsel from time to time in order that he may be informed of the progress of his case, thereby exercising that standard of care which an ordinarily prudent man bestows upon his important business. FERNANDEZ *v.* TAN TIONG TICK, G. R. No. L-15877, April 28, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE THE DEFENDANT APPEARED IN RESPONSE TO SUMMONS, PRESENTED A MOTION TO DISMISS, AND THE COMPLAINT IS SUBSEQUENTLY AMENDED, NO NEW SUMMONS NEED BE SERVED UPON HIM WITH RESPECT TO THE AMENDED COMPLAINT. — Ong Peng filed an action on April 15, 1958 against Jose Custodio to recover a sum of money representing the value of goods and materials obtained from the plaintiff. Notice was duly served and the defendant filed a motion to dismiss on the ground of prescription on April 30, 1958. The plaintiff answered the defendant's motion and

attached to it was an amended complaint, setting forth the promissory note supporting the claim. No answer to the amended complaint was filed and no objection to its admission was interposed. On May 21, 1958, the court admitted the amended complaint on the ground that no objection thereto was made, and on May 28, 1958 the same court denied the motion to dismiss. The copy of the order of admission of the amended complaint was sent by ordinary mail on May 31 to the defendant's attorney and the denial of the motion on June 16. The defendant failed to file an answer to the amended complaint, hence a declaration of default was entered by the court upon motion of the plaintiff. Plaintiff presented his evidence and judgment by default was rendered against defendant. On appeal from the denial of his petition for relief the defendant argued that he never came under the court's jurisdiction for the purposes of the amended complaint for the reason that the same was not served upon him with summons and in accordance with section 10, Rule 27, Rules of Court, and invoking the case of Atkins v. Domingo (44 Phil. 680). *Held,* untenable. In the case invoked by the appellant, summons was properly served under the original complaint and before defendant can appear another amended complaint was served by registered mail. In the present case, the defendant had already appeared when the amended complaint was served, in fact, he presented a motion to dismiss. Hence, if the defendant had already appeared in response to the first summons, so that he was already in court when the amended complaint was filed, then ordinary service of that pleading upon him, personally or by mail, would be sufficient and no new summons need be served upon him. ONG PENG *v.* CUSTODIO, G. R. No. L-14911, March 25, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE THE MAYOR REDEEMS MUNICIPALITY PROPERTY, THE FACT THAT THE REDEMPTION MONEY DID NOT COME FROM THE MUNICIPALITY DOES NOT TAINT THE TRANSACTION WITH INVALIDITY. — Pursuant to a writ of execution in a civil case the sheriff sold at public auction on July 16, 1957 a parcel of land belonging to the municipality of Caba, La Union, subject to redemption within one year. Exactly one year thereafter the municipality of Caba, through its mayor, redeemed the property and a certificate of redemption was issued and registered. Purchaser Mangaser petitioned the court for a final deed of sale, contending that the redemption was invalid because the redemption money did not come from the municipality but from the P.T.A. of Caba, of which the mayor was president. Petition was denied, hence, this appeal. *Held,* the fact that the redemption money did not come from the defendant cannot taint the transaction with invalidity, it being a mere accommodation which the P.T.A. deemed wise to extend. The mayor redeemed the property in his capacity as mayor, otherwise, the sheriff would not have allowed the redemption, considering that the property belonged to the municipality. GERONIMO *v.* MUN. OF CABA AND MANGASER, G. R. No. L-16221, April 29, 1961.

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.