CASE DIGEST

SUPREME COURT

CIVIL LAW — ADOPTION — ALTHOUGH UNDER ARTICLE 341 OF THE CIVIL CODE, ADOPTION GIVES TO THE ADOPTED THE SAME RIGHTS AND DUTIES AS IF HE WERE A LEGITIMATE CHILD OF THE ADOPTER, NEVERTHELESS THE RIGHTS REFERRED TO THEREIN ARE ONLY THOSE ENUMERATED IN ARTICLE 264, AND DO NOT INCLUDE THE ACQUISITION OF THE NATIONALITY OF THE ADOPTER.—Ching Leng, a Chinese, obtained a judgment granting his petition for naturalization. Subsequently, he and his wife filed another petition for the adoption of Ching Leng's illegitimate children with one Sy An. The petition was granted. After taking his oath of allegiance, Ching Leng, believing that his adopted children also became Filipino citizens by virtue of his naturalization, wrote the Commissioner of Immigration requesting the cancellation of the alien certificate of registration of said minors. The request was denied and Ching Leng filed an action for the issuance of a writ of mandamus. Denied. Hence, this appeal. **Held,** although adoption gives to the adopted person the same rights and duties as if he were a legitimate child of the adopter, pursuant to article 341 of the new Civil Code, nevertheless the rights referred to therein are only those enumerated in article 264 of said Code, and do not include the acquisition of the nationality of the adopter. CHING LENG *v.* GALANG, G. R. No. L-11931, Oct. 27, 1958.

CIVIL LAW — APPLICATION OF PAYMENT — IN THE ABSENCE OF ANY EXPRESS APPLICATION BY THE DEBTOR, OR OF A SPECIFIC IMPUTATION BY THE CREDITOR, PARTIAL PAYMENT IS TO BE APPLIED TO THE MORE ONEROUS DEBT. — Dy Eng Giok, a provincial sales agent of Destilleria Lim Tuaco & Co. procured a surety bond from Traders Insurance & Surety Company to secure the performance of his duty of turning over the proceeds of his sales to his principal. Dee Lopez and Dy-Liaco were counterbondsmen. Before the surety bond was obtained, Dy Eng Giok had an outstanding account in favor of his principal in the amount of ₱12,898.61. After the filing of the bond, the sales agent contracted obligations in favor of his principal in the sum of ₱41,449.93 and made remittances amounting to ₱41,864.49. The distillery company applied the payments first to the unsecured debt, and later to the secured debt. Failing to collect the balance from the agent, the company demanded payment from the surety company. The surety company paid and instituted this action for reimbursement against the agent and his counterbondsmen. **Held,** the surety company may recover from Eng Giok insofar as payment benefited him **pro tanto** but not from the counterbondsmen. Since there was no express application by the debtor, nor any receipt issued by the creditor specifying a particular im-

putation of the payment, the partial payment should be applied first to the debt secured by the bond, it being the more onerous one (Art. 1254, N.C.C.). TRADERS INSURANCE & SURETY CO. *v.* ENG GIOK, G. R. No. L-9073, Nov. 17, 1958.

CIVIL LAW — CONTRACTS — THE OFFER MADE BY A BIDDER, IN SEALED BIDDING, TO EQUAL AND IMPROVE THE BEST BID BY PAYING AN ADDITIONAL SPECIFIED SUM, IS SPECULATIVE, IMPROPER, AND SHOULD BE DISREGARDED. — The respondent court authorized the sale of the Legarda-Tambunting subdivision. Offers to purchase were submitted by the petitioner, the Manotoc Realty, and by A. V. Valencia. The parties then discussed the terms and conditions of the sale. It was agreed that the bidders will submit new bids or offers in the form of memorandum wherein they may reiterate or improve their offer, either with respect to the price, the terms and conditions, or the manner of payment. The realty corporation offered the price of ₱776,000 and the payment of real estate taxes in the amount of ₱64,000. The petitioner offered the price of ₱800,000 and an additional offer to equal and improve the "best offer" plus ₱2,500 over and above the amount of the best offer. He did not offer to pay the real estate taxes. The court accepted the offer of the realty corporation. The petitioner moved for reconsideration on the ground that the assumption by the corporation to pay the real estate taxes is a violation of one of the conditions of the bidding that said taxes shall be paid by the estate. Denied. Hence this certiorari. **Held,** the offer made by a bidder, in sealed bidding, to equal or improve the best bid that may be submitted by paying an additional specified amount or sum, is speculative and improper and should be disregarded for the reason that, if entertained, it would destroy the very nature and purpose of secret bidding. VENTURANZA *v.* CAÑIZARES, G.R. No. L-13396, October 22, 1958.

CIVIL LAW — CONTRACTS — IN CONTRACTS WITHOUT FIXED PERIODS, THERE CAN BE NO BREACH THEREOF UNLESS AND UNTIL THE PERIOD FOR PERFORMANCE IS FIRST FIXED. — The Basilan Lumber Company agreed to buy all the logs which might be produced at Port Sta. Maria Lumber, a concession owned by Abelardo Pages. In order to circumvent a Bureau of Forestry regulation providing that only the concessionaire can deduct logging operations within the concession, the contracting parties made it appear that Pages would hire the company's men and would lease the company's machineries. Upon the suspension of logging operations, to which Pages objected, the latter brought this action to recover damages for breach of contract plus the value of the logs which the defendant allegedly refused to buy. The defendant moved for the dismissal of the case on the ground of lack of cause of action, the contract being simulated and contrary to law and hence void. **Held,** the evidence showed that the concession was actually being operated by the Basilan Lumber Company contrary to Bureau of Forestry regulations. Hence the contract entered into by the parties was simulated and void and consequently no cause of action can arise from it. The defendant did not violate the contract by its delay in purchasing the logs because no period of time was fixed by the parties. The plaintiff should have asked the lower court to fix a period because without it being first

determined, in the absence of a term fixed by the parties, there can be no breach of contract. PAGES *v.* BASILAN LUMBER CO., G. R. No. L-10679, Nov. 29, 1958.

CIVIL LAW — CONTRACTS — A CONTRACT WHOSE CAUSA OR CONSIDERATION IS TO STIFLE THE PROSECUTION OF A CRIME IS VOID AB INITIO AND, CONSEQUENTLY, NO ACTION WOULD LIE FOR THE SPECIFIC PERFORMANCE THEREOF. — Ramirez was accused in the Municipal Court of Manila of physical injuries thru reckless imprudence. Virginia Hofileña was the offended party. At the instance of the accused, Virginia consented to a provisional dismissal of the case on condition that damages suffered by her be paid. The accused, together with his attorney, agreed to the condition and signed an instrument to that effect. The case against Ramirez was thus dismissed. Ramirez failed to fully pay the amount of damages agreed upon. Meanwhile, Virginia assigned the same to the plaintiff Monterey, who brought an action for the collection of the unpaid sum. **Held,** it is obvious that the object of the undertaking contained in the contract in question is to stifle the prosecution of Ramirez and that the cause of the obligation thus assumed by him is unlawful, for which reason the contract is void ab initio and no cause of action may be predicated thereon. MONTEREY *v.* RAMIREZ, G.R. No. L-11082, Oct. 31, 1958.

CIVIL LAW — CREDIT TRANSACTIONS — THE CLAIM OF A LESSOR, IN THE PROCEEDS OF THE SALE OF MOVABLES FOUND IN THE LEASED PREMISES, FOR UNPAID RENTS, IS PREFERRED OVER THAT OF A JUDGMENT CREDITOR OF A PRIOR DATE. — The sheriff of the City of Manila filed an action of interpleader against Soledad Alconcel and Wilhelmina Carlos on one hand, and the Angel Jose Realty Corporation, on the other, to litigate their respective claims to a certain sum in his possession by virtue of execution issued in a criminal case. The claim of the first party arose from a counter-bond the executed for the accused; that of the second party, from unpaid rents of apartment occupied by said accused. The properties sold were movables found in the rented room. Rentals were of later date. **Held,** the rentals are preferred, the disputed sum being part of the proceeds of the sale of movables found in the leased premises. SHERIFF *v.* ANGEL JOSE REALTY CORPORATION, G. R. No. L-11787, Nov. 28, 1958 .

CIVIL LAW — OBLIGATIONS — IN THE ABSENCE OR FAILURE OF THE DEBTOR TO EXERCISE THE RIGHT TO PROVIDE THE APPLICATION OF PAYMENTS, THE CREDITOR IS ENTITLED AND EMPOWERED TO APPLY AS HE DEEMS FIT AND IN SUCH MANNER AS IS BENEFICIAL TO HIM. — A contract of lease, on a monthly basis of P800 commencing Dec. 1, 1953, was entered into between plaintiff corporation and defendant Andolong, and secured by a surety company for one year. As of Dec. 1, 1954, of the total rents due, the lessee had paid only P6,200.00 leaving a balance of P3,400.00. As both the lessee and the surety failed to settle the unpaid obligation despite repeated demands, the lessor filed on Dec. 20, 1954 a complaint against them. Notwithstanding the action, the lessee retained possession of the premises up to Sept. 30, 1955. For this occupancy, he paid only P4,500 leaving a deficiency of P3,50

So the lessor amended his original complaint by demanding from the lessee alone payment of this later unpaid obligation. The surety company, in disclaiming liability for the first cause of action, i.e., the unpaid rentals for 1954, maintained that the amount which the lessee had paid in 1955, amounting to P4,500 should first be applied to the satisfaction of the deficiency for 1954, it being an earlier debt and as said amount more than satisfies the unpaid rental for that year, said defendant surety should be relieved from liability. **Held,** while the Civil Code gives to the debtor the right to provide for the application of payments where he has various debts of the same kind in favor of one and the same creditor, which must be exercised at the time he effects payment (Art. 1252), in the absence of failure of the debtor to exercise such right, the creditor is empowered to make the application of the payments made by the debtor as he deems it fit and in such manner as is beneficial to himself. U.P. RECREATION CLUB, INC. *v.* ALTO SURETY & INSURANCE CO., G. R. No. L-11181, Sept. 17, 1958.

CIVIL LAW — PERSONS — IN ORDER TO VIOLATE THE ANTI-ALIAS LAW (C. A. 142), THERE MUST BE A SHOWING OF CONFUSION OR PREJUDICE CAUSED BY THE USE OR ADDITION OF ANOTHER NAME. — Anselmo Lim Hok Albano, alias Lim Hok Anselmo Albano filed a petition for oath taking and issuance of his naturalization certificate under section 1 of Republic Act 530. The lower court denied the petition on the ground that the petitioner had been using aliases in violation of the Anti-Alias Law. In the petition for naturalization it was alleged that petitioner's full name is Anselmo Lim Hok Albano, alias Lim Hok, alias Lim Hok Anselmo Albano. Lim Hok appealed. **Held,** the mere fact that the appellant used a name with which he was christened, or by which he has been known since childhood, or had added the surname of his godfather in connection with his business and social dealings, does not prove that he violated the Anti-Alias Law in the absence of a showing that confusion or prejudice had been caused by such use of addition. ALBANO *v.* REPUBLIC, G. R. No. L-10912, Oct. 31, 1958.

CIVIL LAW — QUASI-DELICTS — A FATHER'S DELAY, OR EVEN HIS NEGLIGENCE, SHOULD NEITHER PREJUDICE THE SON WHO HAS NO CONTROL OVER THE PARENT'S ACTION, NOR IMPAIR HIS RIGHT TO A FULL INDEMNITY. — On March 7, 1951, Dario Arreglado, resenting the banter levied on him, suddenly pulled a pistol and fired at Benjamin Araneta, hitting him on the lower jaw. Dario was indicted for frustrated homicide. He pleaded guilty, but in view of his age (14 years) the court suspended the proceeding in accordance with article 80 of the Revised Penal Code. The court, upon recommendation of the SWA, discharged him on May 22, 1953 and quashed the criminal case. On October 13, 1954, an action was instituted by the Aranetas against the Arreglados to recover material, moral and exemplary damages. Because of the refusal of the trial court to consider the cost of plastic treatment as a proper element of the indemnity for damages, on the ground of the father's failure to submit his son to plastic surgery as soon as possible, an appeal was made therefrom. **Held,** the failure of a father to submit his son to an operation does not prove that such treatment is not called for. The father's delay, or even his negligence, should not be allowed to prejudice the son who has no control over the parent's action, or to

impair his right to a full indemnity. ARANETA *v.* ARREGLADO, G. R. No. L-11394, Sept. 9, 1958.

CIVIL LAW — SURETYSHIP — THE CREDITOR, IN ORDER TO PRESERVE HIS RIGHTS AGAINST THE SURETY, IS NOT BOUND TO ACT WITH DILIGENCE, AND HIS RIGHTS ARE NOT IMPAIRED IF HE REMAINS PASSIVE. — Defendant Victorina Vienes, as legal guardian of the minor Florentino Baquiran, Jr., son of a deceased member of the U.S. Army, received from the plaintiff, as administrator of the estate of the deceased under Rep. Act No. 136, the sum of ₱4,588.62 from the funds of the estate, for the construction of a house for the said minor. For the release of the amount, Vienes put up a surety bond whereby she, as principal and the Alto Surety & Insurance Co., as surety, bound themselves solidarily to pay the plaintiff the sum released should she fail to comply with the conditions of the bond. Principal and surety defaulted, hence this action. Judgment was rendered for the plaintiff, but on appeal, the Court of Appeals modified the judgment and absolved the surety company to the extent of ₱1,588 which, according to the Court, the plaintiff neglected or failed to collect despite defendant's sworn statement that she had the amount. **Held,** the creditor, in order to preserve his rights against the surety, is not bound to act with diligence, and his rights are not impaired if he remains passive, THE JUDGE ADVOCATE GENERAL *v.* COURT OF APPEALS AND ALTO SURETY & INS. CO., G. R. No. L-10671, October 23, 1958.

COMMERCIAL LAW — PRIVATE CORPORATIONS — STOCKHOLDERS WHO HAVE SOLD AND DISPOSED OF ALL THEIR STOCKHOLDINGS IN THE CORPORATION CEASE NO LONGER CLAIM TO BE ITS STOCKHOLDERS AND CANNOT, CONSEQUENTLY, VALIDLY ORGANIZE THEMSELVES INTO A BOARD TO ACT FOR THE CORPORATION UNLESS IT BE SHOWN THAT THEY REACQUIRED THEIR STOCKHOLDINGS BEFORE SO ACTING. — The stockholders of the plaintiff corporation sold the entire stockholdings as well as its assets to the Ohta Development Co., a Japanese corporation. After liberation, the Alien Property Custodian took over the custody of the rubber plantation of the Ohta Development Co. Control and ownership of this corporation were later transferred to the Republic of the Philippines pursuant to the Property Act of 1946. Later, the Mindanao Institute of Technology was established, and the landholdings of the plaintiff corporation were transferred to it. After failing to secure the return of their shareholdings in the plaintiff corporation, the stockholders commenced action, in the name of the corporation, to recover the possession and ownership of the lands transferred to the Mindanao Institute of Technology. **Held,** the stockholders could not validly organize themselves into a board to act for the corporation inasmuch as they could no longer claim as stockholders because they already sold and disposed of all their shareholdings and they failed to reacquire the same before the commencement of the action.—RIO GRANDE RUBBER ESTATE CO. *v.* BOARD OF LIQUIDATORS, G. R. No. L-11321, Nov. 28, 1958.

CRIMINAL LAW — CONSPIRACY — THE MERE PRESENCE OF THE ACCUSED AT THE HOUSE WHERE HIS CO-ACCUSED MADE THE PROPOSAL TO COMMIT THE CRIME, WITHOUT ANY ACTIVE PARTICIPATION IN THE CONSPIRACY, IS NOT ENOUGH FOR CONVICTION. — About 2 weeks before the perpetration of the crime charged, Izon, Robles and Saldariaga went to the house of San Miguel, one of the co-accused, to plot the robbery of the Colgate-Palmolive Company. On the night they carried out their plan, Ranara, one of the security guards of the company, was hog-tied while another was shot to death. The robbery was not successful. Izon, Robles, Saldariaga and two others were prosecuted for frustrated robbery in band with murder. Robles and two of his co-accused were convicted of frustrated robbery with homicide. It was shown that Robles took no active part in the conspiracy and was not present during the perpetration of the crime. **Held,** the mere presence of the accused at the house where his co-accused made the proposal to commit the crime charged, without the former uttering a word of approval throughout the whole proceeding is not enough for purposes of conviction. PEOPLE *v.* IZON, G. R. No. L-10397, October 16, 1958.

LABOR LAW — CERTIFICATION ELECTION — THE COURT OF INDUSTRIAL RELATIONS MAY NOT ORDER A CERTIFICATION ELECTION, ALTHOUGH THERE IS A PETITION THEREFOR SIGNED AND SUBMITTED BY 10% OF ALL THE WORKERS. WHEN A CERTIFICATION ELECTION HAS OCCURRED WITHIN ONE YEAR FROM THE DATE OF THE PETITION, OR WHEN THERE IS AN UNEXPIRED BARGAINING AGREEMENT NOT EXCEEDING TWO YEARS. OR WHEN THERE IS A PENDING CHARGE OF COMPANY-DOMINATION OF ONE OF THE LABOR UNIONS. — Acoje United Workers Union submitted a petition for certification election, but Acoje Labor Union opposed the petition on the grounds that it has an existing collective bargaining agreement with the mining company and that the prejudicial question of unfair labor practice, charged against the mining company for having assisted in the organization of the rival union, has not been disposed of by the CIR. The Workers Union maintained that once a petition for certification election is submitted and signed by at least 10% of all the workers, it is mandatory upon the court to order a certification election without exceptions, in view of section 12(c) of Republic Act 875. **Held,** section 12 of Republic Act 875 is not so absolute as it may appear at first glance because the statute itself recognizes certain exceptions, as when a certification election had occurred within one year, or when there is an unexpired bargaining agreement not exceeding two years, or when there is a pending charge of company-domination of one of the labor unions. The charge of company-domination is a prejudicial question which must be decided first to insure a free election. ACOJE MINES EMPLOYES *v.* ACOJE LABOR UNION, G. R. No. L-11273, Nov. 21, 1958.

LABOR LAW — TENANCY — THE PROHIBITION MENTIONED IN SEC. 24 OF REPUBLIC ACT NO. 1199 APPLIES WHETHER OR NOT THE TWO SEPARATE LANDHOLDINGS BE PLANTED TO THE SAME CROP. — For cultivating additional areas without the consent of the petition with whom he first tenanted, the tenant was dispossessed of his first landholding which is planted to rice. The tenant contends that the dispossession was unjustified on the ground that the additional areas cultivated were planted to corn. **Held,** sec. 24 of Rep. Act 1199 which prohibits cultivation of additional areas without the consent of the landowner prejudiced by the scattered effort, applies whether or not the two landholdings are planted to the same crop. CENON BUENCAMINO *v.* HON. JUDGE REYES, G. R. No. L-11951, Nov. 29, 1958.

LABOR LAW — WAGE ADMINISTRATION SERVICE—WHERE THE PARTIES NEVER AGREED IN WRITING TO SUBMIT THE CASE TO ARBITRATION, BUT INSTEAD THE CLAIM WAS WITHDRAWN BY THE PLAINTIFF TO BRING THE MATTER TO A COMPETENT COURT, THE DISMISSAL OF THE CASE "WITH PREJUDICE" BY THE INVESTIGATOR BEFORE WHOM THE CLAIM WAS FILED FOR MEDIATION IS WITHOUT AUTHORITY AND HAS NO LEGAL EFFECT. — The plaintiff filed with the Regional Office No. I of the Dept. of Labor on Nov. 4, 1955 a verified compliant against the defendant, claiming the amount of ₱20,000 for overtime, vacation, sick leave and separation pay, which amount was subsequently increased by the plaintiff by filing a new claim to ₱55,600. On May 31, 1956, the plaintiff, before a decision could be rendered, filed a written manifestation withdrawing his claim and signified his intention to file a complaint directly in court. On July 3, 1956, upon motion of the defendant, the investigator issued an order dismissing the case "with prejudice." Subsequently, on July 7, 1956, the plaintiff herein filed the present action in the CFI of Manila. The defendant filed a motion to dismiss on the ground that the causes of action of the plaintiff are barred by the prior judgment of the investigator of the Regional Office No. I of the WAS. The CFI sustained the contention of the defendant and dismissed the case. Hence this appeal. **Held,** where the parties never agreed in writing to submit the case to arbitration, but instead the claim was withdrawn by the plaintiff to bring the matter to a competent court, the dismissal of the case "with prejudice," by the investigator before whom the claim was filed for mediation is without authority and has no legal effect. WINCH *v.* P. J. KIENER Co., G. R. No. L-11884, Oct. 27, 1958.

LABOR LAW — WORKMEN'S COMPENSATION — WHERE AN EMPLOYEE, WHILE PERFORMING HIS DUTY AND DURING HIS TIME OF WORK, WAS SHOT TO DEATH BY AN INTRUDER FOR HIS REFUSAL TO GIVE CIGARETTES TO THE LATTER, HE IS CONSIDERED TO HAVE DIED IN THE COURSE OF EMPLOYMENT AND THEREFORE HIS DEATH IS COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT. — Lorenzo was employed as laborer by the Bureau of Public Works in its irrigation project at Montalban, Rizal. Natividad, with another, arrived at the place and for refusing to give them cigarettes, shot Lorenzo who died instantaneously. The widow filed a claim for compensation under the Workmen's Compensation Act. The question is whether or not the death of Lorenzo arose out of his employment. **Held,** Lorenzo met his death at the place where he was performing his duty and during his time of work, and therefore, there is ground for holding that the deceased died in the course of his employment. Compensation granted. BUREAU OF PUBLIC WORKS *v.* WORKMEN'S COMPENSATION COMMISSION, G. R. L-8994, Nov. 28, 1958.

LABOR LAW — WORKMEN'S COMPENSATION — A PERSON WHO ELECTS TO SEEK COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT CAN NO LONGER BE PERMITTED TO FILE A CIVIL ACTION FOR DAMAGES FOR THE SAME INJURY IN THE COURT OF FIRST INSTANCE. — Esguerra, a sheller in the Franklin Baker Co., while working, felt an unusual pain in the waist for which, after an examination by the company physician, he was injected with **Irgapyrine** in the right arm. Immediately, his arm became swollen, compelling him to enter a hospital, where he was confined for eight months. He then filed a claim for permanent partial loss of the use of the right arm with the Workmen's Compensation Commission. While these proceedings were pending, he initiated in the CFI the present action to recover damages from the company physician and a nurse, and to hold the company subsidiarily liable. Upon motion, the trial court dismissed the action for lack of jurisdiction. Plaintiff, unable to have the dismissal reconsidered, filed this present petition for certiorari on the theory that the availability of a remedy under the Workmen's Compensation Act does not preclude him from seeking damages under the New Civil Code from persons who directly caused his injury. **Held,** the petitioner cannot maintain the civil action for damages against the respondents, having elected to seek compensation under the Workmen's Compensation Act and his claim being processed at the time he filed the action in the CFI. ESGUERRA *v.* MUÑOZ PALMA, G. R. No. L-11983, Sept. 24, 1958.

POLITICAL LAW — DEPORTATION — SEC. 37 OF COMMONWEALTH ACT NO. 613, AS AMENDED, WHICH ENUMERATES THE GROUNDS FOR WHICH AN ALIEN MAY BE DEPORTED DOES NOT WITHDRAW OR ABROGATE THE POWER OF THE PRESIDENT TO DEPORT ALIEN WHOSE STAY IN THE PHILIPPINES HAS BECOME UNDESIRABLE. — The petitioner, a Chinese citizen, allowed to reside in the Philippines permanently, was charged with and convicted of estafa. The court did not recommend to the President his deportation after service of his sentence. Before his release, however, the special prosecutor filed charges against him with the Deportation Board alleging the facts of conviction and service of sentence and praying that after hearing, the Board recommend to the President his deportation. Petitioner contends that the President has no power to deport him on the ground that the cause does not come under Sec. 37, Com. Act 613, as amended, and therefore it is Congress alone that has the power to deport him. **Held,** sec. 37, Com. Act 613, as amended which enumerates the grounds for which an alien may be arrested and deported, does not withdraw or abrogate the power of the President to deport an undesirable alien. — TAN SIN *v.* DEPORTATION BOARD, G. R. No. L-11511. Nov. 28, 1958.

POLITICAL LAW — ELECTION LAW — THE MERE FACT THAT THE NAME OF A PERSON WHO IS NOT A CANDIDATE APPEARS ON THE BALLOT SHOULD NOT INVALIDATE THE WHOLE BALLOT, BUT SUCH SHOULD BE CONSIDERED MERELY AS STRAY VOTE. — In the general election held on November 8, 1955, Jaucian and Callos were candidates for Mayor of Daraga, Albay. Callos was proclaimed mayor-elect by the municipal board of canvassers. Dissatisfied with the result of the election, Jaucian filed a protest in the Court of First Instance of Albay on the ground of mass frauds perpetrated in at least 10 precincts of the municipality. The trial court re-affirmed the election of Callos. Jaucian then appealed. The issue presented is whether the names of persons who are not candidates for councilors, appearing on the space for councilors, should be considered as distinguishing marks as to invalidate the whole ballot under section 135, in relation to section 146, of the Revised Election Code, or whether to consider them as stray votes under section 149 (13) of the same code. **Held,** they cannot be considered as distinguishing marks. Under section 149 (13) of the Revised Election Code, the mere fact that the name of a person who is not a candidate is written on a space

intended for an office for which he is not a candidate will not invalidate the ballot but that it would be merely considered a stray vote, and this is true even if the same name be repeated on the same space on several ballots, unless there is sufficient evidence to show that the name was written thereon by the voter with the evident intention of identifying his vote. JAUCIAN *v.* CALLOS, G. R. No. L-11573, Sept. 29, 1958.

POLITICAL LAW — IMMIGRATION — THE REMEDY OF HABEAS CORPUS IS AVAILABLE IN IMMIGRATION CASES ONLY TO DETERMINE WHETHER OR NOT A FAIR HEARING HAS BEEN CONDUCTED, AND NOT FOR THE PURPOSE OF INQUIRING WHETHER, UNDER THE EVIDENCE PRESENTED, THE DECISION IS RIGHT OR WRONG. — Gurdial Kaur was denied admission as a non-preference quota immigrant by the Board of Special Inquiry despite her attempt to prove that she was completely cured of **amoebiasis.** On August 8, 1955, the petitioner asked for a writ of **habeas corpus** and succeeded in getting a writ of preliminary injunction from the Court of First Instance of Manila restraining the Commissioner of Immigration from excluding her from the country. The appellee contends that the lower court erred in disturbing the Board's findings which were supported by evidence showing petitioner to be an undesirable alien. **Held,** the remedy of habeas corpus is afforded in immigration cases only to determine whether or not a fair hearing has been conducted and not for the purpose of inquiring whether, under the evidence presented, the decision of the Board is right or wrong. When the hearing is fair, the decisions as to questions of facts are final, if supported by substantial evidence. The courts are bound to accept these decisions, and cannot interfere therewith. KAUR *v.* COMM'R OF IMMIGRATION, G. R. No. L-9864, Nov. 21, 1958.

POLITICAL LAW — PUBLIC CORPORATIONS — WHEN A SOVEREIGN STATE ENTERS INTO A CONTRACT WITH A PRIVATE PERSON, SAID STATE CAN BE SUED ON THE THEORY THAT IT HAS DESCENDED TO THE LEVEL OF A PRIVATE INDIVIDUAL FROM WHICH IT CAN BE IMPLIED THAT IT HAS GIVEN ITS CONSENT TO BE SUED UNDER THE CONTRACT. — Plaintiff and defendant entered into a contract for stevedoring service at the U.S. Naval Base, Subic Bay, Philippines, the contract to terminate on June 30, 1956. Plaintiff brought this action before the Court of First Instance of Manila to collect several sums of money arising from the contract. Defendant filed a motion to dismiss on the ground that the court has no jurisdiction over the defendant, it being a sovereign state which cannot be sued without its consent. **Held,** when a sovereign state enters into a contract with a private person, the state can be sued, upon the theory that it has descended to the level of an individual from which it can be implied that it has given its consent to be sued under the contract. HARRY LYONS, INC. *v.* U.S.A., G. R. No. L-[illegible], Sept. 26, 1958.

POLITICAL LAW — TAXATION — THE COMMON LAW DOCTRINE OF EQUITABLE RECOUPMENT WHICH MEANS THAT A TAX PRESENTLY ASSESSED AGAINST A TAXPAYER MAY BE RECOUPED OR SET-OFF AGAINST A TAX ILLEGALLY OR ERRONEOUSLY COLLECTED, OR OVERPAID, IS NEITHER BINDING NOR APPLICABLE IN THIS JURISDICTION. — The University of Santo Tomas filed a claim for refund of certain taxes on the operation of its Printing Press, alleged to have been erroneously collected. This claim was denied, on the other hand a deficiency tax was assessed against the claimant. On review, the Court of Tax Appeals held that while the taxes claimed were refundable, no refund can be made on the ground that the claim was made out of time. However, applying the doctrine of equitable recoupment, the court set-off the deficiency tax assessed against and to the extent of the taxes erroneously collected. **Held,** the common law doctrine of equitable recoupment is neither binding nor applicable in this jurisdiction. COLLECTOR *v.* U.S.T., G. R. No. L-11274, November 28, 1958.

POLITICAL LAW — TAXATION — THE "INVENTORY METHOD" OF DETERMINING INCOME IS LEGAL, AND ITS APPLICATION IS THEREFORE PROPER, AS LONG AS THE REQUISITES HAVE BEEN COMPLIED WITH. — Using the "net worth method" of determining income as his basis of investigation, the Collector of Internal Revenue issued a deficiency assessment in the sum of ₱641,470.04 as deficiency income tax for the calendar years 1946-50, together with the corresponding penalties. Simultaneously, the Collector issued a warrant of distraint and levy against the properties of A. P. Reyes. The Court of Tax Appeals tried the case on its merits after restraining the Collector from executing the warrant of distraint and levy. A. P. Reyes appealed from the decision of the lower court which reduced the deficiency tax assessment to ₱210,759.20, attacking the legality of the inventory method of determining income and questioning the propriety of its application. **Held,** the conditions for the proper use of the method are: (a) that the taxpayer's books do not reflect his correct income; (b) that the opening net worth is established with reasonable certainty; (c) that all relevant leads furnished by the taxpayer, reasonably susceptible of verification, be tracked down; (d) that the increase in net worth be in some way proved due to taxable income; (e) that proper allowance be made for personal and non-deductible expenditures, depreciation and non-taxable receipts. All the conditions being present, the use of the "inventory method" is proper and legal. COLLECTOR OF INTERNAL REVENUE *v.* REYES, G. R. No. L-11534, Nov. [illegible], 1958.

POLITICAL LAW — TAXATION — A TAXPAYER MAY NOT AVAIL OF THE DEFENSE OF PRESCRIPTION WHEN BY HIS REPEATED REQUESTS THE GOVERNMENT HAS BEEN PERSUADED TO POSTPONE COLLECTION FOR MORE THAN 5 YEARS. — The Victoria Consolidated Mining Company failed to file its income tax return for 1941 due to the last war. After liberation, Com. Act No. 722 was enacted, extending the filing of tax returns for 1941 up to Dec. 31, 1945. On Nov. 28, 1946 the mining company filed its second final return. On the basis of the second final return, the Collector assessed against the company the sum of ₱33,099.26. On February 21, 1947, the company asked for an extension of time within which to pay, reserving the right to question the correctness of the assessment. An extension of 3 months counted from March 20, 1947 was granted. On Nov. 28, 1950, the Collector demanded payment of tax assessed. Respondent asked for reconsideration of the assessment and a new assessment was made on March 7, 1952, which

was superseded by another assessment made on April 18, 1952. After several other negotiations, the assessment was reduced to P24,438.96. Within the reglementary period, the company filed this petition for review of the assessment made on July 26, 1955, alleging that the right of the government to collect the tax had already prescribed. **Held,** the Collector of Internal Revenue refrained from collecting the tax because of the several requests of the taxpayer for extension to give the mining company every opportunity to prove its claim regarding the correctness of the assessment. While a mere request for re-examination may not have the effect of suspending the running of the period of limitation, nevertheless there are cases in which the taxpayer may be prevented from setting up the defense of prescription, even if he has not previously waived it in writing as when by his repeated requests, the Government for good reasons has been persuaded to postpone collection. He who prevents a thing from being done may not avail himself of the benefits of the non-performance which he has himself occasioned. COLLECTOR OF INTERNAL REVENUE *v.* SUYOC CONSOLIDATED MINING CO., G. R. No. L-11527, Nov. 25, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — IN JUSTICE OF THE PEACE AND MUNICIPAL COURTS, THE FAILURE TO APPEAR IN CIVIL CASES IS THE ONLY GROUND WHERE A DEFENDANT MAY BE DECLARED IN DEFAULT, AND NOT THE FAILURE TO ANSWER THE COMPLAINT. — In a case before the Justice of the Peace of Guiuan, Samar, the petitioner Manuel Gancayco received the summons issued by said court to appear before it to answer the complaint. Petitioner Manuel Gancayco personally appeared, in his own behalf and in behalf of his father, answered the complaint, and joined counsel for the respondents in asking for the postponement of the hearing which was granted. Another postponement was asked and granted. One more postponement was asked by the petitioners but on the opposition of the respondents, it was denied. The judge proceeded to hear the evidence and decided for the responents. The petitioners appealed to the Court of First Instance but the appeal was denied on the ground that having defaulted in the Justice of the Peace they lost their right to appeal. Hence this petition for certiorari and mandamus. **Held,** in the justice of the peace and municipal courts, the failure to appear in civil cases is the only ground when a defendant may be declared in default, and not the failure to answer the complaint. GANCAYCO *v.* BENITEZ, G. R. No. L-11335, October 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — REBELLION CANNOT BE COMPLEXED WITH OTHER COMMON CRIMES, SUCH AS MURDER, ROBBERY, ETC. — Defendants were charged in the Court of First Instance of Pangasinan with complex crime of rebellion with murders, robberies, etc. On October 1954, Santos filed a motion to quash the information on the ground that it accused him of a multiplicity of offenses, simple rebellion and other common crimes, in violation of Section 12, Rule 106 of the Rules of Court. Motion was overruled. In the course of the trial, Santos offered to plead guilty to the crime of simple rebellion, which was refused. He was found guilty of the offense charged. He appealed. **Held,** even if the other crimes said to have been committed in the course of the rebellion could be considered as independent common crimes committed within the territorial jurisdiction of the court **a quo,** appellant could not be convicted thereof because he has objected to the information on the ground of multiplicity of offenses charged therein. PEOPLE *v.* SANTOS, G. R. No. L-11813, Sept. 17, 1958.

REMEDIAL LAW — EVIDENCE — ALTHOUGH AN ATTEMPT TO SETTLE A CRIMINAL CASE IS CIRCUMSTANTIAL EVIDENCE OF GUILT, THE REFUSAL OF THE ACCUSED TO MEET THE DEMANDS OF THE VICTIM'S HEIRS AND HIS STUBBORN INSISTENCE TO PAY NOT MORE THAN A SMALL AMOUNT OF MONEY, DESPITE THE GRAVITY OF THE CHARGES, POINT MORE TO A CONSCIOUSNESS OF INNOCENCE AND A DESIRE TO AVOID HARASSMENT THAN TO AN ADMISSION OF CULPABILITY. — The spouses Rufino de Vera and Cristina Doctolero and their children were awakened from their sleep by the sudden barking of dogs. De Vera rose from his bed and walked towards the main door apparently to investigate. Just then, someone outside slid the door and shot him 3 times causing his death the following morning. The unknown assailant also shot the deceased's wife inflicting wounds on different parts of her body. But she survived. The accused was charged with murder and frustrated murder. He made an attempt to settle the criminal case but did not give in to the heavy demands of the victims' heirs. Found guilty in the lower court, he appealed. **Held,** although an attempt to settle a criminal case is circumstantial evidence of guilt, the refusal of the accused to meet the demands of the victim's heirs and his stubborn insistence to pay not more than a small amount of money despite the gravity of the charges point more to a consciousness of innocence and a desire to avoid harassment than to an admission of culpability. PEOPLE *v.* FRIGILLANA, G. R. No. L-10050, October 22, 1958.

COURT OF APPEALS

CIVIL LAW — PROPERTY — A REVOCABLE PERMIT TO OCCUPY PUBLIC LANDS DOES NOT MAKE THE OCCUPANT THE OWNER OF THE LAND. — Valeriano Esparas and his daughter Conchita Esparas entered into a contract of barter or exchange of real properties with Numeriano Almojuela, whereby the former exchanged a piece of land which was planted with coconut trees and bananas belonging to them, for a piece of land with a house standing thereon allegedly belonging to the latter. In pursuance with the agreement, the Esparas took possession of that parcel of land with a house erected thereon that was ceded by Almojuela, and the latter, on his part, also took possession of that parcel of land planted with coconut trees and bananas. Subsequently the Esparas learned that the land given by Almojuela belonged to the government, and the latter only had a revocable permit of occupancy. Hence an action was filed to recover the land conveyed by the Esparas to Almojuela. Judgment was rendered in favor of the defendant. Hence this appeal. **Held,** a revocable permit to occupy public lands does not make the occupant the owner of the land. The contract of