EDITOR, COLUMNIST OR REPORTER OF ANY PUBLICATION FROM REVEALING THE SOURCE OF PUBLISHED NEWS OR INFORMATION OBTAINED IN CONFIDENCE."

SECTION 1. Section 1 of Republic Act No. 53 is amended to read as follows:

"SECTION 1. Wtihout prejudice to his liability under the civil and criminal laws, the publisher, editor, columnist or duly accredited reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news-report or information appearing in said publication which was related in confidence to such publisher, editor or reporter unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 15, 1956.

CASE DIGEST

SUPREME COURT

CIVIL LAW — NATURALIZATION — WHERE A CHARACTER WITNESS DIES SHORTLY BEFORE THE HEARING AND THE SUBSTITUTE IS WELL-KNOWN AND COMPETENT, THERE IS SUBSTANTIAL COMPLIANCE. — Raymundo Pe and Fortunato Pe filed separate petitions for naturalization in the Antique Court. Attached to each petition were the affidavits of the same two character witnesses, Panlilio Chua and Gerardo Agravante. After due publication of the notices and a joint hearing, the trial court found that both brothers possessed all the qualifications and none of the disqualifications for naturalization and granted the two petitions. The Provincial Fiscal appealed, on the ground that at the hearing, only one of the character witnesses testified for the applicants. In place of Panlilio Chua, one of the character witnesses whose affidavit was attached to the two petitions, Provincial Governor Calixto Zaldivar of Antique testified for the applicants. The Fiscal contends that the affidavits of the character witnesses form part of the application and that to substitute witnesses would be amending the application and depriving the government of the opportunity to check up on the new witnesses, find out their background and determine their competence to vouch for the good character of the applicants. *Held*, we realize that in previous naturalization cases, this Court has held that the two character witnesses required by law, whose affidavits should be attached to the application for naturalization, must be presented to testify at the trial, unless there is some valid reason why they or anyone of them could not testify, and in case of a justified change or substitution, the new witness or witnesses must be competent. In the present case, the reason why character witness Panlilio Chua could not testify at the hearing was because he died shortly before said hearing. That certainly was a valid excuse. The government could not well allege that it had no time to check up on the new or substitute witness so as to determine his background and his opportunity to know the applicants and his competency as a witness because as already stated, he was the Provincial Governor of the province, well known, and whose competency and background could not be doubted. PE *v.* REPUBLIC, G.R. No. L-7872, July 20, 1956.

CIVIL LAW — PERSONS — AN ILLEGITIMATE CHILD MAY BRING AN ACTION TO ESTABLISH HIS STATUS AS SUCH. — Plaintiff brought an action seeking a declaratory judgment on his hereditary rights in the property of his alleged father and incidentally the recognition of his status as an illegitimate son. Defendants, instead of answering the complaint, filed a motion to dismiss which was granted. The reason given was that an action for declaratory relief is proper only when a person is interested "under a deed, will, contract or other written instrument, or whose rights are affected by a statute or ordinance" in order to determine any question of construction or validity arising

under the instrument or statute, or to declare his rights or duties thereunder. From this order of dismissal, plaintiff appealed. *Held*, it can be conceded that the present case does not come within the purview of the law authorizing an action for declaratory relief for it neither concerns a deed, will, contract or other written instrument, nor does it affect a statute or ordinance, the construction or validity of which is involved. But the present action, though captioned as one for declaratory relief, is not merely aimed at determining the hereditary right of the plaintiff to eventually preserve his right to the property of his alleged father, but rather to establish his status as an illegitimate child in order that, should his father die, his right to inherit may not be disputed, as at present, by the other defendants who are the legitimate children of his father. It is true that there is no express provision in the new Civil Code which prescribed the steps that may be taken to establish such status as in the case of a natural child who can bring an action for recognition, but this silence notwithstanding, we declare that a similar action may be brought under similar circumstances considering that an illegitimate child other than natural is now given successional rights and there is need to establish his status before such rights can be asserted and enforced. EDADES *v.* EDADES, G.R. No. L-8964, July 31, 9516.

CIVIL LAW — SUBSTITUTE PARENTAL AUTHORITY — IF THE WELFARE OF THE CHILD DEMANDS IT, THE MATERNAL GRANDPARENTS MAY HAVE ITS CUSTODY AS AGAINST THE PATERNAL GRANDPARENTS. — The minors Robert Murdock and Elizabeth Constance Murdock are the legitimate children of Neil Murdock, Jr., an American, and Belen Chuidian, a Filipina. Both parents died in November 26, 1955, on the occasion of a fire which burned their house. Respondent Chuidian, a maternal grandfather, thereafter took both minors into his custody. Petitioners then brought a petition for habeas corpus to secure custody of the two children allegedly withheld by the respondent, claiming that under articles 349 and 355 of the new Civil Code, they, as paternal grandparents, have the right to exercise substitute parental authority in preference to their maternal grandfather. By agreement of the parties, the financial ability of both the petitioners and the respondent to support the minors is admitted. The respondent testified that ever since the death of the parents he had taken the children into his custody and that since petitioners are residents of the United States, the transfer or sending of the minors there would work hardship on them. The court thus dismissed the petition so the petitioners appealed. *Held*, the order of preference provided for in article 355 of the new Civil Code is mandatory when there is no special circumstance that would require the exercise of substitute parental authority different from that provided in said article. In other words, everything being equal, the order provided for in said article must be followed. But if it appears that the welfare of the minor children would be best subserved by having their custody left in the hands of the maternal grandfather, the substitute parental authority by the latter should prevail over that of the paternal grandparents. The paramount aim is the welfare of the minor children. MURDOCK *v.* CHUIDIAN, G.R. No. L-10544, Aug. 30, 1956.

CIVIL LAW — CIVIL REGISTER — WHERE THE PETITION TO CORRECT THE CIVIL REGISTER REFERS TO A CHANGE OF STATUS OR CITIZENSHIP IT MUST BE

THRESHED OUT IN A PROPER ACTION DEPENDING ON THE NATURE OF THE ISSUE INVOLVED. — On October 15, 1935, Matea Piconada was delivered of a baby girl at the Maternity and Children's Hospital. She told the hospital authorities that the child's name is Henrietta Piconada and that the father is unknown. This was so stated in the report of the hospital to the office of the local civil registrar, and in the corresponding entry in the records of the latter as well as in the birth certificate of said child. Almost 20 years thereafter, petitioner Brown filed an action in court claiming that the child is his daughter, that she had regularly used the name of Henrietta Brown, that she had been in his custody since her childhood for her support and education with the knowledge and consent of her mother. He thus asked that the civil register be corrected by changing the name of Henrietta Piconada to Henrietta Brown and her nationality from Filipino to American. Despite the opposition of the Solicitor General, the court granted the petition so the Solicitor General appealed. *Held*, in *Ty Kong Tin v. Republic*, (50 O.G. 1078), it was held that "if the purpose of the petition is merely to correct a clerical error then the court may issue an order in order that the error or mistake may be corrected. If it refers to a substantial change, which affects the status or citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved." The very petition indicates that the entries in the office of the Local Civil Registrar were made in conformity with the data furnished by Matea Piconada upon the birth of her daughter. In fact, when Matea Piconada then advised the hospital authorities that Henrietta's father was unknown, she merely complied with the provisions of article 280 of our Civil Code. Then again, the allegations of the petition suggest that petitioner had acknowledged Henrietta as his natural child by acts subsequent to her birth. Hence, a decision directing the change or correction of the official entries relative to Henrietta's birth, as prayed for in the petition, would cause the records of the local Civil Registrar to state as a fact something which was not so at the time of the event referred to in said entries. What is more, this retrospective operation sought by herein petitioner would, in effect, sanction the recognition of a minor, made otherwise than "in a record of birth or in a will," without the previous judicial approval specially required therefor by law. (Art. 281, Civil Code). BROWN *v.* REPUBLIC, G.R. No. L-9526, Aug. 30, 1956.

CIVIL LAW — DAMAGES — THE ADVERSE RESULT OF AN ACTION DOES NOT PER SE MAKE THE ACT WRONGFUL AND SUBJECT THE ACTOR TO THE PAYMENT OF MORAL DAMAGES. — On January 10, 1945, plaintiff Barreto bought a parcel of land from defendant Arevalo. On the same day, Barreto leased the same property to Arevalo and an option was granted on the lease contract for Arevalo to repurchase the property for the same price. The contract of sale and lease were duly registered in the Register of Deeds. On July 22, 1946, Arevalo sold the same property to defendants Padilla. On April 11, 1947, Arevalo brought an action against plaintiff Barreto for a judicial declaration that the contract between them was an equitable mortgage but the Supreme Court held that the contract was really a sale with a right to repurchase. Thus Barreto filed an action claiming that since Arevalo failed to repurchase the property in accordance with the Supreme Court decision, his title thereto had become consolidated. He also alleged that defendants Padilla caused the deed of sale in their favor to be registered notwithstanding the fact that they

knew of the pendency of the action instituted by him against Arevalo. Defendants Padilla filed a motion to dismiss denying that they caused the registration of the land, during the pendency of the Supreme Court suit, alleging by way of counterclaim that the allegation that they bought the property with actual notice of the sale in plaintiff's favor is a malicious imputation which caused them moral damages. The trial court held that the Padillas did not have any knowledge of the sale by Arevalo in favor of the plaintiff, concluded that the action was malicious, and ordered plaintiff to pay ₱100,000 as moral damages. Barreto appealed. *Held*, it must be remembered that Barreto had a valid deed of sale in his favor. This was entered in the day book of the register of deeds office. The sale of the property in favor of the Padillas was subsequent to that in favor of Barreto, and subsequent also to the entry of Barreto's deed. Granting that the Padilla deed was registered, the same would not avail against Barreto if the Padillas had knowledge of the previous sale in favor of Barreto. Barreto was under no obligation to presume that the Padillas did not have knowledge of the sale; here was a mere presumption only that good faith existed. As against such presumption Barreto had the right to introduce evidence to the contrary. He had the right to have that matter of knowledge investigated in a judicial proceeding; he had the right to litigate such fact. And no right to damages can accrue if it happens that the litigation is decided adversely against him. No injury can accrue by the exercise of a right. The results of litigation, especially on issues of law, are indeed very uncertain; facts and circumstances are elicited in the course of trial which are never expected. The fact that the results of the trial were adverse to Barreto did not alone make his act in bringing the action wrongful. If we held thus, all actions would be wrongful because in most cases one party would lose; we would be imposing an unjust condition or limitation on the right to litigate. The grant of moral damages is not subject to the whims and caprices of judges or courts. The court's discretion in granting or refusing it is governed by reason and justice. In order that a person may be made liable to the payment of moral damages, the law requires that his act be wrongful. The adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate; such right is so precious that damages may not be charged on those who may exercise it erroneously. For these the law taxes costs. BARRETO *v.* AREVALO, G.R. No. L-7748, Aug. 27, 1956.

COMMERCIAL LAW — TRANSPORTATION — THE REGISTERED OPERATOR AND NOT THE ACTUAL OWNER OF A PUBLIC UTILITY IS LIABLE FOR DAMAGES CAUSED BY ITS OPERATION. — On May 31, 1953, a passenger jeepney driven by Brigido Avorque smashed into a post on Azcarraga street, resulting in the death of one of its passengers, Vicente Medina. The driver was prosecuted for homicide thru reckless imprudence but the heirs of the deceased reserved their right to file a separate action for damages and on June 16 brought suit against the driver and defendant Cresencia, the registered operator of the jeepney in question. Defendant Cresencia disclaimed liability on the ground that he had sold the jeepney in question and that its actual owner at the time of the accident was one Rosario Avorque. Plaintiffs amended their complaint to include Rosario Avorque as a co-defendant. After the plaintiffs had presented their evidence, defendants made manifestations admitting that Cresencia was still the registered operator of the jeepney in question in the records of the Motor Vehicles Office and the Public Service Commission, while Avorque was the actual owner thereof at the time of the accident. The lower court held that as far as the public is concerned, Cresencia, in the eyes of the law, continued to be the legal owner of the jeepney and thus held him liable. He appealed. *Held*, the law [Sec. 20 (g), C.A. No. 146 as amended] requires the approval of the Public Service Commission in order that a franchise, or any privilege pertaining thereto, may be sold or leased without infringing the certificate issued to the grantee; and that if property covered by the franchise is transferred or leased without this requisite approval, the transfer is not binding against the public or the Public Service Commission; and in contemplation of law, the grantee of record continues to be responsible under the franchise in relation to the Commission and to the public. "Since a franchise is personal in nature any transfer or lease thereof should be notified to the Public Service Commission so that the latter may take proper safeguards to protect the interest of the public. In fact, the law requires that, before the approval is granted, there should be a public hearing, with notice to all interested parties, in order that the Commission may determine if there are good and reasonable grounds justifying the transfer or lease of the property covered by the franchise, or if the sale or lease is detrimental to public interest." (Montoya v. Ignacio, G.R. No. L-5868, Dec. 29, 1953). As the sale of the jeepney here in question was admittedly without the approval of the Public Service Commission, appellant Cresencia, who is the registered owner and operator thereof, continued to be liable to the Commission and the public for the consequences incident to its operation. VDA. DE MEDINA *v.* CRESENCIA, G.R. No. L-8194, July 11, 1956.

COMMERCIAL LAW — TRANSPORTATION — WHERE THE ACTION FOR DAMAGES IS BASED ON THE CARRIER'S BREACH OF HIS CONTRACTUAL OBLIGATION AND NOT UNDER THE REVISED PENAL CODE, THE REGISTERED OPERATOR AND NOT THE ACTUAL OWNER IS LIABLE. — A passenger jeepney driven by Brigido Avorque smashed into a post on Azcarraga street on May 31, 1953, causing the death of Vicente Medina, one of its passenger. The driver was prosecuted for homicide thru reckless imprudence but the heirs of the deceased reserved their right to file a separate action for damages and on June 16 brought suit against the driver and defendant Cresencia, the registered operator of the jeepney. It later turned out that although Cresencia was the registered operator of the jeepney as found in the records of the Motor Vehicles Office and the Public Service Commission, the actual owner at the time of the accident was one Rosario Avorque. The lower court held Cresencia liable, saying that as far as the public is concerned, he continued to be the legal owner of the jeepney and should be liable for the consequences incident to its operation. Cresencia appealed, contending that the basis of plaintiff's action being the employer's subsidiary liability under the Revised Penal Code for damages arising from his employee's criminal acts, it is defendant Rosario Avorque who should answer subsidiarily for the damages sustained by plaintiffs, since she admitted that she, and not appellant, is the employer of the negligent driver. *Held*, this argument is untenable because plaintiffs' action for damages is independent of the criminal case filed against Brigido Avorque, and is based, not on the employer's subsidiary liability under the Revised Penal Code, but on a breach of the carrier's contractual obligation to carry his passengers safely

to their destination (*culpa contractual*). And it is also for this reason that there is no need of first proving the insolvency of the driver before damages can be recovered from the carrier, for *culpa contractual*, the liability of the carrier, is not merely subsidiary or secondary but direct and immediate. (Arts. 1755, 1756, and 1759, New Civil Code). VDA. DE MEDINA *v.* CRESENCIA, G.R. No. L-8194, July 11, 1956.

CRIMINAL LAW — PRESCRIPTION OF OFFENSES — AN OFFENSE PUNISHABLE BY *ARRESTO MENOR* OR A FINE NOT EXCEEDING ₱200 IS A LIGHT OFFENSE AND PRESCRIBES IN TWO MONTHS. — On Oct. 22, 1954, Yu Hai was accused of a violation of art. 195 (2) of the Revised Penal Code for allegedly having permitted a game of *panchong* or *paikiu*, a game of hazard, and having acted as maintainer thereof, on or about June 26, 1954. On motion of the accused, the lower court quashed the information on the ground that the offense was a light offense which prescribed in two months. The prosecution appealed arguing that the crime charged may be punished by a maximum fine of ₱200 (a correctional penalty under art. 26), and thus prescribes only after ten years. *Held*, under article 90 of the Revised Penal Code, "light offenses prescribe in two months." The definition of light offenses is in turn found in article 9 which defines it as "those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos or both is provided." The offense charged in the information is punishable by *arresto menor* or a fine not exceeding 200 pesos (Art. 195). Hence, it is a "light offense" under article 9 and prescribes in two months under article 90. The argument that as the crime charged may be punished by a maximum fine of ₱200, which under article 26 is a correctional penalty, the time for prescription thereof is ten years under article 90, is untenable. While article 90 provides that light offenses prescribe in two months, it does not define what is meant by "light offenses," leaving it to article 9 to fix its meaning. Article 26, on the other hand, has nothing to do with the definition of offenses, but merely classifies fine, when imposed as a principal penalty, whether singly or in the alternative, into the categories of afflictive, correctional, and light penalties. As the question at issue is the prescription of a crime and not the prescription of a penalty, article 9 should prevail over article 26. PEOPLE *v.* YU HAI, G.R. No. L-9598, Aug. 15, 1956.

CRIMINAL LAW — REBELLION — THE CRIME OF REBELLION CANNOT BE COMPLEXED WITH MURDER, ROBBERY OR ARSON. — The defendant Hernandez was charged with the crime of rebellion and that as a necessary means to commit said crime, in connection therewith and in furtherance thereof, committed murder, robbery, arson and other crimes. He was convicted in the lower court and sentenced to life imprisonment. Subsequently, he appealed and filed a petition for bail before the Supreme Court. This petition for bail was opposed by the prosecution on the ground that Hernandez is charged with, and convicted of, rebellion complexed with murders, arsons and robberies, for which the capital punishment may be imposed, although the lower court merely sentenced him to life imprisonment. This then, was the question which the Supreme Court had to resolve: Can rebellion be complexed with murder, robbery or arson? *Held*, there can be no complex crime of rebellion with murder, robbery or arson. Article 48 of the Revised Penal Code provides, "When a

single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." It is obvious, from the language of this article, that the same presupposes the commission of *two* or more crimes, and hence, does not apply when the culprit is guilty of only one crime. Article 135 of the same Penal Code provides for the means by which rebellion may be committed: 1) engaging in war against the forces of the government; 2) destroying property; 3) committing serious violence; 4) exacting contributions; or 5) diverting public funds from the lawful purpose for which they have been appropriated. Whether performed singly or collectively, these five classes of acts constitute only *one offense* and is subject only to *one penalty*. The expressions "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war," imply everything that war connotes, namely: resort to arms, requisition of property and services, restraint of liberty, damage to property, physical injuries and loss of life. Being within the purview of "engaging in war" and "committing serious violence," said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offenses but only *one* crime — that of rebellion plain and simple. Inasmuch as the acts specified in said article 135 constitute *one single* crime, it follows necessarily that said acts offer no occasion for the application of article 48, which requires therefor the commission of at least two crimes. This rule has been expressed in several treason cases wherein the theory that treason can be complexed with murder and other crimes has been rejected. It is true that rebellion and treason are distinct from each other. This does not detract, however, from the rule that the ingredients of a crime form part and parcel thereof, and hence are absorbed by the same and cannot be punished separately therefrom or by the application of article 48 of the Revised Penal Code. National, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and consequently, cannot be punished separately from the principal offense or complexed with the same, to justify the imposition of a graver penalty. The main argument in support of the theory seeking to complex rebellion with murder and other offenses is that "war" within the purview of the laws on rebellion and sedition, may be "waged" or "levied" without killing. This premise does not warrant, however, the conclusion, drawn therefrom, that any killing done in furtherance of a rebellion or sedition is independent therefrom, and may be complexed therewith, upon the ground that destruction of human life is not indispensable to the waging or levying of war. The keen interest displayed by the Executive Department in the apprehension of those believed to be guilty of crimes against public order has not been lost sight of, but the courts must apply the policy of the State as set forth in its laws regardless of the wisdom thereof. PEOPLE *v.* HERNANDEZ, G.R. No. L-6025, July 18, 1956.

CRIMINAL LAW — ASSAULT UPON A PERSON IN AUTHORITY — THE FACT THAT A PERSON IN AUTHORITY ACCEPTS A CHALLENGE TO A FIGHT DOES NOT DISROBE HIM OF HIS CHARACTER AS SUCH. — The offended party is a duly appointed District Supervisor of the Bureau of Public Schools. On October

16, 1950, he was accosted by the defendant and was asked to go with the latter to the office of the Academic Supervisor. While in said office, a heated discussion arose between the defendant and the offended party because of the latter's insistence that a certain teacher be accommodated a teaching position. The argument led up to the point where defendant challenged the offended party to a fight outside the office. On their way out, the defendant assaulted the District Supervisor, offended party in this case. Prosecuted for assault upon a person in authority, defendant set up the defense that when the offended party accepted his challenge to fight outside and followed him out of the office, the offended party disrobed himself of the mantle of authority and waived the privilege of protection as a person in authority. *Held*, the argument of defendant is untenable. The character of a person in authority is not assumed or laid off at will but attaches to a public official until he ceases to be in office. Assuming that the complainant was not actually performing the duties of his office when assaulted, this fact does not bar the existence of the crime of assault upon a person in authority so long as the impelling motive of the attack is the performance of official duty. JUSTO *v.* COURT OF APPEALS, G.R. No. L-8611, June 28, 1956.

CRIMINAL LAW — USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS — THE CRIME OF USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS MAY BE COMMITTED NOT ONLY BY PRIVATE INDIVIDUALS BUT ALSO BY PUBLIC OFFICIALS. — When the Mayor of Villareal, Samar, departed for Manila on official business on September 22, 1952, he designated the herein defendant councilor to discharge the duties of his office. Subsequently, the Vice-Mayor served written notices to the corresponding municipal officers, including defendant, that he was assuming the duties of the absent Mayor. Defendant refused to yield the positon, arguing that he had been designated to fill the same by the Mayor. The controversy was resolved by the Executive Secretary and the Provincial Fiscal upon their being asked to do so, in favor of the Vice-Mayor, but the defendant still refused to abandon the office which he held for about a month, appointing some policemen, solemnizing marriages and collecting the corresponding salary for mayor. Whereupon, he was prosecuted and convicted of usurpation of public authority or official functions. Defendant appealed contending that he committed no usurpation of authority because he was a councilor, an official of the Government, and that such crime may only be committed by private individuals. *Held*, the decision of the Supreme Court of Spain cited by the defendant in support of his contention has already been superseded by other decisions of the same court holding that certain officials who without proper authority discharge the functions of other officials are guilty of usurpation of authority. There is actually no reason to restrict the operation of article 177 of the Revised Penal Code to private individuals. For one thing, it applies to "any person"; and where the law does not distinguish, we should not distinguish. PEOPLE *v.* HILVANO, G.R. No. L-8583, July 31, 1956.

LABOR LAW — LABOR DISPUTES — THE DISPUTANTS NEED NOT STAND IN THE RELATION OF EMPLOYER AND EMPLOYEE FOR THE CASE TO INVOLVE A LABOR DISPUTE. — On September 11, 1954, a collective bargaining agreement was entered into between the Republic Theatre Enterprises and the Majstic Theatre Inc. on the one hand and the Republic and Majestic Theatres Employees Association on the other, to run for two years. For an alleged violation of the agreement, the employees staged a strike. To induce them to return to work, a new collective bargaining contract was entered into on January 2, 1955, also to run for two years. This was signed by the petitioner PAFLU, with which the employees association had affiliated. The two theatres were then sold by the owner to the Goodwill Trading Co. which sale was embodied in an agreement executed between the parties on April 27, 1955 and on the same date the latter leased them to respondent REMA Inc. The next day, the latter corporation, as lessee and operator of the two theatres, sent a circular to all the employees of the former owner requiring them to apply for employment with the new management. The employees of the association staged a strike and picketed the premises of the two theatres, so the REMA Inc. filed action for damages with preliminary injunction in the court of first instance of Manila. The employees association questioned the jurisdiction of the trial court to issue the injunction, the case involving a labor dispute which is within the jurisdiction of the Court of Industrial Relations. The court nonetheless granted the injunction, so they filed this present petition. *Held*, while it is true that the employees of the petitioning association do not have an actual contract of employment with REMA Inc. and were actually employed by the former owner of the two theatres with whom they had concluded a collective bargaining agreement, the fact however remains that these employees do not admit, and in fact dispute, the genuiness and validity of the alleged transfer and for that reason they still consider themselves as employees of the two theatres in contemplation of law. It is their stand that the alleged transfer is fictitious and was merely resorted to by the former owner as a ruse to evade its liability under the collective bargaining agreement. There is therefore the vital issue concerning the genuiness and validity of the sale involved in the main case which in the light of the spirit of our labor legislation is deemed a labor dispute. Thus, it was held that "the disputants need not stand in the relation of employer and employee for a case to involve a 'labor dispute' within the Norris-La Guardia Act regulating issuance of restraining order or injunction in cases involving labor disputes." (Green v. Obergfell, 121 F.2d 46). While under our own Industrial Peace Act, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, "regardless of whether the disputants stand in the proximate relation of employer and employee." [Section 2 (j), R.A. No. 875]. Considering the equities involved, the relation of petitioners and respondent comes within the purview of this definition. PAFLU *v.* TAN, G.R. No. L-9115, Aug. 31, 1956.

LABOR LAW — LABOR DISPUTES — IN ORDER THAT AN INJUNCTION MAY BE PROPERLY ISSUED, THE PROCEDURE LAID DOWN IN SECTION 9 (d) OF R.A. NO. 875 SHOULD BE FOLLOWED. — As of April 27, 1955, there was a collective bargaining agreement between the owners of the Republic and Majectic Theatres on the one hand and its employees association, affiliated with petitioner PAFLU, on the other. On that day, the owners sold the theatres to the Goodwill Trading Co. and the latter leased them on the same day to the REMA Inc. The next day, the REMA Inc. issued a circular to all the employees of the former owner requiring them to apply for employment under the new management. The employees went on strike and picketed the premises of the two theatres. Thus, REMA Inc. filed an action for damages with preliminary injunction. On the day of the hearing of the petition for injunction, petitioner questioned

the jurisdiction of the court. But respondent judge, after hearing the oral arguments of both parties and without receiving any evidence in support of the factual allegations of the petition, declared himself with jurisdiction and granted the injunction. PAFLU thus filed this petition. *Held*, in order that an injunction may be properly issued the procedure laid down in section 9 (d) of R.A. No. 875 should be followed and cannot be granted *ex-parte* as allowed by Rule 60, section 6, of the Rules of Court. The reason is that the case, involving as it does a labor dispute, comes under said section 9 (d) of the law. That procedure requires that there should be a hearing at which the parties should be given an opportunity to present witnesses in support of the complaint and of the opposition, if any, with opportunity for cross-examination, and that the other conditions required by said section as prerequisites for the granting of relief must be established and stated in the order of the court. Unless this procedure is followed, the proceedings would be invalid and of no effect. The court would then be acting in excess of its jurisdiction. PAFLU *v.* TAN, G.R. No. L-9115, Aug. 31, 1956.

LABOR LAW — LABOR DISPUTES — IN CERTAIN CASES, ORDINARY COURTS HAVE THE JURISDICTION TO ENTERTAIN CASES INVOLVING A LABOR DISPUTE. — On September 11, 1954, a collective bargaining agreement was entered into between the Republic Theatre Enterprises and Majestic Theatre Inc. on the one hand and the Majestic and Republic Theatres Employees Association on the other. Because of a strike, another agreement was executed between petitioner PAFLU, with which the employees association had affiliated, and the owners of the theatre, to run for two years from January 2, 1955. On April 27, 1955, however, the owners sold the two theatres to the Goodwill Trading Co. and on the same date the latter company leased them to respondent REMA Inc. The next day, the latter corporation issued a circular to all the employees of the former owner requiring them to apply for employment with the new management. The employees thus went on strike and picketed the premises of the theatres. The REMA Inc. filed an action for damages with preliminary injunction in the court of first instance of Manila. The employees questioned the court's jurisdiction, claiming that there was a labor dispute which is within the exclusive jurisdiction of the Court of Industrial Relations. *Held*, it should be noted that prior to the approval of the Industrial Peace Act (R.A. No. 875), the law that governed the jurisdiction of the Court of Industrial Relations over cases involving labor disputes is C.A. No. 103. This Act gave that court broad powers of compulsory arbitration on any matter involving a labor dispute. But this broad jurisdiction was somewhat curtailed upon the approval of R.A. No. 875, the purpose being to limit it to certain specific cases, leaving the rest to the regular courts. Thus, as the law now stands, that power is confined to the following cases: (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court (sec. 10, R.A. No. 875); (2) when the controversy refers to minimum wage under the Minimum Wage Law (R.A. No. 602); (3) when it involves hours of employment under the Eight-Hour Labor Law (C.A. No. 444); and (4) when it involves an unfair labor practice [sec. 5(a), R.A. No. 875]. In all other cases, even if they grew out of a labor dispute, the Court of Industrial Relations does not have jurisdiction, the intendment of the law being "to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of

regulating the relations between the employer and employee by means of an agreement freely entered into in collective bargaining" (sec. 7, R.A. No. 875). In other words, the policy of the law is to advance the settlement of disputes between the employers and the employees through collective bargaining, recognizing "that real industrial peace cannot be achieved by compulsion of law." It therefore appears that with the exception of the four cases above specified the Court of Industrial Relations has no jurisdiction even if it involves a labor dispute. And as the issue involved in the instant case does not fall under, nor refer to, any of these specified cases, it follows that the lower court has jurisdiction to entertain the same. PAFLU *v.* TAN, G.R. No. L-9115, Aug. 31, 1956.

LABOR LAW — INDUSTRIAL PEACE ACT — ORDINARY COURTS AND NOT THE COURT OF INDUSTRIAL RELATIONS HAVE JURISDICTION TO IMPOSE FINES FOR VIOLATIONS OF R.A. NO. 875. — Nena Micaller was employed as a salesgirl in the Scoty's Department Store, which was owned and operated by Yu Ki Lam, Richard Young, Yu Si Kiao, and Helen Young. Pursuant to section 5 (b) of the Industrial Peace Act, Nena Micaller filed charges of unfair labor practice against her employers alleging that she was dismissed by them because of her membership in the National Labor Union and that, prior to her separation, said employers had been questioning their employees regarding their membership in said union and had interfered with their right to organize under the law. The employers denied the charge but after due hearing, the court found petitioner Department Store guilty of unfair labor practice and ordered them to pay a fine of ₱100. The Department Store now brought this petition for review questioning the right of the industrial court to impose the fine, claiming that it is penal in nature and should be construed strictly in favor of the accused. *Held*, section 25 of R.A. No. 875 provides that "any person who violates the provisions of section 3 of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment of not less than one month nor more than one year, or both such fine and imprisonment, in the discretion of the Court." The above provision is general in nature for it does not specify the court that may act when the violation charged calls for the imposition of the penalties therein provided. It merely states that they may be imposed "in the discretion of the Court." Does the word "Court" employed therein refer to the Court of Industrial Relations under section 2 (a) of the same Act which provides that, "'Court' means the Court of Industrial Relations . . . unless another Court shall be specified"? After mature deliberation, this Court has reached the conclusion that, said provision notwithstanding, that word cannot refer to the Court of Industrial Relations for to give that meaning would be violative of the safeguards guaranteed to every accused by our Constitution. [See: art. III, section 1, (15) and (17), Philippine Constitution.] The procedure laid down by law to be observed by the Court of Industrial Relations in dealing with unfair labor practice cases negates those constitutional guarantees to the accused. And this is so because, among other things, the law provides that "the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that the Court (of Industrial Relations) and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure." It is likewise enjoined

that "the Court shall not be bound solely by the evidence presented during the hearing but may avail itself of all other means such as (but not limited to) ocular inspections and questioning of well-informed persons which results must be made a part of the record" [Section 5 (b), R.A. No. 875]. All this means that an accused may be tried without the right "to meet the witnesses face to face" and may be convicted merely on preponderance of evidence and not beyond reasonable doubt. This is against the due process guaranteed by our Constitution. It may be contended that this gap may be subserved by requiring the Court of Industrial Relations to observe strictly the rules applicable to criminal cases to meet the requirements of the Constitution, but this would be tantamount to amending the law which is not within the province of the judicial branch of our Government. SCOTY'S DEPARTMENT STORE *v.* MICALLER. G.R. No. L-8116, Aug. 25, 1956.

LABOR LAW — TENANCY — WHERE THE MAIN CONTROVERSY IS NOT COVERED BY ANY TENANCY RELATION, ORDINARY COURTS AND NOT THE COURT OF INDUSTRIAL RELATIONS HAVE JURISDICTION. — Agoncillo filed a case for forcible entry and illegal detainer in the justice of the peace court against petitioner Tumbaga wherein, after due trial, petitioner was ordered to vacate the property in question. Petitioner appealed to the court of first instance but failing to put up a supersedeas bond or deposit the damages awarded in the judgment, the court, upon motion of Agoncillo, ordered the judgment executed without prejudice to the continuance of the case on the merits. Petitioner filed a motion to dismiss disputing for the first time the jurisdiction of the court over the case upon the ground that the relation between plaintiff and defendant is one of tenancy which comes under the exclusive jurisdiction of the Court of Industrial Relations. The court ruled that since the issue involved in the motion to dismiss is evidentiary in nature, resolution thereon should be postponed until the case is tried on the merits. Not satisfied with this ruling, defendant interposed the present petition for certiorari. *Held*, we fail to see in this ruling any abuse of discretion for the question raised really needs the presentation of some evidence to establish certain facts which may serve as basis for determination of the question affecting the jurisdiction of the court. Undoubtedly, the court needed to clarify certain questions of fact before passing judgment on the question of jurisdiction. But, brushing aside this question of procedure, we find in the record certain facts which show that, at least with regard to the main controversy, the portion of land, as well as the house erected thereon, from which petitioner is being ejected, is not covered by any tenancy relation that would place the case under the exclusive jurisdiction of the Court of Industrial Relations. Said facts show that petitioner was a tenant of respondent for a period of more than 15 years on a piece of agricultural land whereon he erected a house for him and his family, but that on May 29, 1953, he constructed another house on a parcel of land distinct and separate from that cultivated by him without the consent of his landlord. The house and lot last mentioned are the ones involved in the ejectment case and this comes under the jurisdiction of ordinary courts. While petitioner is a tenant of respondent in contemplation of law, such relation is entirely foreign to the present case for he appears to be a mere intruder on the property which has not been turned over to him for cultivation and use. Verily, this case does not come under the jurisdiction of the Court of Industrial Relations. TUMBAGA *v.* VASQUEZ, G.R. No. L-8719, July 17, 1956.

LABOR LAW — WORKMEN'S COMPENSATION ACT — AN ACCIDENT THAT BEFALLS AN EMPLOYEE WHILE GOING TO OR RETURNING FROM HIS PLACE OF EMPLOYMENT IS ONE ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT. — Angel Ariar was a diesel mechanic and power plant operator of the herein petitioner. On January 20, 1953, while proceeding to his place of work and running to avoid the rain, he slipped and fell into a ditch fronting the main gate of petitioner's factory, as a result of which he died the next day. His wife filed a claim for compensation against the petitioner for her husband's death under the Workmen's Compensation Act. The sole question to be decided is whether or not the accident causing the death of Ariar arose out of and in the course of his employment. Petitioner maintained that an employee is not entitled to recover for personal injuries resulting from an accident that befalls him while going to or from his place of employment because such an accident does not arise out of and in the course of his employment. On the other hand, the wife maintained that when an employee is accidentally injured at a point reasonably proximate to the place of work, while the employee is going to or from his work, such injury is deemed to have arisen out of and in the course of his employment. *Held*, the very case invoked by the petitioner intimated that it does not necessarily mean that an employee can never recover for injuries suffered while on his way to or from his work. That depends on the nature of his employment. Considering the facts that the deceased Ariar was not under any shift routine; that his assignment covered the entire working hours of the factory; that it takes at least thirty minutes before the machine operates at full speed or load; that the spot where he fell fronting petitioner's factory is immediately proximate to his place to work, the accident in question must be deemed to have occurred within the zone of his employment, and therefore arose out of and in the course thereof. PHILIPPINE FIBER PROCESSING CO. *v.* AMPIL, G.R. No. L-8130, June 30, 1956.

LABOR LAW — WORKMEN'S COMPENSATION ACT — THE LIABILITY OF THE EMPLOYER FOR INDEMNITY UNDER THE WORKMEN'S COMPENSATION ACT IS NOT AFFECTED BY THE LIABILITY OF THE EMPLOYEE'S KILLER TO INDEMNIFY THE HEIRS OF THE DECEASED. — Felicito Lagradante was an employee of the herein petitioner. On the night of March 7, 1951, said Lagradante was murdered. The killer was subsequently found and convicted and the heirs of the deceased were awarded indemnity in a criminal case instituted for that purpose. The heirs of the deceased filed a petition against the herein petitioner for compensation for death under the Workmen's Compensation Act. Petitioner argued that since Lagrante's killers were finally convicted and his heirs were awarded indemnity, it is not liable for compensation under the aforementioned Act. *Held*, although the death of the employee resulted from a deliberate act of the killer and the latter was convicted of homicide, the said employee died from an accident, and the obligation of the employer to compensate was unaffected by the liability of the killer to indemnify the heirs of the deceased which is wholly distinct from the obligation imposed by the Workmen's Compensation Act and the latter is in no way subsidiary to the former. MARTHA LUMBER MILL INC. *v.* LAGRADANTE, G.R. No. L-7599, June 27, 1956.

LAND REGISTRATION — PRIOR JUDGMENT — THE APPLICANT CANNOT APPLY ANEW FOR THE SAME PARCEL OF LAND WHICH HAD ALREADY BEEN DECREED

REGISTERED IN THE NAME OF HIS OPPONENT. — Respondent Valencia applied for the registration of certain parcels of land claiming that he had acquired title thereto by the failure of the Marquez spouses to repurchase it within the time stipulated. The Marquez spouses objected claiming that they were the owners of the land and that it is still the subject of litigation between them and the applicant. By agreement of the parties, the hearing of the application for registration was postponed until after final judgment in the pending case between them. The contract between the parties was later declared to be an equitable mortgage only and the Marquez spouses were ordered to pay Valencia the mortgage debt. In view of this judgment, Valencia amended his application in the land registration case alleging instead that he had acquired the land from his grandfather and that he and his predecessors-in-interest have been in possession thereof from time immemorial. After due hearing, the court dismissed this application of respondent Valencia on the ground of *res judicata* and decreed the registration thereof in the name of the estate of the late Marquez. Valencia appealed. *Held*, the rule that a dismissal of an application for the registration of a parcel of land does not bar the filing of another application, cannot be availed of in the case at bar, because a renewal of an application for registration of the same parcel of land or an amendment thereto upon a ground different from that alleged in the previous application was without prejudice and not when the ownership or title to the parcel of land was litigated by the same parties and a judgment rendered for one party and against the other. So that if by virtue of or pursuant to a final judgment, the land registration court should decree the registration of a parcel of land applied for in the name of the opponent, the applicant could not apply anew for the registration of the same parcel of land which had already been decreed registered in the name of his opponent. The action previously pending between the parties involved ownership of or title to the parcel of land. By resisting the claim of the plaintiffs upon the ground that he had acquired title to the land by a deed of sale with a right to repurchase and for failure of the plaintiffs to repurchase it within the period stipulated in the deed, the defendant expressly admitted that he had derived title to the parcel of land from the plaintiffs. If, aside from relying solely on the deed of sale with a right to repurchase and failure on the part of the vendors to repurchase it within the period stipulated therein, the defendant had set up an alternative though inconsistent defense that he had inherited the parcel of land from his late grandfather and presented evidence in support of both defenses, the overruling of the first would not bar the determination by the court of the second. The defendant having failed to set up such alternative defenses and chosen or elected to rely on one only, the overruling thereof was a complete determination of the controversy between the parties which bars a subsequent action based upon an unpleaded defense, or any other cause of action. The determination of the issue joined by the parties constitutes *res judicata*. HEIRS OF MARQUEZ *v.* VALENCIA, G.R. No. L-7328, Aug. 21, 1956.

POLITICAL LAW — CONSTITUTIONAL LAW — A LAW WHICH IS LATER DECLARED AS UNCONSTITUTIONAL HAS CONSEQUENCES WHICH CANNOT BE JUSTLY IGNORED. — In May 1954, plaintiff company filed in the municipal court of Manila a complaint to recover from defendant the amount of ₱1,047 as chattel mortgage installments which fell due in September 1941. Defendant pleaded

prescription: 1941 to 1954, and the complaint was dismissed. On appeal, the court of first instance saw differently and sustained plaintiff's contention that the moratorium laws had interrupted the running of the prescriptive period, and that deducting the time during which said laws were in operation — 3 years and 8 months — the ten-year term had not yet elapsed when the complainant sued for collection in May 1954. Defendant appealed, arguing that the moratorium laws were declared unconstitutional in *Rutter v. Esteban*, (49 O.G. 1807), and did not have the effect of suspending the period of limitations, claiming that a statute which is declared unconstitutional is as inoperative as if it had never been passed and no rights can be built upon it. *Held*, the case of *Rutter v. Esteban* may be construed to mean that at the time of the decision the Moratorium Law could no longer be validly applied because of the prevailing circumstances. At any rate, although the general rule is that an unconstitutional statute "confers no right, creates no office, affords no protection and justifies no acts performed under it," there are several instances wherein courts, out of equity, have relaxed its operation or qualified its effects "since the actual existence of a statute prior to such declaration is an operative fact and may have consequences which cannot justly be ignored" and a realistic approach is eroding the general doctrine. MANILA MOTOR CO. *v.* FLORES, G.R. No. L-9396, Aug. 16, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — A COMPLAINT AGAINST POLICEMEN FILED BY THE CHIEF OF POLICE AND SUBMITTED BY THE MAYOR TO THE CITY COUNCIL IS VALID. — Appellees were members of the police force of the city of Bacolod. In 1951, the chief of police filed administrative charges against them, charging some with having tolerated prohibited games, another with maltreatment, another with failure to arrest offenders, etc. The complaints were sworn to by the chief of police and were presented by him to the city mayor, who thereupon endorsed them to the city council and suspended the appellees. The latter referred the complaints to a committee on police which, after reception of the evidence, found the appellees guilty as charged and recommended their immediate separation from the service. This was ratified by the city council, so the appellees instituted this suit against the mayor, alleging that they have been illegally removed from office. The trial court ordered their reinstatement holding that their removal was not in accordance with R.A. No. 557 since the complaints were not instituted by the city mayor himself. *Held*, the law provides that the charges against city policemen shall be preferred by the city mayor. It cannot be implied therefrom that the mayor himself must file the charges personally, or that he sign the complaint himself like a prosecuting officer filing an information. There is no provision that he must sign the charges. To *prefer* is to present, and this is what the mayor did when he submitted the charges before the council. Besides, the chief of police is the immediate representative of the mayor, and acts for the latter under the latter's direct orders. When the chief of police, therefore, filed the administrative complaints and the mayor submitted them to the city council, the latter may be considered as having made the complaints his own. The signing of the complaints by the mayor is a mere formality which is not essential to the validity of the proceedings, causing no substantial injury to the rights of the appellees. There is, therefore, no justification for annulling the investigation under this score. CARMONA *v.* AMANTE, G.R. No. L-8790, Aug. 14, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — A JUSTICE OF THE PEACE COURT NOT HAVING JURISDICTION OVER THE ORIGINAL COMPLAINT BECAUSE OF THE AMOUNT INVOLVED, MAY NOT ALLOW THE AMENDMENT OF THE COMPLAINT, AFTER THE DEFENDANT HAS FILED A MOTION TO DISMISS. — On August 24, 1954, respondents filed against petitioner a complaint in the Justice of the Peace Court for the collection of certain sums of money under several causes of action. On September 6, 1954, petitioner moved to dismiss the complaint on the ground that the amount of the demand was beyond the jurisdiction of the Justice of the Peace Court. The inferior court held the motion to dismiss meritorious but instead of dismissing the complaint, ordered its amendment on the basis of respondents' willingness to waive the excess of the jurisdictional amount. Petitioner moved to reconsider the order, claiming that as the Justice of the Peace Court did not acquire jurisdiction over the original complaint, it should not have allowed its amendment. His motion for reconsideration having been denied, petitioner sued out for a writ of certiorari. *Held,* as the Justice of the Peace Court did not acquire jurisdiction over the original complaint, it did not have the power and jurisdiction to order its amendment and admit the amended complaint after the defendant had filed a motion to dismiss, since it is elementary that a court must first acquire jurisdiction over the case in order to act validly therein. FELIX VDA. DE ROSARIO *v.* JUSTICE OF THE PEACE COURT OF CAMILING, G.R. No. L-9284, July 31, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE REPUBLIC OF THE PHILIPPINES IS THE PROPER PARTY IN A CLAIM FOR DEATH BENEFITS AFFECTING EMPLOYEES OF THE NATIONAL GOVERNMENT UNDER THE WORKMEN'S COMPENSATION ACT. — One Villacorta entered into a contract with the Director of Public Works to construct the right lane of the Quezon Boulevard Project. He hired one Alvaro as one of his employees. On August 26, 1952, somewhere at Quezon Boulevard, Alvaro was shot to death by another employee. His widow subsequently filed an action for compensation under the Workmen's Compensation Act against Villacorta and the Director of Public Works to pay the compensation. In the meantime, R.A. No. 1192 was passed abolishing the Division of Highways of the Bureau of Public Works and its powers, duties and functions were transferred to the Bureau of Public Highways, headed by a Commissioner. As no substitution was made of the proper official despite the creation of the Bureau of Public Highways, a copy of the decision was transmitted to the Commissioner of Public Highways only on January 13, 1955, such that no step to secure the review of the decision could be taken anymore, the legal period having expired. The question presented was whether the Republic of the Philippines is an indispensable party such that not having been given an opportunity to be heard, the decision of respondent referee should be considered as having been rendered in excess of his jurisdiction. *Held,* from a reading of sections 3 and 53 of the Workmen's Compensation Act, it appears that the benefits of the Act equally apply with the same force and extent to all the employees employed for public works of the national government and its political subdivisions with the particularity that the law expressly enjoins that to make effective the payment for such compensation, the government must deposit such amount as may be determined by the Commissioner with the office of the Workmen's Compensation Commission to guarantee the payment of such compensation, which clearly indicates that when it affects government employees employed in any public work, the party in interest is either the national government or any of its political subdivisions. Considering this therefore, the proper party who should be made respondent in a claim for death benefit affecting employees of the national government is the Republic of the Philippines and the service of process is made upon the Solicitor General as required by section 15, Rule 7, of the Rules of Court. REPUBLIC *v.* HERNANDO, G.R. No. L-9252, July 31, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — A MOTION FOR POSTPONEMENT FILED BEFORE THE TRIAL CANNOT BE ACTED UPON AND DENIED ONLY ON THE ACTUAL DATE OF THE TRIAL TO THE PREJUDICE OF THE MOVANT. — The plaintiff filed an action against the defendant for the collection of a sum of money. The trial was set for October 1, 1951, notice of which was served upon counsel for defendant. Counsel for defendant, however, filed an *ex parte* motion for postponement based on the ground that counsel had a case in another court set for hearing on the same day. On October 1, neither defendant nor his counsel appeared, whereupon the court denied the motion for postponement and proceeded to receive the evidence presented by the plaintiff and accordingly to render a decision in plaintiff's favor. The defendant assailed the action taken by the trial court contending that early action should have been taken by it on the motion for postponement so that in case of denial, counsel for defendant could act accordingly. *Held,* defendant's position is well taken. The motion for postponement which was the first, was filed several days before the trial. While attorneys should not assume that a motion for postponement would be granted, they are nonetheless entitled to a timely notice of its denial, to know what to do to protect the interest of the client. The decision of the trial court is hereby reversed. SIOCHI *v.* TIRONA, G.R. No. L-8318, June 29, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE RULE OF RES ADJUDICATA IS APPLICABLE TO DECISIONS OF QUASI-JUDICIAL BODIES. — The plaintiff filed a complaint against the defendant before the Wage Administration Service for the recovery of alleged unpaid salary and overtime pay. The parties entered into an arbitration agreement whereby they agreed to submit their case to the Wage Administration Service for investigation and to abide by whatever decision this Office may render. After the presentation of evidence, the Wage Administration Service rendered a decision which became final as no appeal was taken. On November 10, 1954, the plaintiff filed a complaint against the defendant over the same subject matter and cause of action litigated between them before and decided by the Wage Administration Service. The defendant demurred on the ground of *res adjudicata.* The question presented was whether the rule of *res adjudicata* is applicable to decisions of quasi-judicial bodies like the Wage Administration Service. *Held,* the rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial acts of public, executive, or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers. BRILLANTES *v.* CASTRO, G.R. No. L-9223, June 30, 1956.

REMEDIAL LAW — PROVISIONAL REMEDIES — THE TEN-DAY PERIOD WITHIN WHICH A PETITION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY MANDATORY

INJUNCTION SHOULD BE FILED, IS COUNTED FROM THE TIME THE PETITIONING PARTY RECEIVES NOTICE OF THE PERFECTION OF THE APPEAL. — Rufina and Company filed a complaint for unlawful detainer in the Justice of the Peace Court against the petitioner herein. Petitioner moved to dismiss the complaint on the ground that the JP court had no jurisdiction over the case because it involved a question of title or ownership of the land. The motion to dismiss was denied, and the case was set for hearing. To stop the proceeding in the JP court, petitioner filed a petition for prohibition in the Court of First Instance which was subsequently denied. The lower court decided in favor of Rufina and Company and petitioner appealed. In the meantime, Rufina and Company filed a motion for the issuance of a writ of preliminary mandatory injunction, which the Court granted. Petitioner contended that the petition for the issuance of the writ was filed beyond the ten-day period fixed by article 1674 of the new Civil Code for the reason that the appeal was perfected on November 2, 1954 and the motion for the issuance of the writ was filed on November 23, 1954. Rufina and Company, however, explained that the said ten days should be counted not from actual perfection of the appeal but from the time that it was notified of said perfected appeal which was on November 19, 1954. *Held*, the contention of the Company is meritorious. An appellee in a case appealed from the JP Court to the Court of First Instance is not called upon always to be on guard in the JP Court to ascertain the exact date and hour the appeal is perfected. All that an appellee is expected to do is to wait for the official notice to him of said perfected appeal from the Court of First Instance where the appeal is taken. The period of ten days therefore, mentioned in article 1674, within which to file a petition for a writ of preliminary mandatory injunction, should be counted from the date when the petitioning party is notified of the perfection of the appeal. DE LA CRUZ *v.* BOCAR, G.R. No. L-8814, June 30, 1956.

REMEDIAL LAW — PROVISIONAL REMEDIES — THOUGH AN ACTION FOR LEGAL SEPARATION SHALL NOT BE HEARD TILL AFTER SIX MONTHS FROM THE FILING OF THE COMPLAINT, EVIDENCE NOT AFFECTING THE CAUSES OF THE SEPARATION MAY BE INTRODUCED EVEN BEFORE THE EXPIRATION OF SAID PERIOD. — Petitioner filed an action for legal separation against his wife on the ground of adultery. After the issues were joined, the wife filed an omnibus petition to secure custody of their three minor children and for support. Petitioner prayed that as the petition for custody and support cannot be determined without evidence, the parties be required to submit their respective evidence. The respondent judge granted the omnibus petition filed by the wife. Upon refusal of the judge to reconsider the order, petitioner filed the present petition for certiorari and mandamus. The main reason given by the judge in refusing petitioner's request that evidence be allowed to be introduced on the issues is the prohibition in article 103 of the new Civil Code that an action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition. *Held*, it is conceded that the period of six months fixed in article 103 of the new Civil Code is evidently intended as a cooling off period to make possible a reconciliation between the spouses. But their practical expediency, necessary to carry out legislative policy, does not have the effect of overriding other provisions such as the determination of the custody of the children and alimony and support *pendente lite* according to the circumstances. The law expressly enjoins that these should be determined by the court according to the circumstances. If these are ignored or the courts close their eyes to actual facts, rank injustice may be caused. Evidence not affecting the causes of the separation, like the actual custody of the children, the means conducive to their welfare and convenience during the pendency of the case, should be allowed so that the court may determine which is best for their custody. ARANETA *v.* CONCEPCION, G.R. No. L-9667, July 31, 1956.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — WHERE THE JUDGMENT FIXES A YEARLY RENTAL, SECTION 8 OF RULE 72 DOES NOT APPLY. — On two civil cases which were jointly tried because they involved the same parties and the same subject matter, petitioner Cerezo was ordered to deliver possession of the land in question to the plaintiffs in said cases and was ordered by respondent judge to pay the rentals at the rate of ₱150 a year until possession shall have been delivered to the plaintiffs. The plaintiffs in both cases filed a motion for execution of the judgment alleging, among other grounds, that the defendant has failed to deposit with the clerk of court the rental of the land for the current year and, therefore, they are entitled to take immediate possession of the property pursuant to section 8 of Rule 72. This motion was granted by respondent judge and when his motion for reconsideration was denied, petitioner brought this petition for certiorari. *Held*, it should be noted that respondent judge in granting the motion for execution did not state any particular reason for allowing such execution pending appeal but simply stated that the motion "was well taken and in accordance with law." Undoubtedly, the court was referring to that part of the motion asking for immediate execution under section 8 of Rule 72. But the judgment which is sought to be executed fixes a yearly rental of ₱150 which should be paid by defendant until the possession of the property is returned to the plaintiffs. Not being a monthly rental what defendant is required to deposit in court, section 8 of Rule 72 does not apply. "This rule contemplates payment of a monthly rental the failure of which would give rise to execution, and not the payment of rental in any other manner. In the present case, the rental fixed by the justice of the peace court is not monthly but yearly, and this is understandable considering the fact that the property subject of lease is a fishpond... As it now appears the rental fixed by the court is not yet due and, therefore, the order of execution issued by respondent judge is premature." (De la Cruz v. Dollete, G.R. No. L-8183, April 16, 1955). Since the rental which defendant has allegedly failed to deposit is for the "current year," it is evident that, based on this ground, the writ of execution is premature. CEREZO *v.* MUÑOZ, G.R. No. L-9575, July 17, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN INFORMATION FILED BEFORE THE EFFECTIVITY OF A LAW PUNISHING AN OFFENSE MAY NOT BE AMENDED AFTER THE LAW PUNISHING THE CRIME HAD COME INTO EFFECT TO CHARGE A VIOLATION AFTER THE LAW HAD COME INTO EFFECT. — On Dec. 28, 1954, petitioner was charged with a violation of C.A. No. 104 during the period from May 3 to October 11, 1954. The accused moved to quash the information on the ground that the regulations implementing the law had not yet been published in the Official Gazette as required by law. When the case was called for hearing on March 17, 1955, the city attorney filed a motion to dismiss but respondent judge instead made an ocular inspection of the place where the al-

leged violation was taking place. The judge found the petitioner still violating C.A. No. 104 and ordered the fiscal to file an amended information. As this amended information alleged that the commission of the violation took place on January 2 to October 11, 1954, petitioner reiterated his motion to quash. The judge ordered the fiscal to file an opposition to this motion but the fiscal instead filed an amended information changing the period of the supposed violation to that of January 2 to March 17, 1955. Petitioner filed another motion to quash and when the judge denied it, he filed this petition for certiorari. *Held*, the acts charged in the original information were not punishable at the time of its filing in 1954; the violation charged in the amended information took place in 1955. The amendment is certainly on a matter of substance because in 1954 the act was not punishable yet. The amendment cannot be allowed because the accused, petitioner herein, had already pleaded not guilty to the original information. Another reason is the fact that when the original information was filed the violation was not yet subject to prosecution because the law had not yet been published. It is true that since the information was filed the law had become effective; but the law can have no retroactive effect. Since an amended information is supposed to retroact to the time of the filing of the original information,and at the time of the filing of the original information the offense was not yet punishable, the proper course would have been not to amend the previous information but to file another one. In civil cases, if a cause of action does not exist at the time the complaint is filed, but accrues thereafter, the defect cannot be cured by amendment; a new complaint must be filed because the cause of action must exist prior to the time of the filing of the complaint. Similarly, an information filed before the effectivity of a law punishing an offense may not be amended after the law punishing the crime had come into effect to charge a violation after the law had come into effect. As an amendment retroacts to the time of the presentation of the amended pleading, the amended information would contain a violation committed after its filing. A crime charged should have been committed prior to the filing of the information; no information can be filed for a future violation. WONG *v.* YATCO, G.R. No. L-9525, Aug. 28, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — R.A. NO. 732 APPLIES ONLY TO PRELIMINARY INVESTIGATIONS CONDUCTED BY PROVINCIAL FISCALS IN CASES ORIGINALLY INSTITUTED BY THEM IN COURTS OF FIRST INSTANCE. — On June 24, 1954, a complaint for kidnapping was filed with the Justice of the Peace Court against the herein petitioner. After conducting the first phase of the preliminary investigation, the Justice of the Peace Court issued the corresponding warrants of arrest. The petitioner waived his right to the second stage of the preliminary investigation and the case was forwarded to the Court of First Instance. Later on, after making a preliminary investigation, in the course of which several witnesses gave testimony under oath, implicating petitioner's wife in the commission of the crime charged in the complaint, the provincial fiscal filed an information charging also petitioner's wife with the crime. Petitioner filed a petition praying that a reinvestigation of the case be ordered so that they may be afforded their right as provided in R.A. No. 732. The petitioner contended that under R.A. No. 732, a provincial fiscal may not file an information without first notifying the accused so as to enable the latter to be present at the preliminary investigation to be conducted by him and to cross-

examine the witnesses of the complainant or the prosecution. *Held*, petitioner's contention is untenable. Said R.A. No. 732 governs preliminary investigations conducted by provincial fiscals in cases *originally* instituted by them in courts of first instance. It does not apply to cases begun in justice of the peace courts and thereafter forwarded to the corresponding court of first instance, either after the second phase of the preliminary investigation required in the Rules of Court had been conducted before said justice of the peace courts, or after a waiver by the accused of their right to said preliminary investigation. The reason is obvious. In those cases, the provincial fiscal is under no obligation to make such preliminary investigation. VILLANUEVA *v.* GONZALES, G.R. No. L-9037, July 31, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE RECEIPT BY THE CLERK OF COURT, NOT THE SENDING BY THE JUDGE, OF THE DECISION CONSTITUTES THE FILING OF SAID DECISION. — The provincial fiscal of Sorsogon filed an information against Domalaon for violation of R.A. No. 145. After the hearing of the case on the merits the case was submitted but the presiding judge, Judge Mañalac, reserved his decision. Shortly thereafter, Judge Mañalac went on a terminal leave of absence but he was authorized by the Secretary of Justice to decide in the city of Manila the cases he had tried in Sorsogon which were pending decision. In the meantime, Judge Mañalac pressed the Secretary of Justice for an approval of his application for retirement which he had filed since March 4, 1954. This was endorsed with a favorable consideration and the President, on June 21, 1954, appointed Hon. Tan Torres *ad interim* judge of the court of first instance of Sorsogon. Judge Tan Torres accepted the appointment and on July 1, 1954, qualified and assumed office. However, under the previous authority granted him, Judge Mañalac drafted his decision in the case against Domalaon, placed it in an envelope, and mailed it at the Manila Post Office. This was received by the clerk of court of Sorsogon on July 3, 1954, and the judgment therein bearing the date of June 12, 1954, was promulgated in court on the same day. The accused appealed from said judgment of conviction and the Court of Appeals held that the promulgation of the judgment means delivery of the decision to the clerk of court for filing and publication, and that when Judge Mañalac deposited his decision in the Manila Post Office on July 1, addressed to the clerk of court of Sorsogon, the judgment was thereby promulgated on that date and is valid since it was before the assumption of office of Judge Tan Torres. *Held*, this is without juridical foundation. According to specific legal provisions (RULE 124 § 9), the decision signed by Judge Mañalac was "to be filed in the court as of the day the same was received by the clerk" namely, as of July 3, 1954. The receipt, not the sending, constitutes the filing. Now then, if in the eyes of the law the decision was filed on July 3, they could not have been promulgated on July 1. Promulgation takes place after the clerk receives the decision and enters it in the criminal docket. It must be remembered that in courts of first instance, the promulgation of judgments in criminal proceedings does not necessarily coincide with the day they were delivered by the judge to the clerk for promulgation. Accordingly, the principles of construction would be unduly strained were we to hold that Judge Mañalac's decision had been promulgated on July 1, upon being mailed to the clerk of court. Legally, the decision of Judge Mañalac was promulgated on July 3, 1954. Because he had left the

Bench before that date, his decision had no binding effect. PEOPLE *v.* COURT OF APPEALS, G.R. No. L-9111, Aug. 28, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN APPEAL BY THE STATE WITH A VIEW TO INCREASING THE PENALTY IMPOSED ON THE ACCUSED PLACES THE LATTER IN DOUBLE JEOPARDY. — Kamad Arinso was accused in the court of first instance of Cotabato of illegal possession of a hand grenade. He pleaded guilty and the court, applying the provisions of section 106 of the Administrative Code for Mindanao and Sulu, and considering the mitigating circumstances of plea of guilty and lack of sufficient instruction, sentenced him to six months of imprisonment. The prosecution moved for a reconsideration of this sentence, upon the ground that section 106 of said Code should not have been applied, but this was denied. Hence, the present appeal by the Government. *Held*, the Government maintains that the penalty meted out to the defendant is too light, inasmuch as said hand grenade had been used by him to commit the crime of robbery in band with homicide, with which he is charged in another case. However, under the provisions of section 106 of said Administrative Code, the lower court had discretion to impose said penalty, which, accordingly, cannot be assailed as erroneous, from the legal point of view. More important still, the lower court admittedly had jurisdiction to render the decision appealed from, as well as over the subject matter of the case and over the parties. Likewise, it is not disputed that the information against the accused is sufficient in form and substance, and that he had been arraigned and had entered his plea prior to the rendition of said decision. In other words, he has already been placed in jeopardy of punishment for the offense charged in the lower court, and the appeal of the prosection, with a view to urging an increase of his penalty, places him twice in jeopardy of punishment for said offense. PEOPLE *v.* ARINSO, G.R. No. L-6990, July 20, 1956.

REMEDIAL LAW — EVIDENCE — THE MERE EXISTENCE OF A VALID DEFENSE WHICH MAY DESTROY A PARTY'S RIGHT OR TITLE DOES NOT MAKE THE DOCUMENTS PROBATIVE OF SAID RIGHT OR TITLE INADMISSIBLE. — On January 10, 1945, plaintiff Barreto bought the property of defendant Arevalo for ₱12,000 but assuming a mortgage thereon in favor of Pedro Reyes for ₱30,000. On the same date, the property was leased to Arevalo and an option to repurchase the property was granted in the contract of lease. Later, Arevalo secured a loan from Barreto for ₱4,000. The contracts of sale and lease were duly registered, but defendant Arevalo nonetheless sold the same property to defendants Padilla. Subsequently, Arevalo filed an action against Barreto for a judicial declaration that the contract between them was only an equitable mortgage but the Supreme Court decided that the contract was a sale with a right to repurchase, and that if she wanted to redeem the property, she could do so only for ₱16,000. Barreto thus filed an action against Arevalo on the ground that Arevalo's failure to redeem the property in accordance with the Supreme Court decision resulted in the consolidation of plaintiff's title thereto. The lower court held that the Padillas had no knowledge of the previous sale by Arevalo to Barreto and dismissed the case. Barreto appealed, assigning as one of the errors the refusal of the trial court to admit in evidence the deed of sale and the contract of lease between Barreto and Arevalo, the promissory note in favor of Barreto, and the Supreme Court decision in the case between

Barreto and Arevalo. The trial court held that the Padillas were not parties to these documents and cannot be affected by them. *Held*, the above ruling is clearly erroneous. The deeds were executed by Arevalo prior to the sale by her in favor of the Padillas. As the latter succeeded to the rights and interests of Arevalo, they were bound by the acts of Arevalo prior to the sale in their favor (RULE 123 § 13). The Padillas are privies in so far as Arevalo is concerned, as they obtained their title from the latter; hence what is admissible against Arevalo before the sale in their favor is admissible against them. The documents prove the alleged purchase made by plaintiff from Arevalo; they are therefore material and relevant to the issues raised in the plaintiff's complaint and denied in defendant's answer. The fact that in point of law they may not be of any avail against the Padillas who are alleged to be purchasers in good faith, for value and without notice, does not in any way affect or destroy their materiality or relevancy or admissibility. The claim that the Padillas are purchasers in good faith is a special defense; the mere fact that this is a valid defense which may destroy plaintiff's right or title does not make the documents indicative or probative of said title or right immaterial or irrelevant and inadmissible. BARRETO *v.* AREVALO, G.R. No. L-7748, Aug. 27, 1956.

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CIVIL LAW — OBLIGATIONS — IN OBLIGATIONS WITH A TERM OR PERIOD, THE OBLIGEE NEED NOT FILE TWO DIFFERENT AND SEPARATE ACTIONS. — Plaintiff Calleja loaned defendant Domingo the sum of ₱2,336 which the latter promised to pay back as soon as he has the money. This promise was evidenced by a promissory note executed by defendant in favor of the plaintiff. Later, plaintiff brought an action to recover from the defendant the sum of money stated in the promissory note. After trial upon the issues, the court held that, considering the terms of the promissory note, the obligation created was governed by article 1180 of the New Civil Code and that pursuant to the provisions of article 1197 of the same Code the court may fix the period of payment. In that connection and for that purpose, it did fix the period to be 90 days from the date of its decision. Defendant appealed, claiming that if an obligation is one with a term or period that may be fixed by the courts in accordance with article 1197 of the New Civil Code, the creditor or obligee must perforce file two different and separate actions: the first should be strictly one asking the court to fix the term or duration of the period, and the second should be one for collection or to enforce the obligation and must be filed only after the debtor or obligor has failed to comply with the obligation within the term or period previously fixed by the competent court. *Held*, we cannot agree with this interpretation of the law which would inevitably lead firstly, to an unnecessary, cumbersome and expensive multiplication of lawsuits, to the detriment of the administration of justice, and secondly, to giving a clearly unfair and undue advantage to the debtor or obligor. Undoubtedly, the first suit alone would imply a litigation of many months, if not years, the same only to end with a judgment fixing the term or period for the payment of the obligation. The second litigation would most likely be as prolonged as the first, the debtor or obligor being naturally interested in delaying performance. All these proceedings will inevitably result in what we have said heretofore. CALLEJA *v.* DOMINGO, (CA) G.R. No. 15161-R, April 27, 1956.