within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation." If a preliminary investigation is not a matter of right of the accused, his presence thereat is not also a matter of right, nor is he entitled to notice. We therefore hold that it is not the duty of the provincial fiscal conducting a preliminary investigation under R.A. No. 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation. We hold, however, that if during the investigation and prior to the filing of the information, the accused requests to be present, the fiscal must conduct the investigation in his presence. RODRIGUEZ *v.* ARELLANO, G.R. No. L-8332, April 30, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — A CIVIL ACTION FOR THE CANCELLATION OF COPYRIGHTS ALLEGED TO HAVE BEEN OBTAINED FRAUDULENTLY DOES NOT CONSTITUTE A PREJUDICIAL QUESTION IN THE CRIMINAL ACTION FOR THE VIOLATION OF SUCH COPYRIGHTS — Petitioner Ocampo was charged with violation of the Copyright Law. Subsequently, Ocampo filed a civil action against Cochingyan and the Dir. of Public Libraries praying for the cancellation of the copyrights issued to Cochingyan on the ground that the same were obtained through fraud. The copyrights were the bases of the criminal complaint against the accused. At the hearing of the criminal case, Ocampo moved for the postponement of the criminal case, alleging that a prejudicial question was involved, and that the action for cancellation should be given due course before the criminal action could be heard. *Held,* the action to cancel respondent's copyrights is not a prejudicial question. Until cancelled, the copyrights issued to respondent are presumed to have been duly granted in accordance with law. Such an action therefore is separate and independent of the criminal prosecution for the violation of the copyrights. OCAMPO *v.* TANCINCO, G.R. No. L-5967, Jan. 31, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE RULE THAT THE STATE IS PRECLUDED FROM SUING ON THE CIVIL ACTION WHEN THE ISSUES THEREIN HAVE BEEN DETERMINED IN A CRIMINAL ACTION DOES NOT APPLY WHEN THE JUDGMENT IN THE LATTER IS ONE OF ACQUITTAL — Respondent Assad, after the decision granting him naturalization had become final, took the oath of allegiance and was granted the corresponding certificate of naturalization. Subsequently, on the ground that the certificate was obtained fraudulently, the Sol.-Gen. moved for the cancellation thereof. The Sol.-Gen. supports his motion by stressing the point that in a criminal prosecution against Assad, the mun. court acquitted him of the crime of physical injuries, and that this acquittal did not preclude Government from re-litigating on the same offense in a civil action. *Held,* the great weight of authority supports the rule that a judgment of acquittal is not effective, under the doctrine of res adjudicata, in a later civil proceeding, and does not constitute a bar to a subsequent action involving the same object matter. This has even been held true in regard to civil actions brought against the defendant by the State, although in order to recover, it must prove him to have been guilty of the offense of which he has been acquitted. An acquittal in a criminal action is not admissible in evidence against the people in a civil suit against the defendant, as for instance on a liquor tax bond, because of the different degrees of proof required. The cause of action in a proceeding to cancel a certificate of naturalization is not the same cause of action in a criminal prosecution but is an additional remedy for correcting an error in the original proceeding granting the naturalization. It is designed to afford cumulative protection against fraudulent or illegal naturalization. REPUBLIC *v.* ASSAD, G.R. No. L-4566, Jan. 24, 1955.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — IN AN ACTION FOR ILLEGAL DETAINER, A DEMAND TO VACATE THE PREMISES FOR VIOLATION OF THE LEASE CONTRACT IS INDISPENSABLE IN ORDER TO DETERMINE WHETHER THE TENANT'S POSSESSION HAS BECOME ILLEGAL — Upon failure of the defendant Vivas to deliver to the plaintiff Santos, the latter's share in the harvest by virtue of a tenancy contract between them, the plaintiff filed an action for unlawful detainer, praying that Vivas be order to vacate the land and to deliver to plaintiff his share in the crops harvested, plus damages. The defendant filed a motion to dismiss for lack of jurisdiction, pointing out that the complaint did not allege that a demand had been made in accordance with § 2, Rule 72. *Held,* it is apparent from § 2, Rule 72 that a demand is a pre-requisite to an action for unlawful detainer when the action is for failure to pay rent due, or to comply with the conditions of his lease in order to determine whether the tenant's possession has become illegal. Such demand is jurisdictoinal, and if none is made, the case falls within the jurisdiction of the CFI. DE SANTOS *v.* VIVAS, G.R. No. L-5910, Feb. 8, 1955.

REMEDIAL LAW — EVIDENCE — A WRITTEN STATEMENT PRESENTED IN EVIDENCE, AS PART OF THE RES GESTAE AND ACCEPTED BY THE TRIAL COURT AS SUCH, MAY STILL BE CONSIDERED ON APPEAL AS AN ANTE-MORTEM DECLARATION IF THE GROUNDS FOR ITS ADMISSIBILITY ARE PRESENT — Ananias was charged with murder in the CFI for having stabbed and killed one Gabriel. Minutes before his death, Gabriel made a written dying declaration. This declaration was presented as evidence, under the rule of res gestae, in the trial court and was accepted in this concept. The accused assailed the competency and probative value of the ante-mortem declaration stating that the prosecution did not clearly establish the circumstance that the deceased was conscious of his impending death when he made the declartion. *Held,* the fact that the declaration was presented in evidence as part of the res gestae does not preclude its being considered as an ante-mortem declaration if the grounds for its admissibility are present. A piece of evidence may be competent for two or more purposes under different rules of law and the evidence will be received if it satisfies all the requirements prescribed by law in order that it may be admissible for the purpose for which it is presented, even if it does not satisfy the other requirements for its admissibility for other purposes. PEOPLE *v.* ANANIAS, G.R. No. L-5591, March 28, 1955.

COURTS OF APPEALS

CIVIL LAW — PERSONS — EVIDENCE OF ACTUAL DEATH NOT NECESSARY TO ESTABLISH PRESUMTION OF DEATH — Jacosalem seeks to recover from Javellana compensation and attorney's fees for the death of her husband Estoper, patron

of Javellana's fishing boat which sank during a typhoon. The evidence presented proving Estoper's death consisted of a witness' testimony that he saw Estopar jump from the sinking boat and was seen swimming towards shore, about 12 miles away, and that he was never seen or heard from since then. The lower court rendered judgment in favor of Jacosalem. Javellana appealed, contending that there was no sufficient proof of the death of Estopar. *Held*, evidence of actual death is not necessary; moral conviction is sufficient to establish the fact of death as in the present case, for when last seen Estopar was in a state of imminent peril that might probably result in his death and has never been heard of or seen again, though diligent search has been made. Equitable considerations will not permit art. 391 of the New Civil Code to override, or be accepted as substitute for, the facts herein involved, demonstrative of death to a moral certainty. Therefore, judgment affirmed. JACOSALEM *v.* JAVELLANA, (CA) G.R. No. 11115-R, Sept. 25, 1954.

CIVIL LAW — PROPERTY — IN CIVIL LAW TRESPASS INCLUDES EVERY INFRACTION OF A LEGAL RIGHT — Castro is the registered owner of a parcel of land which was occupied by the Ordnance Depot of the U.S. Army, whose interests were transferred to the S.P.C., and later sold to Bautista. Subsequently, Sevilla, by virtue of an authorization issued to him by Malaya, alleged representative of Bautista, sold to Kiener any concrete, mattings and subsoil from the lot formerly occupied by the Ordnance Depot. Thereupon, Kiener bulldozed, excavated and drilled more than five hectares of the land and took and carried away concrete slabs, gravel, stone and soil from the premises which he sold to the BPW and other persons. Consequently, Castro sued Kiener and Sevilla for trespass, for which the two were condemned to pay the former ₱40,000.00 as damages. Kiener appealed on the ground that the court erred in holding them as trespassers. *Held*, the trespass alluded to by the trial court is not that penalized by Art. 281 of the Revised Penal Code, for it is not only under the criminal law that one may be held liable for trespass which in legal contemplation embraces every infractoin of a legal right. A trespasser, under the general principles of law cannot escape liability by showing lack of knowledge of the location of the boundaries even when the owner has failed to erect any artificial markings of his boundaries. The trespass is a joint trespass when two or more person unite in committing it, or where some actually commit the tort, and the others command, encourage or direct it, acting in concert and cooperation with a common purpose and it is not material that they do not share alike in the profits of the trespass. Any person who actually does the act is liable, although acting for another as servant, agent, attorney or contractor. As a general rule, all persons who command, instigate, promote, ncourage, advise, countenance, cooperate in, aid, or abet the commission of a trespass, or who approves of it after it is done, if done for their benefit are co-trespassers with the person committing the trespass and are liable as principals to the same extent and in the same manner as if they had performed the wrongful act themselves. CASTRO *v.* P.J. KIENER CO., (CA) G.R. No. 10169-R, April 29, 1955.

CIVIL LAW — CONTRACTS — THE DECEIT WHICH VITIATES CONSENT MUST RESULT IN INJURY OR DAMAGES TO THE PARTY CLAIMING IT — In 1943, Butte sold

to Binondo four parcels of land and in 1944, Binondo sold the same property to Lim and Kim. After the liberation, Butte sought the annulment of the deed of sale on the ground that her consent thereto had been secured through fraud and misrepresentation and that the real purchasers are aliens who are disqualified, under the Constitution, to acquire real estate in this jurisdiction. The trial court dismissed the complaint. Plaintiff appealed reiterating that as Lim and Kim were the real purchasers, Binondo being a mere dummy of said Chinese, and said appellees — knowing her decision not to dispose of her property to aliens — withheld this fact from her, the consent she gave to the sale in question amounted to no consent and was ineffective, as consent, one of the essential elements of the contract, is wanting in the transaction. *Held*, granting that appellant's claim were true, it is well-settled that the absence of consent which invalidates a contract has reference to the substance of the thing which is the subject-matter thereof and not to the right of the parties thereto as provided in the Old Civil Code, Arts. 1261-1266, and that the deceit which vitiates the consent given to a contract, in order to amount to lack of consent, must result in injury or damage to the party claiming it, which do not obtain in the case at bar for it refers only to the nationality of the alleged purchasers and does not affect the substance of the subject-matter thereof. BUTTE *v.* ONG SUI LIM, (CA) G.R. No. 8652-R, June 6, 1955.

CIVIL LAW — CONTRACTS — CONTRACT OF LEASE OF SERVICES AND OF SALE, DISTINTINGUISHED — Ong Tiam ordered from Mah Long 10,000 Cisco Kid candy labels. The former delivered 10,000 Ruby Ruth box labels to the latter at 176 Sales and not at 757 Sto. Cristo, so that Ong Tiam did not see them until they were to be used. Noticing the difference from the sample he gave, he asked Mah Long to reprint them giving him ₱210 which according to the latter, he needed to buy 5 reams of paper for the reprinting. Mah Long failing to print the 10,000 labels according to the sample, Ong Tiam did not pay the balance of ₱240 now sought to be recovered by the former. The municipal court decided the case for Mah Long, but on appeal to the CFI, said decision was reversed and Mah Long's complaint was dismissed and he was sentenced on the counterclaim to pay Ong Tiam the amount of ₱500 as actual damages and ₱500 as attorney's fees. Mah Long appealed, contending, among others, that the right of Ong Tiam to question the quality of print of the candy labels is barred or has prescribed. *Held*, art. 1571 of the Civil Code provides that actions arising from the provisions of the ten preceding articles shall be barred after six months from the delivery of the thing sold; and art. 1562, which provides that in sale of goods, there is an implied warranty or condition that the goods shall be reasonably fit for the purpose or that the goods shall be of merchantable quality, is one of the ten articles referred to. Over six months had elapsed since the goods were received by Ong Tiam until he filed the counterclaim arising from the defect in the goods, counted from the date of receipt thereof and not from the alleged discovery of said defect. Ong Tiam's allegation that the transaction between them is one, not of sale, but of lease of services so that arts. 1571 and 1562 are not applicable, is of no consequence for when one orders another to manufacture goods for him and he furnishes the materials, the contract is a contract of lease of services; but when he furnishes nothing except a description of the goods, as in this case, and both labor and

materials are furnished by the manufacturer, it is no longer a contract of lease of services but a contract of sale. No sufficient evidence has been adduced as regards the actual damages suffered by Ong Tiam. Hence, defendant is absolved from complaint, and plaintiff from the counterclaim. MAH LONG *v.* ONG TIAM, (CA) G.R. No. 12456-R, March 2, 1955.

CIVIL LAW — CONTRACTS — ARCHITECT'S COMPENSATION ON QUANTUM MERUIT — Antonio, upon the request of Enriquez agreed to draft the plans of a residential building, to supervise its construction, and to receive 10% of the total cost of of the building. Antonio having sent the finished plans to Enriquiez and not having received any advice from him as to the commencement of the work notwithstanding the lapse of time from the receipt thereof, sent a bill for his services in the amount of ₱2,500 which the latter refused to pay. Antonio filed suit and the lower court granted him ₱2,400 as compensation for his services. Enriquez appealed contending, among others, that the house not having been constructed, Antonio was not entitled to the payment. *Held*, in contracts of this nature, the trend of judicial pronouncements seems to veer towards the proposition that if the services is received and is of benefit to the party receiving it, the party rendering services may recover on a *quantum meruit* or to the extent of the value of the services rendered. If an architect prepares plans and specifications for a building pursuant to an unconditional order or direction of the owner, but without express agreement as to compensation, he is entitled to recover the reasonable value of the services rendered, whether the plans are used or not, and Enriquez would benefit from the plans which he could still fully use in building his projected beautiful residence. On the basis of *quantum meruit*, the sum of ₱2,400 fixed by the trial court, is fair and reasanable compensation for the services rendered by Antonio. Judgment affirmed. RUFINO *v.* ENRIQUEZ, (CA) G.R. No. 8057-R, Jan. 31, 1955.

COMMERCIAL LAW — INSURANCE — TEST OF INSURABLE INTEREST — Suter, general manager of the partnership between himself and his wife, insured with Union Surety Insurance Co. two Rockola Juke-boxes for ₱4,000 each, paying the corresponding premiums therefor. During the existence of the policy, a fire of accidental origin destroyed the insured articles. Consequently, Suter notified the insurance company and demanded payment of the value of the policies, which the latter refused. Suter filed suit therefor and after trial, the lower court condemned the insurance company to pay Suter the amount of ₱8,000.00. On appeal, the insurance company contends, among others, that Suter was not the interested party and without insurable interest in the articles insured. *Held*, the test of insurable interest in property is whether the insured has such a right, title, or interest therein, or relation thereto, that he will be benefited by its preservation and continued existence, or suffer a direct pecuniary loss from its destruction or injury by the peril insured against. The interest of palintiff who is the managing partner of the partnership formed by him and his wife, in the juke-boxes is undeniable. Judgment affirmed. SUTER *v.* UNION SURETY & INSURANCE CO., (CA) G.R. No. 11142-R, Oct. 9, 1954.

CRIMINAL LAW — CRIMINAL LIABILITY — EVERY PERSON IS LIABLE FOR THE NATURAL CONSEQUENCES OF HIS ACT — Guzon and Sevilla were husband and wife. During an altercation between said spouses, Guzon hurled a bolo hitting Sevilla on the abdomen, causing her death four days later. Prosecuted for parricide, Guzon was convicted. On appeal, Guzon contended that he intended merely to scare Sevilla who was unfortunately hit by the bolo at the instant she stood up and took two steps forward towards him; that the death of Sevilla, who was two months pregnant, was due to her abortion and not to the injuries caused by the bolo thrown at her. *Held*, one who inflicts injury upon another is mediately or immediately responsible for the latter's death, and the fact that other causes may have cooperated to cause the death of such other does not relieve the actor of responsibility; and, that is only when the death is not the direct or indirect consequence of the injury, but of a malicious omission on the part of the injured, that he is relieved of responsibility. PEOPLE *v.* GUZON, (CA) G.R. No. 12136-R, Jan. 31, 1955.

CRIMINAL LAW — MITIGATING CIRCUMSTANCE — PASSION AND OBFUSCATION, AND PROVOCATION CANNOT BE CONSIDERED SEPARATELY WHEN THEY ARISE FROM THE SAME CAUSE — Guzon and Sevilla, husband and wife, had an altercation, during which Sevilla hurled insulting words and epithets at Guzon, and even dared the latter to put to action his verbal threats of bodily harm on her should she insist on her verbal tirade putting him to public ridicule. This fact proven at the trial, the lower court, in meting out the penalty, credited the accused with three mitigating circumstances, two of which were (a) sufficient provocation on the part of the deceased, and (b) acting upon an impulse so powerful as naturally to have produced passion or obfuscation, on the part of the accused. *Held*, the mitigating circumstance of passion and obfuscation and of provocation should not be considered as two distinct and separate circumstances when they arise from the same cause. PEOPLE *v.* GUZON, (CA) G.R. No. 12136-R, Jan. 31, 1955.

CRIMINAL LAW — DAMAGE TO PROPERTY — DELIBERATE INTENT TO CAUSE DAMAGE IS AN ESSENTIAL ELEMENT — Collantes, Traqueña and Alfaro, employees of a restaurant, had an altercation and fist fight in said establishment, as a result of which, tables, chairs and silverwares were damaged. Prosecuted for damage to property, they were convicted. The accused appealed, each appellant giving a different version of the incident contrary to the version of the prosecution, but the fact of the altercation resulting in the breakage of silverwares as well as destruction of chairs and tables has been duly proven. *Held*, the crime of causing injury to property is not determined solely by the mere act of inflicting injury upon the property of a third person, but it must be shown that the act had for its object the injury to the property for the sake merely of damaging it; without this circumstance the essential element of the crime is lacking and the criminal intention of the culprit cannot be established. The act imputed to the accused being a mere incident of an altercation and not with the deliberate intent of causing damage so as to prejudice the owner of of the articles damaged, it does not therefore constitute the offense punishable by law. PEOPLE *v.* COLLANTES, (CA) G.R. No. 12086-R, Feb. 24, 1955.
