PRODUCE THE BODY OF THE ACCUSED OR GIVE SATISFACTORY EXPLANATION FOR ITS NON-PRODUCTION WITHIN THE 30 DAYS GRANTED TO HIM IS NOT ENTITLED TO A FULL DISCHARGE ON HIS BOND, THOUGH IT IS LATER FOUND OUT THAT THE ACCUSED DIED BUT AFTER THE EXPIRATION OF SAID THIRTY DAYS. — The defendant surety company executed a bond for the provisional release of an accused in a criminal case. When the accused failed to appear for arraignment, the bond was ordered confiscated and the defendant was given 30 days within which to produce the body of the accused and to explain why judgment should not be rendered against it. Instead of producing the body of the accused and explaining why no judgment should be rendered for the amount of the bond, the defendant filed an *ex-parte* motion for the immediate issuance of the order of arrest of the accused on the ground that there was sufficient ground to believe that the accused intends to jump his bail. The motion was granted but the defendant did nothing to arrest the accused or to procure said arrest by virtue of the warrant of arrest issued pursuant to said motion. It was found out later that the accused died but his death occurred after the expiration of the thirty-day period granted to the defendant to produce his body. For this reason, defendant filed a motion for the cancellation of the bond. The Provincial Fiscal opposed this motion. *Held*, under section 15 of Rule 110 of the Rules of Court, the defendant should have produced the body of its principal or should have given the reason for its non-production and should have explained satisfactorily why the defendant did not appear before the court when first required to do so. The defendant surety company was negligent in its duties as bondsman in failing to follow the above-mentioned requirements. At most the defendant is entitled to a partial exoneration from its obligations in view of the death of the accused which occurred after the expiration of the 30-day period granted to the defendant to produce his body or explain the reason for its non-production. PEOPLE *v.* LUZON SURETY CO., G.R. No. L-6952, April 25, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — WHEN AN ACCUSED GIVES NOTICE ORALLY IN OPEN COURT OF HIS INTENTION TO APPEAL AT THE PROMULGATION OF THE JUDGMENT AGAINST HIM, HE MAY BE CONSIDERED AS HAVING PERFECTED HIS APPEAL, NOTWITHSTANDING HIS FAILURE TO FILE A WRITTEN NOTICE OF APPEAL. — On April 24, 1953, Jesus Agasang was convicted by the CFI of Nueva Ecija for the crime of serious physical injuries. On June 16, 1953, the decision was promulgated and immediately thereafter, in open court and in the presence of the Provincial Fiscal, Agasang orally announced his intention to appeal and filed a bond wherein he stated he had appealed from the decision, which bond was approved by the Court. On July 16, 1953, he filed a motion for new trial on the ground that the offended party had retracted from his testimony. The Provincial Fiscal opposed said motion on the ground that the decision had already become final because Agasang had failed to perfect his appeal since he had not filed a written notice of appeal within the reglamentary period of 15 days as required by sec. 3 of Rule 118 of the Rules of Court. After due hearing, the trial court denied the motion for new trial on the ground that it was filed out of time. Agasang appealed, claiming that he had complied substantially with the requirements of the law. *Held*, sec. 3 of Rule 118 should be construed liberally for its strict application may cause irreparable damage. The herein appellant never lost interest in his appeal and should not be deprived of his right to appeal simply because he has not filed a written notice of appeal, for he has given verbal notice thereof in open court and in the presence of the adverse party and immediately posted a bond for his provisional release which was duly approved by the court on the very day the decision was promulgated. When an accused manifests his intention to appeal in open court within 15 days from the promulgation of the judgment against him, he may be considered as having perfected his appeal, notwithstanding his failure to file a written notice of appeal and to serve a copy thereof on the adverse party as required by sec. 3 of Rule 118 of the Rules of Court. Since there has been substantial compliance with the law, the appeal is considered perfected and therefore the judgment had not yet become final when appellant filed his motion for new trial. PEOPLE *v.* AGASANG, G.R. No. L-7155, May 4, 1956.

COURT OF APPEALS

CIVIL LAW — PERSONS — A MOTHER MAY BE DEPRIVED OF THE CARE AND CUSTODY OF HER CHILDREN BY REASON OF ADULTERY BECAUSE SUCH MORAL DEPRAVITY IS ONE OF THE CAUSES FOR THE LOSS OF PARENTAL AUTHORITY. — In 1936, plaintiff and defendant, widow and widower respectively, started living together as husband and wife without the benefit of marriage. Out of the union, three children were born. They were legally married only on November 4, 1947. One night, on his way home, defendant caught his wife and their family driver in the act of sexual intercourse. For this offense, the defendant drove his wife away from the conjugal home. She and the children went away and she committed further acts of adultery with the driver. Later, she brought an action for support for herself and the three children under her custody. The lower court denied her support but granted her custody of the children, so the defendant appealed. *Held*, the plaintiff had committed adultery and therefore she had no right to demand support. This judgment of the lower court not having been appealed from by the plaintiff, is already conclusive with binding finality. Section 6 of Rule 100 provides that "when husband and wife are divorced or living separately and apart from each other, . . . the court . . . shall award the care, custody, and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, . . ." Article 171 of the (old) Civil Code provides that courts may deprive parents of their parental authority or suspend the exercise of the same, whenever they treat their children with excessive cruelty or whenever they give them corrupting orders, advice or example. Adultery being a moral depravity, will give a corrupting example to and have a pernicious influence upon the young children of the defendant. To give the plaintiff the care, custody, and control of said children would not at all be conducive to their best interest. BENITO DE CASTILLO *v.* CASTILLO, (CA) G.R. No. 8674-R, Feb. 21, 1956.

CRIMINAL LAW — ASSAULT UPON PERSON IN AUTHORITY — ASSAULT AGAINST A PUBLIC SCHOOL TEACHER NEED NOT BE COMMITTED BY THE PUPILS OR RELATIVES OF THE PUPILS, BUT MAY BE COMMITTED BY ANY PERSON HAVING KNOWLEDGE THAT THE PERSON ASSAULTED IS A PUBLIC SCHOOL TEACHER. — At

about 1:30 o'clock in the afternoon of September 2, 1952, in Anib, Camarines Sur, Teofilo Solares, a public school teacher was supervising the cleaning of the yards by his pupils. Somebody called him "sir" from behind and when he turned around, he was struck by a fist blow. Immediately thereafter, another three fist blows hit him on his face and other parts of the body. Before becoming unconscious he was able to see that the defendant was the one who attacked him. He suffered contusions on his face and was subjected to medical care for 14 days. Defendant, charged with the crime of assault upon a person in authority with slight physical injuries, contended that since he was neither the pupil nor relative of a pupil of the offended party he cannot be held liable for the offense charged. *Held*, the information alleged that the complainant is a public school teacher who was unlawfully attacked by appellant while the former was engaged in the performance of his official duties and, therefore, is deemed to be a person in authority, pursuant to article 152 of the Revised Penal Code, as amended by Commonwealth Act No. 578. These allegations, coupled with the showing that appellant knew before the incident that the offended party was a public school teacher, are sufficient to properly indict appellant of the crime of direct assault upon a person in authority, under article 148 of the Code. The spirit and purpose behind Commonwealth Act No. 578 is to give teachers protection, dignity and respect while in the performance of their official duties. This protection extends not only against pupils or relatives of pupils, but against all persons who knowingly attack a teacher while engaged in the performance of his official duties. Respect for a teacher is required of all persons, whether pupils, parents of pupils, or otherwise, if we are to uphold and enhance the dignity of the teaching profession which the law similarly enjoins upon all persons for the sake of the pupils and the profession itself. PEOPLE *v.* CEPRISO, (CA) G.R. No. 13190-R, Jan. 31, 1956.

CRIMINAL LAW — ILLEGAL POSSESSION OF FIREARMS — ILLEGAL POSSESSION OF FIREARMS IS A CRIME *MALA PROHIBITA* AND THE DEFENSE OF GOOD FAITH CANNOT BE AVAILED OF AS A GROUND FOR ACQUITTAL. — The defendant, having been reported by a detainee in the municipal jail as possessing certain unlicensed firearms, was apprehended by two policemen upon orders of the chief of police. Although reluctant at first, the defendant finally admitted to the two policemen his possession of a *paltik* (home-made gun). He was brought to the office of the Justice of the Peace in the municipal building and there he stated in an affidavit that he received the gun from the former barrio lieutenant and hid it by burying the can containing it. He has been holding the gun since January up to September 20, 1952, but he claimed that he delivered the gun and the ammunition to the incumbent barrio lieutenant when the lieutenant announced "that anyone who is concealing firearms should surrender so that they will not be penalized." *Held*, illegal possession of firearm is considered *malum prohibitum*. Being charged for a statutory crime, the good faith invoked by appellant is immaterial. Mere unauthorized possession is penalized by section 2692 of the Rev. Adm. Code as later amended by R.A. No. 482, regardless of the motives of the accused. Furthermore, there is no law authorizing a barrio lieutenant to exempt any unauthorized possessor of firearm from criminal responsibility, even under the pretext of the government's peace campaign initiated by the Armed Forces of the Philippines. In fact, not even the President could give such assurance of immunity to any violator of the firearm law. His constitutional power of clemency can be exercised only after conviction. (Article VII, sec. 10 (6), Constitution). PEOPLE *v.* ALABAS, (CA) G.R. No. 14218-R, Feb. 15, 1956.

LABOR LAW — VACATION LEAVE — IN THE ABSENCE OF AGREEMENT THAT AN EMPLOYEE'S UNUSED LEAVES WILL TAKE THE FORM OF A CASH BONUS IN LIEU OF THE PAY AND WHERE THERE WAS NO OPPORTUNE DEMAND FOR THE SAME, THE CLAIM FOR SUCH VACATION PAY IS WITHOUT BASIS. — Plaintiff was under the employ of the defendant club as a Chief Steward from May 16, 1947 to July 12, 1952. During his stay, he was entitled to different sick leaves and vacation leaves of 15 days each. He only used the vacation leave for 1951 and the sick leave for 1950. When he was dismissed and separated from the service of the club, he brought an action to recover the amount due him for his leaves from 1947 to 1952 except the sick leave and the vacation leave which he used. The lower court ruled that the nature of the work of the plaintiff was that of an employee and therefore he was entitled to such sick and vacation leaves amounting to ₱2,772.64. From this decision the defendant appealed. *Held*, granting for a moment that the plaintiff was entitled to vacation leave with pay, it is believed, however, that there being no agreement whereby an option was given to him that his accrued or unused leaves will take the form of a cash bonus in lieu of vacation pay, and the further fact that there was no opportune demand for the enjoyment of such vacation leaves, the claim of the plaintiff for the money value of his unused leaves is without basis. The same is true with his claim for the money value of the sick leaves, there being no showing of actual illness during the period of his employment. ARCILLA *v.* WACK WACK GOLF & COUNTRY CLUB INC., (CA) G.R. No. 11518-R, Jan. 23, 1956.

LABOR LAW — MINIMUM WAGE LAW — SUBSTANTIAL COMPLIANCE WITH THE PROVISION OF THE MINIMUM WAGE LAW REQUIRING EMPLOYERS TO KEEP PRESERVED PAY ROLLS IS SUFFICIENT COMPLIANCE. — Upon complaint of ten laborers of Conpinco & Co., a furniture shop in Iloilo, this action for an alleged violation of the minimum wage law was commenced against the defendant, manager of said company. It was discovered that prior to April 26, 1954, the company was not keeping a regular payroll in violation of the Rules and Regulations promulgated by the Department of Labor for the implementation of the Minimum Wage Law. The defendant claimed that instead of the said preserved pay roll he pays the laborers by means of receipts. The lower court convicted the defendant for violating section 2 of art. 1, chapter VII of the Code of Rules and Regulations to implement the Minimum Wage Law which provides that: "Every employer shall maintain and preserve payroll bearing the signature or thumbmark of the employee concerned, in or about the premises where an employee is employed,...." *Held*, while the receipts required by Conpinco & Co., to be signed by its laborers for their wages is not exactly the same as the payroll prescribed by the Wage Administration Service, it may be considered as substantial compliance with what is called for in the prescribed form. Even granting that in a most strict sense the keeping of the records of the wages paid to its laborers is in violation of the Rules and Regulations of the Wage Administration Service, still no penalty would attach to such violation. It is significant to note that defendant was accused of having violated that particular section of the Rules and Regulations for the keeping of the required payroll, but going over the same Rules we have likewise noted

that no penalty for the violation is provided therein. Such being the case, they could not be considered penal regulations and a violation thereof is not a penal offense. PEOPLE *v.* UY KIMPANG, (CA) No. 14417-R, Feb. 8, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE ISSUANCE OF THE WRIT OF CERTIORARI IS SAID TO BE IN THE AID OF THE APPELLATE JURISDICTION OF THE COURT OF APPEALS IF IT HAS JURISDICTION TO REVIEW DECISIONS OF THE LOWER COURT. — This case is a petition for certiorari with writ of preliminary injunction seeking from the Court of Appeals an order enjoining the City Fiscal and Assistant City Fiscal from further proceeding with the prosecution of Criminal Case No. D-55499 of the Municipal Court of Manila in the investigation of the charge of robbery against the petitioner. The petitioner claims that the information filed by the fiscal is null and void because no preliminary investigation was conducted by the City Fiscal's Office in accordance with the mandatory provisions of sec. 38-C of Republic Act No. 1201. The crime charged here is serious physical injuries which is cognizable by both the Municipal Court and the Court of First Instance, but the case was instituted in the Municipal Court. It was claimed by the plaintiff that the issuance of the writ is in aid of the appellate jurisdiction of the Court of Appeals. *Held*, a writ of certiorari against a lower court is said to be in aid of the appellate jurisdiction of the Court of Appeals if the Court of Appeals has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the former. The Court of Appeals does not have any appellate jurisdiction over the actuations of the City Fiscal and his staff. It does not exercise supervisory authority over them. (Breslin v. Luzon Stevedoring Co., 47 O.G. 1170). Therefore, the review by certiorari sought in this petition seeking from the court an order enjoining the City Fiscal and his staff from further proceeding with the prosecution of a criminal case filed with the Municipal Court of Manila cannot be said to be in aid of its appellate jurisdiction inasmuch as appeal from any decision or order of said Municipal Court is to be taken to the Court of First Instance of Manila and not to the Court of Appeals. CO BUN KIM *v.* ARAGON, (CA) G.R. No. 16569-R, Feb. 6, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN ACCUSED CANNOT BE CONVICTED OF A MORE SERIOUS CRIME THAN THAT ALLEGED IN THE INFORMATION. — Defendant was a meat vendor in the market of Lurauen, Leyte. In the morning of November 11, 1951, Uy Sue Chia, a Chinaman, bought a piece of meat from the defendant which he said to be 700 grams and for which the Chinaman paid ₱2.00. On the way home, the Chinaman went to another store to buy cabbage and there he weighed the meat and found it to weigh only 600 grams. He returned to the defendant and demanded his change but the defendant took offense at this demand, refused to give back the change, and thereupon gave the Chinaman a fist blow on the mouth for which he suffered injuries. In the information, defendant was only charged with less serious physical injuries but the trial court convicted him of serious physical injuries because the offended party had lost a front tooth and thereby suffered a deformity. There was no allegation of such loss in the information so the defendant appealed. *Held*, even assuming that the loss of a front tooth constitutes a physical deformity (which is not true nowadays, considering the progress of dental science), such deformity was not alleged in the information.

It matters not how conclusive and convincing the evidence of guilt may be. An accused cannot be convicted in the courts of these Islands of any offense unless it is charged in the complaint or information on which he is tried or is necessarily included therein. He has a right to be informed of the nature of the accusation against him and to convict him of a crime higher or more serious than that charged in the information will be to deny him that right. PEOPLE *v.* REDOBLA, (CA) G.R. No. 14844-R, Jan. 26, 1956.