Five witnesses identified the appellant as the leader of the gang that took the victims from their respective houses. Feliciana Manubay testified that it was appellant who, with others, went up her house to take her husband and who took him to Barrio Buliran where she found her husband's dead body the following day. Lolita Alberto testified that she recognized appellant among those who took her husband to Barrio Buliran where, the following morning, she found the latter's body sprawling among other dead bodies. Cosme de la Cruz also pointed to appellant as among those who took his son from his house and who brought the same to Buliran to be killed. Maria Solis identified appellant as one of those who maltreated her husband. She later found her husband dead in front of her house. Maria Lopez was another witness for the prosecution who testified to having seen appellant come up her house with other men to take her husband. This witness saw appellant shoot her husband to death. All these killings took place on the night of Sept. 20, 1948. Appellant put up the defense of alibi. He denied having gone to the houses of the alleged victims in the evening of Sept. 20, 1948. He claimed that on the night of Sept. 20, 1948 he was in Cabanatuan Cty in the house of Jose Ramos whose rig he was driving. Jose Ramos corroborated appellant's testimony. Felix Gulapa also gave corroborating testimony in favor of appellant. *Held*, having been sufficiently identified as the leader of the gang that perpetrated the crimes charged, the alibi put up by appellant in an effort to exculpate himself from liability cannot certainly be of much help, not only because that defense is by nature weak because of the facility with which it can be fabricated, but also because there is nothing in the evidence to show why the prosecution witnesses would point to him as one of the culprits unless he is really one of those who had perpetrated the crimes. PEOPLE *v.* UMALI, ET AL., G.R. No. L-8866-8870, Jan. 23, 1957.

COURT OF APPEALS

CIVIL LAW — PROPERTY — LANDS COVERED BY THE WATERS OF A LAKE ONLY TEMPORARILY AND ACCIDENTALLY AND FOR THE SHORTER PERIOD OF TIME OF THE YEAR ARE PROPERTY OF PRIVATE OWNERSHIP. — Plaintiff bought from the heirs of De Relos a parcel of land located in the province of Camarines Sur. To the east of this piece of land laid Bula lake. During the longer part of the year Bula lake left dry portions of said land. Said portions of land were covered by the waters of Bula lake only during the months of December, January and March. Defendants took possession of these portions of land, claiming the same to be of public ownership. Plaintiff, on the other hand, claimed ownership of the same since these portions of land adjoined his property. *Held*, the law applicable to the present case is the Spanish "Ley de Aguas de 3 de Agosto de 1866", the effectivity of which was extended to the Philippines on Sept. 21, 1871, and which has expressly been declared as supplementary legislation to the new Civil Code and Irrigation Law. Consequently, the controverted parcels of land cannot be considered as of public ownership because Art. 77 of the "Ley de Aguas de 3 de Agosto de 1866" expressly provides that "Los terrenos que fueren accidentalmente inundados por las aguas de los lagos o por los arroyos, rios y demas corrientes, continuaran siendo propiedad de sus deños respectivos." Even in the event that the two parcels of land claimed by appellants may be considered as accretions gradually deposited

by accessions or sediments from the water of Bula lake, still appellee should be considered as the owner of said parcels of land because Article 84 of the Spanish Law of Waters of 1866 provides that "Pertenece a los dueños de los terrenos confinantes con los arroyos, torrentes, rios y lagos, el acrecentamiento que reciban paulatinamente por la accesion o sedimentacion de las aguas." YOROBE *v.* OROZCO, (CA) G.R. No. 14820-R, Nov. 14, 1956.

CIVIL LAW — PROPERTY — THE OWNER OF THE LAND HAS NO RIGHT TO DEMAND RENTS FOR THE OCCUPATION THEREOF BY THE BUILDER IN GOOD FAITH PENDING THE PAYMENT OF INDEMNITY OR THE SALE OF THE LAND TO THE LATTER. — Appellant Maximo Baquilaran built a house on two lots which on partition fell to the plaintiffs. Appellant was the son of Benito Baquilaran, also a defendant, one of the co-owners of the six lots to which the two lots abovementioned belonged. The lower court found that appellant built his house in good faith. It ruled that the plaintiffs were entitled to acquired said house of appellant by paying him ₱5,000, or to compel appellant to pay them the price of the lands on which appellant's house stood. Should the plaintiffs choose to acquire the house, appellant, the trial court ruled, had the right to retain the same until the amount of ₱5,000 was satisfied by the plaintiffs. The court ordered appellant to pay rents to the plaintiffs in the amount of ₱120 a month from October, 1957 until the plaintiffs should have acquired his house, or until appellant should have chosen to buy the lands where his house was built. *Held*, appellant's house falls within the scope of the term "useful expenses." Since he built it in good faith he has the right of retention pending reimbursement. This right extends to the land itself, because the right to retain the improvements while the indemnity is not paid implies the tenancy or possession in fact of the land on which they are built. It need only be added, as a logical conclusion from what has been said, that the owner of the land has no right to demand rents for the occupation thereof by the builder in good faith pending the payment of the indemnity or the sale of the land to the latter, whichever is the choice of the said owner. BAQUIRAN, ET AL., *v.* BAQUIRAN ET AL., (CA) G.R. No. 13515-R, Nov. 12, 1956.

CIVIL LAW — PROPERTY — THE NATURE OF PROPERTIES OWNED BY CITIES IN THIS COUNTRY IS DETERMINED BY THE CHARACTER OF THE USE OR SERVICE FOR WHICH THEY ARE INTENDED OR DEVOTED. — Appellants constructed their houses on a lot donated to the city of Manila which was intended for a traffic circle. A lease contract was executed between them and the city mayor. The city needed said lot for the intended purpose so that it gave to the appellants notice to vacate which the latter did not mind claiming they had a valid lease contract and that the property in question was patrimonial being vacant when they occupied the same. *Held*, the nature of the properties owned by cities in this country is determined by the character of the use or service for which they are intended or devoted. Properties which are intended for public use or for some public service are properties for public use. All others are patrimonial properties. It matters not that the property is not actually devoted for public use or for some service. CAPITULO ET. AL., *v.* AQUINO (CA) G.R. No. 15488-R, Nov. 19, 1956.

CIVIL LAW — ACCION PUBLICANA — RULE 72 OF THE RULES OF COURT DOES NOT APPLY AT ALL TO AN ACCION PUBLICIANA. — On Jan. 19, 1956 the Philippine Republic brought a civil action for the recovery of a portion of the Meisic Military Reservation located in the City of Manila. Petitioner, by way of affirmative defense, alleged that she had acquired the right to purchase the land in question from the Government and, as a counter-claim, sought to recover from the latter ₱5,000 as compensation for one-half of the value of the improvements she had introduced on the property. Respondent Judge ordered petitioner to vacate the land in question, to remove the improvements she might have thereon and to restore full possession thereof to the Philippine Republic. Petitioner was also ordered to pay the back rentals. Invoking the provisions of Section 9, Rule 72 of the Rules of Court, the Philippine Republic moved for the immediate execution of the judgment. Respondent Judge issued the corresponding writ of execution. Her motion for reconsideration denied, petitioner sought to prohibit respondent Judge on the ground that he acted in the premises in excess of his jurisdiction and with grave abuse of discretion. *Held*, it is obvious that the action instituted by the Philippine Republic against Asuncion V. Rodis in the Court of First Instance of Manila is not the summary action of forcible entry or unlawful detainer but an accion publicana. Consequently, Rule 72 does not apply to it at all. It was, therefore, clearly erroneous on the part of respondent Judge to have issued the writ of execution prayed for by the Philippine Republic in accordance with the provisions of Section 9, Rule 72 of the Rules of Court. RODIS *v.* REPUBLIC OF THE PHILIPPINES, ET AL., (CA) G.R. No. 19117-R, Jan. 30, 1957.

CIVIL LAW — CONTRACTS — ALIENATIONS BY ONEROUS TITLE "ARE PRESUMED FRAUDULENT WHEN MADE BY PERSONS AGAINST WHOM SOME JUDGMENT HAS BEEN RENDERED IN ANY INSTANCE". — On Nov. 29, 1948 the CFI of Batangas rendered judgment ordering primarily defendant Fidel Garcia and subsidiarily and jointly defendants Ricardo Bathan and Leonardo Gardoce to pay plaintiffs the aggregate sum of ₱26,085, which sum, on appeal, was reduced by the Court of Appeals to ₱14,085. The writ of execution was issued on March 26, 1951 and was returned unsatisfied because no properties of the defendants could be attached, defendant Fidel Garcia having sold for the price of ₱900 his sole parcel of land to spouses Clemente Perez and Marina Renicolla on Dec. 2, 1950. Believing that the sale executed by Fidel Garcia was fraudulent, the plaintiffs instituted another action, the present action, seeking the rescission of the deed of sale executed by the said Fidel Garcia. The trial court annulled the said sale made by Garcia. *Held*, it is, therefore, undisputable that the said sale is fraudulent and rescissible because, according to Art. 1378 of the New Civil Code (1297 of the old), alienations by onerous title "are presumed fraudulent when made by persons against whom some judgment has been rendered in any instance", and pursuance to Article 1381 of the same code (1291 of the old) contracts "undertaken in fraud of creditors and the latter cannot in any other manner collect the claims due them", are rescissible. GONZALES, ET AL., *v.* GARCIA, (CA) G.R. No. 15843-R, Dec. 29, 1956.

CIVIL LAW — SALES — REDEMPTION OF LAND SOLD *A RETRO* BY VENDORS AND A PERSON WHO CLAIMS TO BE RELATIVE OF THE SAME, ONE IN A PUBLIC

INSTRUMENT, THE OTHER IN A PRIVATE DOCUMENT, IS VALID, BUT NOT AGAINST INNOCENT THIRD PERSONS. — Plaintiffs sold, under a *pacto a retro*, a parcel of land with the improvements thereon to Leonardo Revilla. The period of repurchase was 3 years. The sale appeared in a public document. Maria Maza, wife of Leonardo Revilla, sold this land to Alipio Cordero. Before this sale, Maria had leased the same land to Toribio Cordero. After the sale to A. Cordero, Maria resold, in behalf of her husband, the land in question to plaintiffs, this resale embodied in a public document. Although the sale to A. Cordero was made prior to the repurchase by plaintiffs of the same land involved in the two sales, A. Cordero did not wrest possession of the land, subject of the sales, from the plaintiffs. It was only after the redemption by plaintiffs that A. Cordero drove away the tenants of the plaintiffs and took possession of the land under question, by virtue of the sale made to him. The questions presented by the case were: the two sales both valid? Who had the right to possession of the land under question? *Held*, from the evidence adduced by the parties, it cannot be determined why defendant Maria Maza resold the property in question twice; once to defendant-appellant A. Cordero in a private document; and then to the plaintiffs in a public document. In either case, however, the resale is valid although not as against innocent third parties. The legal possession of the property resold was deemed delivered to plaintiffs upon the execution of the deed of resale. Applying the general principles of law relative to the sales of properties to different vendees, plaintiffs in the case have the better right to the real possession. LEONIDO, ET AL., *v.* MAZA ET AL., (CA) G.R. No. 12241-R, Nov. 28, 1956.

CIVIL LAW — TORTS — MORAL DAMAGES ARE RECOVERABLE EVEN BEFORE PROMULGATION OF THE NEW CIVIL CODE. — On May 1, 1949 Anecito Belisario, Jr. was killed when the passenger truck in which he was riding, owned by defendant Co. collided with another truck on the Iligan-Cagayan de Oro Highway. The heirs of the deceased reserved the right to file separate civil action for damages against the defendant Co. in the criminal action for homicide through reckless imprudence against the driver of the ill-fated bus. Said driver was found guilty and accordingly on Dec. 4, 1950, herein plaintiff, parents of deceased commenced this action in the CFI of Lanao against defendant Co. claiming among others ₱5,000.00 for moral damages which the lower court granted. Defendant appealed. *Held*, appellant contends that moral damages are not recoverable for the death of the deceased, inasmuch as it happened under the regime of the old Civil Code, which contained no provision authorizing such recovery. It is true that the right to recover moral damages has been given express statutory recognition for the first time in the New Civil Code. The position of appellant is that the absence of similar provision in the old Civil Code bars recovery in the instant case. The silence of said Code on the subject, however, has not deterred the Supreme Court from awarding moral damages in analogous cases which arose under it. From the foregoing it would seem quite clear that the right to recover moral damages for the death of a person prior to the effectivity of the New Civil Code, caused by the negligence of anothr, whether the same constitutes culpa aquiliana or culpa contractual, finds its juridical basis within the framework of the Code itself, and it is not necessary, in order to enforce such right at present to resort to the transitory provision of Art. 2253 of the New Civil Code. BELISARIO *v.* MINDANAO BUS CO., (CA) G.R. No. L-12401-R, July 7, 1956.

CIVIL LAW — CONSTRUCTIVE TRUST — A TRUSTEE CANNOT CREATE IN HIMSELF AN INTEREST OR RIGHT ON THE THING HELD IN COMMON. — Catalino Antuerpia was decreed owner of a tract of land situated in Legaspi City. He sold a portion thereof to Miguel Vargas, deceased husband of defendant. Felipe Brizuela, an heir of Catalino Antuerpia was a subscribing witness to the private document of sale executed between deceased Miguel Vargas and deceased Catalino Antuerpia. Felipe Brizuela subsequently became owner of the land originally decreed in the name of Catalino Antuerpia. It did not appear in the record by what mode of transfer was this change effected. When Felipe Brizuela died, his heirs, plaintiffs in this case, who had transfer certificates issued in their name moved to exclude defendant Ciriaca Vda. de Vargas from the piece of land she had been occupying because the same was included in that tract of land covered by the transfer certificate issued in their name. Defendant Ciriaca claimed ownership of the lot she occupied by virtue of the sale made by Catalino Antuerpia to her deceased husband. *Held*, the foregoing undisputed facts have established a constructive trust. Catalino Antuerpia was occupying a fiduciary relation with Miguel Vargas to whom he sold that portion of 196 square meters when he obtained the decree of registration over the land, and therefore, consistenlty with the principles of good faith, said trustee cannot be allowed to create in himself an interest or right in opposition or adverse to that of the *cestui que trust*. BRIZUELA, ET AL., *v.* VDA. DE VARGAS, (CA) G.R. No. 9820-R, Jan. 23, 1957.

CRIMINAL LAW — ASSAULT UPON A PERSON IN AUTHORITY — OFFENDED PARTY NEED NOT BE ACTUALLY PERFORMING HIS OFFICIAL DUTIES WHEN ASSAULTED. — For failure of the accused in Criminal Case No. 3887 to appear at a scheduled hearing on December 16, 1956, he was ordered arrested and on December 21 declared guilty of contempt of court by Judge Jose Teodoro. On January 5, 1954 Judge Teodoro was invited guest at a dinner dance of the University Club in Bacolod City. When he was about to enter the clubhouse, all of a sudden, somebody whom he could not recognize at that moment grabbed his left hand and blows were delivered on his lips. The assailant was proved to be the accused. Charged and convicted of the crime of assault against a person in authority he appealed assigning as one of the errors that at the time the assault was committed, Judge Teodoro was not engaged in the performance of his official duties. *Held*, it is not necessary that the person in authority who was assaulted was actually performing official duties. The law employs the phrase "on the occasion of such performance" and this has been interpreted to include cases where the assaults were made "by reason of" the performance of official duties. PEOPLE *v.* TORRECARION, (CA) G.R. No. L-14174-R, Sept. 24, 1956.

CRIMINAL LAW — MALVERSATION OF PUBLIC FUNDS — THE PRESUMPTION OF GUILT ESTABLISHED BY THE LAST PARAGRAPH OF ART. 277 OF THE REVISED PENAL CODE IS MERELY *PRIMA FACIE* AND MAY BE REBUTTED OR OVERCOME BY PROOF TO THE CÓNTRARY. — Appellant was a deputy provincial and municipal treasurer as well as part time postmaster of the municipality of San Fernando, Romblon. After an extended leave of absence, she returned to San Fernando on Sept. 25, 1952, a Saturday. Pedro Molino, field auditor's clerk of the office of the provincial auditor arrived at San Fernando to examine appellant's accounts. Preparatory to the examination Molino placed a seal on appellant's safe and then left for the municipality of Cajdiocan. Sept. 30, the books and accounts of the municipal treasurer were examined by Jose Montaña, administrative deputy of the provincial treasurer's office and Pedro Molino. When appellant returned from his extended leave of absence, he found a big pile of work on his desk which kept him busy the whole day, so much that on Sept. 30 all the collections had not yet been recorded. Appellant was given time to do so. After the examination conducted by Montaña and Molino a shortage of ₱5,647.07 was discovered. The examiners demanded that the appellant make good his cash shortage at once but the latter asked for time within which to check his accounts. In convicting appellant for malversation of public funds or property, trial judge relied strongly on the presumption of guilt established by the last paragraph of Art. 217 of the Revised Penal Code that a public officer has put missing funds or property to personal use in the event of his failure to have duly forthcoming any public funds or property with which he is chargeable, upon demand of any duly authorized officer. *Held*, it should be noted that the presumption established by the law is merely *prima facie* and may be rebutted or overcome by proof to the contrary. Thus, if the accused has adduced evidence showing that he has not put said funds or property to personal uses, then the presumption is at an end and the *prima facie* case is destroyed. PEOPLE *v.* BERNAS, (CA) G.R. No. 15373-R, Oct. 25, 1956.

CRIMINAL LAW — PUBLIC OFFICER — AN EMERGENCY HELPER OF THE BUREAU OF TREASURY WHO TAKES PART IN THE PERFORMANCE OF PUBLIC FUNCTIONS OR PUBLIC DUTIES AS SUBORDINATE OFFICIAL OF THE NATIONAL GOVERNMENT IS A PUBLIC OFFICER. — Jovito Irineo y Empistan was found guilty of infidelity in the custody of public documents. He was an emergency helper on daily wage basis and was particularly assigned as janitor in the Division of Backpay Claims. Besides his duties as janitor, he was entrusted with the delivery of official papers to the chiefs and assitsant chiefs of the different sections and divisions of the Bureau. However, Irineo did not have any appointment either as janitor or messenger. On March 24, 1953 Rafael Abad, an examiner of the Backpay Division, requested appellant to help Apolonio Daza expedite the issuance of the backpay certificate belonging to Leopoldo P. Aguilar. Appellant presented said backpay certificates to National Treasurer Vicente Gella who had then replaced National Treasurer Ver, after having asked typist Casilang to replace Ver's name with Gella's Ver having then retired. Mr. Gella acknowledged and approved the backpay certificate. Instead of returning the same after its approval by National Treasurer to the Backpay Division for the releasing clerk to properly release it, appellant gave the same to Apolonio Daza who signed for the receipt for the the original. Appellant did not demand any power of attorney from Daza and signed by Leopoldo P. Aguilar authorizing Daza to draw the backpay certificate. When Leopoldo P. Aguilar claimed the said backpay certificate, he found it already withdrawn by said Apolonio Daza. *Held*, appellant's contention that he was not a public officer under the contemplation of the law was not well taken. The fact that he was a mere emergency helper without appointment as janitor or messenger cannot have the effect of considering him as a private employee or officer, nor exempt him from liability for infidelity in the custody of the document

entrusted to him on March 24, 1953. PEOPLE v. EMPISTAN, (CA) G.R. No. 15653-R, Jan. 29, 1957.

LABOR LAW — SRIKES — STRIKE DOES NOT EXCUSE NON-COMPLIANCE WITH THE TERMS OF A CONTRACT. — On July 10, 1948 plaintiff and defendant entered into a contract whereby the plaintiff undertook to manufacture and deliver, within 30 working days approximately after the defendant had approved and signed the contract, 14 pieces of steel windows with the corresponding accessories. Such proposal was approved by defendant on the same date. It was the understanding of the parties that the handles, locks, and roto-operators were those produced in the United States. Plaintiff failed to deliver said steel windows with their accessories on the expiration of the 15 days which were given as an extension of the 30 days originally agreed upon. Defendant refused to pay for the balance of the price for the steel windows. Plaintiff then brought an action to recover the same. Defendant set up the defense that the plaintiff had failed to comply with the contract for the delivery of the steel windows, thereby causing considerable damage to the defendant. Defendant claimed damages in the sum of ₱2,000. Plaintiff contended that his non-compliance with the contract was excused due to a state of strike in some parts of the United States from which the accessories of the steel windows had to be imported as previously agreed upon between plaintiff and defendant. *Held*, it is fundamental in law that a strike does not excuse non-compliance with the terms of a contract unless such an eventuality had been expressly provided for in the contract. Such is not provided in the agreement of the parties in the present case. PEDRET *v.* ENRILE, (CA) G.R. No. 9311-R, Jan. 21, 1957.

LABOR LAW — EIGHT-HOUR LABOR LAW — UNDER SECTION 4 OF COM. ACT NO. 444, PUBLIC UTILITY EMPLOYERS ARE EXEMPT FROM THE OBLIGATION OF PAYING ADDITIONAL COMPENSATION FOR WORK DONE BY THEIR EMPLOYEES ON SUNDAYS AND LEGAL HOLIDAYS. — Plaintiffs brought an action against Luzon Stevedoring Co., Inc. to recover overtime compensation and for work done on Sundays and holidays in defendant's tugboat M/T WA HOO. Defendant admitted that plaintiffs were its employees but denied that they ever worked overtime or on Sundays and legal holidays. The lower court dismissed the complaint and plaintiffs appealed. The lower court held that defendant was a public utility engaged in public services and was not liable for the payment of additional compensation for work done by their employees on Sundays and legal holidays. The language of the statute upon this subject is clear and unequivocal. The section referred to consists of two parts: the first prohibits a person, firm or corporation, etc., from compelling an employee or laborer to work during Sundays and legal holidays unless the latter is paid an additional sum of at least twenty-five per centum of his regular remuneration; and the second part, which provides for and establishes an exception, exempts public utilities performing some public service from the operation of said prohibition. It is clear, therefore, that public utilities performing some public service may make their employees or laborers work during Sundays and legal holidays without paying them any compensation other than their regular remuneration. GREGORIO ET AL., *v.* LUZON STEVEDORING CO., INC., (CA) G.R. No. 15826-R, Nov. 15, 1956.

LAND REGISTRATION — ACTION FOR RECONVEYANCE — THE REGISTRATION OF LAND AND THE ISSUANCE OF THE CERTIFICATE OF TITLE THERETO DO NOT PRECLUDE AN ACTION FJR RECONVEYANCE.— F. Balo, instructed by his father to register the latter's three lots in a cadastral hearing for the purpose ,registered two of said three lots in his own name and only one lot in his father's name. A decree of registration for said two lots and the corresponding certificates of title for said two lots were issued in the name of F. Balo. When T. Balo, father of F. Balo, died, he left several heirs, his children and grandchildren, plaintiffs herein. Notwithstanding the issuance of the title in F. Balo's name, plaintiffs herein remained in possession of the land, constructing their houses thereon, and paying for their share of the land taxes. Several times they demanded of F. Balo to correct the titles to the land so as to include them, since they were part owners of the same. F. Balo kept promising to do so. When the latter died J. Balo, eldest son of F. Balo and one of the defendants in this case, succeeded by threat and intimidation in evicting plaintiffs from the land which had been registered in his father's name. Plaintiffs then sought for the reconveyance of said land. Defendants contended that the decree of registration in the name of F. Balo of the land in question in the cadastral proceedings constituted *res judicata* of the rights over the land of said registered owner. *Held*, it is settled in this jurisdiction that the registration and the issuance of the certificate of title thereto under the provisions of Act No. 296 do not preclude an action for reconveyance notwithstanding the lapse of the one year period within which a petition for review of the decree of title may be filed. BALO ET AL., *v.* BALO ET AL., (CA) G.R. No. 9041-R, Jan. 15, 1957.

LAND REGISTRATION LAW — JURISDICTION OF CADASTRAL COURT — THE JURISDICTION OF THE CADASTRAL COURT IN CASES WHERE LANDS ALREADY REGISTERED UNDER THE LAND REGISTRATION ACT IS INCLUDED IN A CADASTRAL PROCEEDING IS LIMITED TO ORDERING THE NECESSARY CORRECTIONS OF TECHNICAL ERRORS IN THE DESCRIPTION OF THE LANDS. — The plaintiffs and the defendant were the respective owners of parcels of land which adjoined each other, situated in the barrio of Balintawak. These two lots formerly form part of the Hacienda de Maysilo. The title of the plaintiff-appellees was derived from a decree of registration issued in an ordinary registration proceeding which dated back to 1917. The title of the defendant-appellant was based on a decree issued in a cadastral proceeding at a much later date. Appellant constructed a house on his lot and according to the description of the land of the plaintiff-appellees, and based on their title, the eaves of said defendant's house extended beyond the boundary of his lot. The CFI of Rizal ordered defendant to remove said eaves and to return the portion covered by the same to the plaintiffs. The issue is: which plan should prevail in the description of the lots? *Held*, tested, therefore, by the well-settled rulings on the subject, the findings of the trial court complained of must be upheld. It is not disputed that the title of the appellees is derived from a decree of registration issued in an ordinary registration proceeding which dates back to the year 1917, while that of the appellant is based on a decree issued in a cadastral proceeding at a much later date. When the lots in question, therefore, were brought anew in the cadastral proceedings, the title to the lot owned by the appellees issued in the name of their predecessors-in-interest was already settled and adjudicated by a final decree in a land registration court. The description and location, therefore, of said lot as stated in said title is final and conclusive,

and must prevail over the description and location of the lot described in appellant's title. The Cadastral Court had no jurisdiction to decree again the registration of said lot, and its attempt to issue a second decree for the same is null and void, as its jurisdiction is only limited to the necessary correction of the technical errors in the description of the land. SY-JUCO *v.* FRANCISCO, (CA) G.R. No. 9493-R, Dec. 27, 1956.

LAND REGISTRATION — PRESCRIPTION — PROPERTY REGISTERED UNDER THE LAND REGISTRATION ACT CANNOT BE ACQUIRED BY PRESCRIPTION. — Doroteo Mercado constituted a mortgage over the improvements on his homestead to defendants Anastacio Abatayo and Jose Abatayo for the sum of ₱1,000. The land under homestead was covered by Original Certificate of Title No. 4137. Doroteo Mercado died without satisfying his mortgage debt nor was the mortgage foreclosed. Plaintiffs Sisenando and Cenen Mercado were the only children and heirs of Doroteo Mercado. Being minors, and assured by defendants that signatures would facilitate the return to them of the land which had been occupied by defendants, Sisenando and Cenen Mercado signed two documents — (1) a deed of absolute sale over the land in question and (2) a deed of extrajudicial partition. Original Certificate of Title No. 4137 was cancelled and Transfer Certificate of Title No. T-14655 in the name of defendants was issued in lieu of the former. When the plaintiffs learned of the true nature of the instruments which they had signed as well as the issuance of a torrens title in the name of the defendants for the land in question, they brought an action for the annulment of the deeds they signed and for the reconveyance to them of the land through the cancellation of the transfer certificate of title. Appellants maintained that the court below should have dismissed the case on the ground of prescription through adverse possession since they had been in possession of the land since 1938. *Held*, this is completely untenable. Property registered under the Land Registration Act, be it a homestead originally covered by a patent, cannot be acquired by prescription or adverse possession. MERCADO *v.* ABATAYO, (CA) G.R. No. 16323-R, Feb. 18, 1957.

LAND REGISTRATION—PUBLIC LAND LAW — UNDER SECTION 20 OF THE PUBLIC LAND ACT, PREVIOUS APPROVAL OF THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES OF A TRANSFER OF RIGHTS OVER A LAND SUBJECT OF HOMESTEAD AND THE IMPROVEMENTS THEREON IS REQUIRED ONLY AFTER THE APPROVAL OF THE HOMESTEAD APPLICATION. — A parcel of land of five meters known as Lot No. 2531, Cadastre 275, was originally applied for and allocated to Segundo Cabatingan in 1938. Cabatingan and his wife, Ikdang, stayed on the land and cultivated the same. On Cabatingan's death, Ikdang transfered her rights over said land and the improvements thereon to Bugtas. Bugtas appointed Hermogenes Garcia as caretaker of this land. Subsequently Garcia acquired Bugta's rights over the lot. These transfers were made without previous approval of the Secretary of Agriculture and Natural Resources. Garcia filed a homestead application over the lot. Subsequently petitioner filed another homestead application over the same lot in the office of the Director of Lands in Manila. Garcia's homestead application, however, was accepted and given due course. On appeal, the Secretary of Agriculture and Natural Resources approved the decision of the Director of Lands. Hence this petition for certiorari against the respondent Secretary. One reason advanced by petitioner is that the transfer of rights over the contested lot by its previous possessors without the previous approval of respondent Secretary worked as a forfeiture of whatever prior rights the previous possessors — and through them, Garcia — had over the land. Hence, approval of the decision of the Director of Lands by respondent Secretary was an abuse of discretion on the latter's part and/or without or in excess of his jurisdiction. *Held*, the record does not show that Segundo Cabatingan's homestead application was duly approved by the Director of Lands. The approval of the Secretary of Agriculture and Natural Resources is a prerequisite for the validity of the transfer of the rights of a homestead applicant only when his application had been duly approved, but in the event that there is no showing that his application had been approved, as in this case, then the transfer of whatever rights he may have over the homestead subject of his application, does not need such approval. SAYSON *v.* SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, (CA) G.R. No. 16615-R, Jan. 29, 1957.

LAND REGISTRATION — PUBLIC LAND LAW — THE DECISION OF THE DIRECTOR OF LANDS AS APPROVED BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES ON QUESTIONS OF FACT IS CONCLUSIVE. — In 1938 petitioner filed a sales application covering a parcel of land. From 1939 to 1941 a group of immigrants headed by Pedro Tabugoc entered the land and cultivated portions thereof. They were not molested by the applicant-corporation, petitioner herein. In 1947 the occupants, represented by Pedro Tabugoc, filed with the Director of Lands a sworn protest against the sales application of petitioner, alleging non-occupation and abandonment by the latter. An administrative investigation was conducted. Acting on the report made by the investigator, the Director of Lands rendered a decision dismissing the protest. The occupants-protestants appealed to the Secretary of Agriculture and Natural Resources who, after a careful study of the case, modified the decision of the Director of Lands by excluding from the sales application the portions of land occupied by the protestants. From the decision of the Secretary of Agriculture and Natural Resources, petitioner instituted *certiorari* proceedings in the CFI of Cotabato. After hearing, the court set aside the decision of the respondent Secretary of Agriculture and Natural Resources. The principal reason behind the court's decision reversing that of respondent Secretary's was the court's disagreement with the finding of respondent Secretary that petitioner-corporation did not protest against the occupation of the land in question by the other appellants, occupants of the land, in this case. The lower court held that petitioner-appellee did protest, basing said finding of fact on an alleged letter of petitioner-corporation's Vice President to the local office of the Bureau of Lands. *Held*, a decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources, upon a question of fact, is conclusive and not subject to review by the courts, in the absence of a showing that such decision was rendered in consequence of fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of evidence, so long as there is some evidence upon which the finding in question could be made. BABAO AGRICULTURE CO., INC. *v.* LOPEZ, ET AL., (CA) G.R. No. 11837-R, Oct. 29, 1956.

LAND REGISTRATION — PUBLIC LAND LAW — THE SALE OF A HOMESTEAD BEFORE THE EXPIRATION OF 25 YEARS FROM THE ISSUANCE OF PATENT IS NOT RENDERED NULL AND VOID BY THE FAILURE TO OBTAIN THE REQUIRED APPROVAL FROM THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES. — Plaintiffs owned the land in question through homestead. Paten was issued on May 11, 1926. On March 7, 1946 plaintiffs signed a deed of absolute sale which was subsequently notarized. Plaintiffs alleged that this sale was "fictitious, false and fraudulent, having been executed wilfully, criminally and illegally at the initiative of the defendant for his benefit without the knowledge and consent of the plaintiffs, and their signatures were either falsified or obtained thru fraud and deceit and without consideration contrary to what was recited in the said deed." The trial court, however, found that that deed of sale was good and valid. Plaintiffs appealed assigning this as error and that said sale made to defendant should have been held null and void, anyway, since it was made in violation of sec. 115 of Com. Act No. 141, as amended, because the approval of the Secretary of Agriculture and Natural Resources had not been procured, the sale having been made before the expiration of 25 years from the issuance of the patent. *Held*, as to whether or not the deed of sale in question is null and void for the reason that the sale took place before the expiration of 25 years from the issuance of patent, without the previous approval of the Secretary of Agriculture and Natural Resources, is a settled question. The failure to obtain the required approval from the Secretary of Agriculture and Natural Resources does not render the sale null and void. The required approval may be regarded as directory; hence, in case of necessity it may be applied for even after the sale had been consummated. SIGUE ET AL., *v.* ESCARO, (CA) G.R. No. 8964-R, Nov. 29, 1956.

LAND REGISTRATION — PUBLIC LAND LAW — THE DECISIVE FACTOR DETERMINING A LAND ACQUIRED BY HOMESTEAD AS CONJUGAL OR BELONGING TO ONLY ONE OF THE SPOUSES IS THE TIME OF THE FULFILLMENT OF THE REQUIREMENTS OF THE PUBLIC LAND LAW FOR THE ACQUISITION OF SUCH RIGHT TO PATENT. — Pio Arroyo made the final fee on his homestead on June 11, 1923, but the patent was issued on Nov. 12, 1935. By his first marriage Pio had a son and another son by his second marriage which took place in Feb. 21, 1925. The son of the first marriage sold said homestead claiming it to be his which gave rise to an action for recovery by the second son upon his knowledge of the alienation. What is then the factor to determine whether homestead is conjugal or just belonging to one of the spouses? *Held*, the decisive factor in the determination of whether a land acquired by way of homestead is conjugal property or belonging to only one of the spouses is not the time of the issuance of homestead patent but the time of the fulfillment of the requirements of the public land law for the acquisition of such right to the patent. AMOL *v.* ARROYO ET AL., (CA) G.R. No. 15975-R, Nov. 7, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE DATE OF MAILING OF A PLEADING, AS SHOWN BY THE REGISTRY RECEIPT, SHOULD BE CONSIDERED AS THE DATE OF ITS FILING IN COURT. — Josefa, Pilar, and Dolores, all surnamed De Jesus, filed an action in the CFI of Laguna against petitioner with respect to the ownership of a portion of land covered by Transfer Certificate of Title

No. T-129 issued by the Registry of Deeds of Laguna. The answer filed by petitioner relied upon defense of exclusive ownership. The parties submitted a partial stipulation of facts and after the presentation of additional evidence by them, the respondent Judge, on June 20, 1956, rendered judgment in favor of the plaintiffs. Notice of said judgment was received July 11 of the same year. On Aug. 9, 1956 petitioner sent by registered mail addressed to the CFI of Laguna a motion for reconsideration which was received in court on Aug. 10 and was denied on Aug. 17, notice of the corresponding order of denial having been received by petitioner on Aug. 27. On this same day, Aug. 27, petitioner sent by registered mail addressed to the CFI an *ex-parte* urgent motion for the extention up to Sept. 12 of the same year of the period within which to perfect his appeal. The same was received in the office of the Clerk of Court on Aug. 29. At the bottom of the said motion counsel for petitioner addressed a notice to the Clerk of Court requesting him to submit the motion to the court upon receipt thereof. Counsel further certified that on the same day, Aug. 27, 1956, a copy of the motion was sent by ordinary mail to the adverse party. Respondent Judge considered the date of receipt, instead of the date of mailing as evidenced by the registry receipt, of the motion for reconsideration — also of the *ex-parte* urgent motion for extension — as the date of filing. On this assumption, respondent Judge denied both motion for reconsideration—and also of the *ex-parte* urgent motion for extension of the period for appeal. *Held*, it is now the rule that the date of mailing of a pleading, as shown by the registry receipt, should be considered as the date of its filing in court. BELARMINO *v.* ALIKPALA, (CA) G.R. No. 18740-R, Jan. 26, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A MOTION FOR EXTENTION OF TIME WITHIN WHICH TO FILE ANSWER MADE ON THE LAST DAY OF THE ORIGINAL PERIOD TO ANSWER, WITHOUT NOTICE THEREOF TO THE OPPOSITE PARTY, IS ALLOWABLE IN THE INTEREST OF JUSTICE. — Plaintiffs lodged a complaint with the CFI of Manila against defendants for damages for breach of contract. Summons were served on defendant Surety and on the principal Agelino Canlas. Due to negligence of a clerk in the Surety's office, Surety's counsel got the copy of the summons only on the last day for the filing of answer. The same day counsel for defendant Surety filed an *ex parte* motion for extention to file its answer upon the plaintiffs. Defendant Canlas averred that he was taken sick and that he had entrusted his case to an attorney who failed to file the answer. Plaintiffs filed a motion to declare defendants in default which the trial court granted. The trial court directed the plaintiffs to adduce their evidence. On the strength of this evidence, the trial court rendered judgment against the defendants who, thereby, appealed. *Held*, the explanation adduced by the defendant Surety relative to the last-day filing of its motion for extention is meritorious. The fact that the defendant Surety's motion for extention was made *ex-parte*, without service of a copy or a notice of hearing thereof upon the opposite party, does not justify the treatment of such motion as a mere scrap of paper. And considering especially that such a motion is one which legal practitioners ordinarily present *ex parte* and is left to the court's sound discretion, we believe that the trial court, bearing in mind the greater interests of justice, should have granted said motion (Sec. 4, Rule 26). TERROBIAS *v.* CANLAS, (CA) G.R. No. 15068-R, Dec. 27, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — ERRORS MERELY OF JUDGMENT OR OF PROCEDURE AND NOT OF JURISDICTION ARE CORRECTIBLE BY APPEAL AND NOT BY CERTIORARI. — Petitioners are the heirs and successors of Marciano A. Roxas. In his lifetime Roxas bought from the heirs of Gregorio Galindo all of the latter's rights, interests, titles and participations over a lot which said Galindo had agreed to buy from the Bureau of Lands. The agreed price thereof was to be divided into ten equal instalments. All this was pursuant to Act No. 1120 of the Philippine Commission regarding the purchase of "friar land estates" and the subdivision thereof into small lots. Roxas completed the payment of the lot to the Government. The heirs of Galindo, however, did not follow the rules and regulations established by the Bureau of Lands when they assigned all their rights, titles, interests and participations in the lot in question. They merely executed a "Documento de Compromiso". Roxas also failed to present the deed of assignment to the Director of Lands as required by Act. No. 1120. So the name of Gregorio Galindo remained in the records of the Bureau of Lands and subsequently, title to the lot was issued in the name of Galindo's heirs. Galindo's heirs refused to execute a final deed of sale. Hence, the heirs of Roxas brought an action for specific performance which defendants moved to dismiss. Respondent Judge dismissed the case only with respect to defendant Federico de Guzman on the ground that the latter was not properly represented by his father in the execution of the deed of assignment in favor of Roxas. Subsequently plaintiffs petitioned to the Court of Appeals for certiorari against the act of respondent Judge. *Held*, it may be true that the averment that defendant Federico de Guzman was represented by his father, Luis de Guzman, in the execution of the "Documento de Compromiso" was sufficient, and consequently, the respondent Judge committed an error in dismissing the complaint in Civil Case No. 1067, simply because he believed that said defendant was not "validly represented therein by his father". But certainly said error was merely one of judgment or of procedure and not of jurisdiction. Therefore, an appeal and not certiorari is the proper remedy for the correction of said error. HEIRS OF ROXAS *v.* MOJICA, (CA) G.R. No. 18810-R, Jan. 11, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE JURISDICTION DEPENDS UPON THE TOTALITY OF THE DEMAND IN ALL THE CAUSES OF ACTION CONTAINED IN THE COMPLAINT. — Consuelo Rojo et al., filed an action in the Court of First Instance of Antique for the recovery of property and partition with damages against defendants. J. Cervera was included as defendant because he was allegedly in unlawful possession of a parcel of land subject of the complaint. By way of cross-claim, Cervera alleged that he bought the land from his co-defendants upon false representations of the latter. He asked the court to hold valid the sale made to him and for damages of ₱1,000 and attorney's fees against his co-defendants. The cross-defendants moved to dismiss said cross-claim on the ground of the court's lack of jurisdiction over the claim, the same being only ₱1,000. The court denied the motion to dismiss. *Held*, the answer may contain any counter-claim or cross-claim which the defendant may have at the time against the opposing party or a co-defendant, provided that the court has jurisdiction to entertain the claim and can, if the presence of third parties is essential for its adjudication, acquire jurisdiction of such parties (Section 3, Rule 10, Rules of Court). The Supreme Court said that the test, for purposes of determining the jurisdiction of the court, is to attend to the

aggregate amount demanded in the complaint, particularly in the prayer thereof. Under the law now, as previously, the jurisdiction of the court is made to depend, not upon the value or demand in each single cause of action contained in the complaint, but upon the totality of the demand in all the causes of action. MEMIJE *v.* ZURBANO (CA) G.R. No. 19279-R, Jan. 8, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A COMPROMISE AGREEMENT HAS THE EFFECT AND AUTHORITY OF RES JUDICATA AND BEING JUDICIAL IN CHARACTER, COULD BE PROPERLY ENFORCED BY EXECUTION IN ACCORDANCE WITH THE RULES OF COURT. — Two contract of sales with right to repurchase were executed by plaintiff in favor of defendants. Plaintiff failed to exercise the action so that defendants wanted to consolidate title. However, plaintiff brought action alleging that the contracts were of loan. Subsequently, a compromise was entered into which plaintiffs failed to comply. The sale then was confirmed by the lower court upon objection of plaintiffs. *Held*, a compromise agreement has the effect and authority of res judicata and, being judicial in character, could be properly enforceable by execution in accordance with the Revised Penal Code. BAYSA AND BAÑEZ *v.* LEE AND LEE, (CA) G.R. No. 16288-R Nov. 8, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — MANDAMUS WILL NOT LIE TO REVIEW THE ACTION OF AN INFERIOR TRIBUNAL IN A MATTER INVOLVING THE ADMISSION OF EVIDENCE. — In an action below present petitioner was a defendant in a civil case. When she started presenting her evidence, the respondent judge ruled that she could not testify on oral evidence due to the Statute of frauds. Thus the petition for mandamus to compel judge to admit the oral evidence presented. *Held*, writ of mandamus will not issue to control or review the exercise of the discretion of a public officer. Applied to courts of justice, mandamus will not lie to review the action of an inferior tribunal in a matter involving the admission of evidence; for ruling on questions of evidence do not fall within the compass of ministerial duties such as may authorize a resort to mandamus. GATENGCO *v.* ALIBJALA, (CA) G.R. No. 18097-R, Nov. 17, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — WHEN ACCUSED GIVES NOTICE OF HIS INTENTION TO APPEAL IN OPEN COURT AND FILES A BOND FOR HIS PROVISIONAL RELEASE WITHIN 15 DAYS FROM PROMULGATION OF JUDGMENT AGAINST HIM, HE MAY BE CONSIDERED AS HAVING PERFECTED HIS APPEAL. — Respondent court rendered a decision in a criminal case against the petitioner herein, convicting him and accordingly imposing on him an indeterminate sentence. On the same day the decision was promulgated, the appellant manifested in open court his intention to appeal, and requested the court to file the bail on appeal, which the court did. Within 15 days from the promulgation of the judgment, the petitioner duly posted his bail on appeal. Notwithstanding these proceedings, the records of the case were not forwarded to the Court of Appeals. Believing that his judgment had already become final, the respondent judge issued an order commanding the petitioner to appear before him, presumably for the execution of the sentence against him. The order

likewise cancelled the bail on appeal. Petitioner did not deny that he had not file with the trial court any written notice of appeal within the 15-day period prescribed by law. He contended, however, that in his case there had been substantial compliance with the requirements of law and that his appeal should have been given due course. He attributed his failure to file a written notice of appeal to his honest belief that his posting of a bail on appeal and its subsequent approval by the respondent judge perfected his appeal. *Held*, when the accused manifests or gives notice of his intention to appeal in open court and files a bond for his provisional release, within 15 days from the promulgation of the decision against him, he may be considered as having perfected his appeal notwithstanding his failure to file a written notice and serve a copy thereof to the adverse party as required by section 3 of Rule 118 of the Rules of Court. DEAN *v.* TAN, (CA) G.R. No. 15921-R, Nov. 14, 1956.

REMEDIAL LAW — EVIDENCE — SEC. 69 (CC) OF RULE 123 OF THE RULES OF COURT ON DISPUTABLE PRESUMPTIONS HAS BEEN AMENDED BY ART. 261 OF THE NC.C. — Plaintiff who was separated from her husband in 1943 met defendant in 1952 and subsequently lived together resulting in the birth of a child surnamed Sevilla in birth and baptismal certificate. Defendant denied paternity of child imposing as defense Sec. 69 (cc) of Rule 123. *Held*, Sec. 69 (cc) of Rule 123 on disputable presumption has been amended by Art. 261 of the N.C.C. which says that there is no presumption of legitimacy or illegitimacy of a child born after 300 days following the dissolution of the marriage or the separation of the spouses. Whoever alleges the legitimacy or the illegitimacy of such child must prove his allegation. GARCIA *v.* SEVILLA, (CA) G.R. No. 15322-R, Nov. 17, 1956.

REMEDIAL LAW — EVIDENCE — VOLUNTARINESS OF A CONFESSION MAY BE INFERRED FROM ITS LANGUAGE. — Accused Lazaro Mariñas appealed from the decision of the Court of First Instance of Bulacan finding him guilty of robbery with force upon things. Of damaging effect against him was his extrajudicial confession which he made before the Chief of Police and which later he subscribed and swore to before the Justice of the Peace. The confession was full of the details of the execution of the crime. The prosecution introduced it as Exhibit A and appellant impugned it as having been obtained from him by force in that he was boxed and kicked by Police Sgt. Buluran and threatened by the same with a piece of wood about one forearm's length. Buluran also threatened him not to reveal the use of force employed in making him confess. Appellant's testimony was uncorroborated. *Held*, voluntariness of a confession may be inferred from its language. If upon its face, it exhibits no sign of suspicous circumstances tending to cast doubt upon its integrity; it is replete with details which could possibly be supplied only by the accused; the narration reflects spontaneity and coherence which psychologically cannot be associated with a mind to which violence and torture have been applied; the response to every interrogatory is so fully informative even beyond the requirements of the questions as to indicate the mind to be free from extraneous restraint (People *v.* Viernes, et al., 47 O.G. 123; People *v.* Bersamin, et al., G.R. No. L-3908, March 5, 1951), a claim that it was a mere invention

or fabrication of the police and forced upon the appellant to be signed, cannot be believed. Appellant's confession is so rich in details that he alone could have supplied those facts, and those are the earmarks of the voluntariness of the confession. PEOPLE *v.* MARIÑA, (CA) G.R. No. 14042-R. Feb. 12, 1957.