CASE DIGEST

SUPREME COURT

CIVIL LAW — NATURALIZATION — ABSENCE OF SHORT DURATION FROM THE PHILIPPINES DOES NOT INTERRUPT OR AFFECT THE CONTINUOUS RESIDENCE OF 30 YEARS REQUIRED BY LAW FOR EXEMPTION FROM THE DUTY TO FILE A DECLARATION OF INTENTION. — Petitioner was born in China, of Chinese parents and came to the Philippines in March 1920 and had continuously resided in the Philippines up to the hearing except in 1925 when he and his father went to China for a 6 month visit. He finished high school in Southern Colleges, Cebu, married Conchita Tan, a Chinese mestiza. His two children studied in San Jose College in Cebu. He worked as sales agent and bookkeeper of Hua Hiong Trading receiving ₱3,000 annual salary. During his stay there, he observed good conduct and maintained excellent relations with the authorities and the Filipinos, had never been accusd of any crime and did not possess any disqualification. His absence, however, for 6 months from the Philippines was made the basis of an objection because such absence interrupted his continuous residence so as not to exempt him to file his declaration of intention. *Held*, an absence of short duration from the Philippines does not interrupt or affect the continuous residence of 30 years required by law for exemption from the duty of filing a declaration of intention. RAMON TING *v.* REPUBLIC OF THE PHILIPPINES, G.R. No. L-9225, Aug. 21, 1957.

CIVIL LAW — OBLIGATIONS — THE BALLANTYNE CONVERSION TABLE IS NOT APPLICABLE WHEN THE OBLIGATION IS NOT PAYABLE DURING THE JAPANESE OCCUPATION. — Plaintiff sold a parcel of land situated in Manila to defendants in Dec. 18, 1943. The price was ₱150,000. ₱100,000 was paid on the signing of the deed of sale. The balance of ₱50,000 was to be paid one year after the ratification of the Treaty of Peace ending the Greater East Asia war and within three years thereof. Interest on the sum was to be paid one year from the ratification. The Treaty was entered on Sept. 2, 1945 and was ratified by the majority of the member nations, excluding the Philippines. Subsequently, and after demand, plaintiff brought an action for the foreclosure of the mortgage executed by defendant to secure the balance price of the land sold to her. Conceding that the ratification of the Peace Treaty without the Philippines ratifying the same could be the ratification referred to in the mortgage contract, defendants maintained that their obligation was to be paid according to the Ballantyne Conversion Table. *Held*, appellees' defense that they should pay the balance of ₱50,000 in accordance with the Ballantyne Conversion Table is without merit, since the obligation, under the mortgage contract, was not payable during the Japanese occupation. ARELLANO *v.* DOMINGO, G.R. No. L-8679, July 26, 1957.

CIVIL LAW — OBLIGATIONS — SACRIFICE AND HARDSHIP TO BE SUFFERED BY A PARTY IN THE PERFORMANCE OF HIS OBLIGATION DOES NOT AMOUNT TO A VALID DEFENSE FOR NON-PERFORMANCE THEREOF. — The City of Manila entered into a contract of lease with Chan Kian and Cua Kah over one of its lots located in Calle Ongpin. The lease was to run for seven and one half years. The lessees were to introduce improvements on the land, including a three-story building. At the end of the lease period, the City of Manila was to acquire the improvements on the lot, including the building. The lessees introduced the above improvements. Chan Kian acquired the right of his co-lessee over the lease right and the improvements. During the duration of the lease contract, it was agreed, monthly rental would be paid in the amount of ₱300. The lessee failed to pay several monthly rentals, failed to pay the real estate tax on the property. When the end of the lease period came he refused to transfer the improvements on the lot leased. His main defense was that he had spent some ₱110,000 on the lot and improvements; that he was able to collect from the same only about ₱90,000. To compel him to deliver the improvements on the lot would work hardship and sacrifice on him. He asked for an extension of five more years. *Held*, sacrifice and hardship to be suffered by a party in performing an obligation is not a valid defense for non-performance of the same. This prejudice may be ascribed to a poor bargain or poor business acumen. CITY OF MANILA *v.* CHAN KIAN, G.R. No. L-10276, July 24, 1957.

CIVIL LAW — SALES — A LUMBER COMPANY WHO SELLS THE PRODUCE FROM ITS CONCESSION THROUGH AN OFFICE IN MANILA IS A PRODUCER AND NOT A DEALER. — Defendant lumber company had a lumber concession in Palawan. It maintained an office in Manila which received orders for lumber (logs). Through this Manila office defendant made several sales of logs to several Manila dealers and consumers. However there were no logs or lumber for display or sale in its Manila office. Defendant had already paid the fees and licenses incident in its operation as concessionaire and lumber producer. The City of Manila sought to hold defendant liable for license and permit fees for selling logs in Manila. These fees were by virtue of ordinances passed by the Municipal Board of Manila City. The City of Manila, plaintiff here, claimed that defendant was liable for the license and permit fees because, by maintaining an office here and by selling its produce through said office, it, defendant, became a dealer and became liable for the above fees as such dealer. The Municipal Court and the CFI were one in holding defendant liable. Defendant appealed to the Supreme Court. *Held*, appellant certainly does not fall within the common and ordinary acceptation of the word "dealer" for there is no controversy as to the fact that what appellant sold was the produce of its concession in Palawan. CITY OF MANILA *v.* BUGSUK LUMBER CO., G.R. No. L-8255, July 11, 1957.

CIVIL LAW — LEASE — LESSEES ARE NOT ENTITLED TO REIMBURSEMENT FOR THE IMPROVEMENTS THEY INTRODUCED ON THE LAND LEASED TO THEM AS THE RIGHT IS GIVEN TO THE LESSOR. — Petitioners leased the land of respondents for a period of ten years. They introduced improvements thereon, including a house. The ten years elapsed and respondents agreed to give lessees three more years, per request of latter. These three years also passed. At the end

of the third year, respondents wanted lessees to vacate the premises and to remove their improvements thereon. The parties went to court. The lessees wanted the lessors to reimburse them of one-half of the value of the improvements they, the lessees, introduced on the land leased. The lower court denied this on the ground that art. 1678 of the new Civil Code gives the right to reimburse the value of the improvements on the land leased to the lessor, not to the lessee. Not contented, lessees petitioned the Supreme Court to enjoin the court below from enforcing its order of demolishing the improvements on the land leased. *Held*, the trial court correctly held that art. 1678 of the new Civil Code gives the lessor and not the lessee the right of reimbursement therein. LAPEÑA *v.* MORFE, G.R. No. L-10089, July 31, 1957.

CIVIL LAW — MORTGAGES — SUBROGATION OF MORTGAGES ONLY OCCURS UPON PAYMENT OF THE FIRST MORTGAGE. — On April 21, 1949 P. Ferrer executed in favor of La Tondeña a second chattel mortgage upon certain properties to guarantee payment of certain amounts. Some of these properties were already subject to a first mortgage in favor of P. Ruiz. All mortgages were duly registered. Upon refusal of Ferrer to surrender the properties on foreclosure proceedings Ruiz brought an action of replevin. He secured the release of the properties by means of a redelivery bond of ₱20,000, guaranteed by the Alto Surety and Insurance Co. When Ferrer defaulted from satisfying the judgment against him the Alto Surety paid for him on June 19, 1952. On June 7, 1950 the La Tondeña obtained a foreclosure decree in its favor in view of which the sheriff levied on the mortgaged properties and advertized them for sale. Sale thereof was postponed several times and on Dec. 13, 1950 the properties were released with certain conditions. On Mar. 13, 1951 Alto Surety obtained writs of preliminary attachment which were executed by the sheriff on Apr. 23, 1951 on the mortgaged properties, but then already released. The properties were sold in a public sale to Alto Surety. Now La Tondeña brought an action claiming priority of right. The defense of Alto Surety was that it was subrogated to the mortgage right of P. Ruiz who was a first mortgagee and, therefore, it had a prior right over that of La Tondeña. *Held*, subrogation only occurs upon payment of the first mortgage. Alto Surety completed payment only on June 19, 1952. The writs of preliminary attachment were levied one year prior to this. La Tondeña, therefore, has a prior right to the mortgaged properties. LA TONDEÑA, INC. *v.* ALTO SURETY & INSURANCE, G.R. No. L-10132, July 18, 1957.

CIVIL LAW — DAMAGES — A FATHER IS LIABLE FOR THE NEGLIGENT ACT OF HIS MINOR SON WHILE THE LATTER WAS ON HIS WAY TO ATTEND A PARADE AS A BOYSCOUT OF AN ELEMENTARY SCHOOL, ALTHOUGH THE FATHER DID NOT KNOW THAT HIS SON WAS TO ATTEND SAID PARADE. — Dante Capuno, a 15 year old minor, was a student of the Balintawak Elementary School and, as part of his extra-curricular activities, was a Boyscout. Upon instruction of the city school's supervisor, Dante had to attend a Rizal Day parade as a member of the Boyscout organization. He took a jeepney, along with other pupils. Dante took the wheel of the jeepney, the jeepney's driver by his side. As a result, the jeepney turned turtle, killing two passengers. During the trial for double homicide, Sarina Exconde, as mother of one of the persons killed, reserved her right to bring a separate civil action for damages against the accused. After conviction of the accused, Sarina Exconde brought a civil suit for damages against minor Dante Capuno and his father, Delfin Capuno. Father of Dante asked the court to exclude him because he claimed he was not responsible for his son's negligent act since when the same occurred he was not with him and he did not know what he was doing. The court gave judgment for damages but only against the son, Dante Capuno. Hence this appeal. *Held*, the teacher of Dante Capuno or the head-teacher of his school could not be made liable for Dante's act since the school Dante attended was not an institution of arts and trades but an academic institution. Dante's father is liable because Dante was living with him when he negligently caused the death of the two persons. EXCONDE *v.* CAPUNO, G.R. No. L-10134, June 29, 1957.

CIVIL LAW — DAMAGES — AN EMPLOYER OF A DRIVER OF A PRIVATE CAR IS LIABLE IN DAMAGES FOR THE NEGLIGENT ACTS OF HIS DRIVER EVEN THOUGH HE IS NOT ENGAGED IN ANY KIND OF INDUSTRY. — Defendant Charri employed one Segundino Estanda as driver of his private car. Through negligence, defendant's car struck plaintiff's son, causing the latter physical injuries. Charged for Slight Physical Injuries Through Reckless Imprudence in the Municipal Court, defendant's driver was convicted therefor. Plaintiff, as father of offended party, had suffered actual damages and moral damages because of the incident. He, therefore, brought a civil suit for damages against present defendant as employer of the driver Estanda. Defendant moved to dismiss the complaint for lack of cause of action, the complaint failing to state that defendant was engaged in any kind of industry at or about the time of the accident. The court dismissed the complaint accordingly. On appeal plaintiff relied for his cause of action on arts. 2884 and 2180 of the new Civil Code while defendant relied for his defense on art. 1161 of the same Code which makes applicable the penal laws and on art. 103 of the Rev. Penal Code which requires the employer, to be subsidiarily liable for the acts or omissions of his employee, to be engaged in some kind of industry. *Held*, there is sufficient cause of action under par. 2 of art. 2884 and pars. 1 and 5 of art. 2180. Under these provisions of the Civil Code defendant-employer need not be engaged in any kind of industry to be liable for the negligence of his driver-employee. ORTALIZ *v.* ECHARRI, G.R. No. L-9331, July 31, 1957.

CIVIL LAW — DAMAGES — THE MERE FILING OF A CIVIL CASE IS NOT IN ITSELF MALICIOUS OR CONTRARY TO MORALS, GOOD CUSTOM OR PUBLIC POLICY AS TO GIVE RISE TO MORAL DAMAGES FOR UNDUE PROSECUTION. — Plaintiff-appellant was a civilian employee of the MPD. Defendant-appellee was administrative officer of the MPD. Plaintiff filed 12 charges against defendant, 9 of which were found to be baseless. Three of the charges were under investigation. Pending the same, defendant filed a civil suit against plaintiff for damages allegedly arising from the series of administrative charges brought against him. On motion to dismiss by plaintiff, case was dismissed as being premature, the administrative charges then pending against defendant being a prejudicial question. After this dismissal plaintiff brought a civil action for damages due to undue prosecution, based on the civil case against him which

had been dismissed. On motion of defendant complaint was dismissed. Hence this appeal. *Held*, the mere filing of a civil case is not in itself malicious or contrary to morals, good custom or public policy. It is true that the new Civil Code provides for moral damages in case of undue prosecution; but the provisions of law should not be so construed as to encourage or sanction endless actions for damages where, as in the case, a complaint is dismissed on a mere technicality. VILLANUEVA *v.* CATINDIG, G.R. No. L-9109, July 24, 1957.

CIVIL LAW — EFFECT AND APPLICATION OF LAWS — LAWS SHALL HAVE NO RETROACTIVE EFFECT UNLESS THE CONTRARY IS PROVIDED.—On June 30, 1954 the Manila Hotelwas leased to a private concern. As a result of this contract of lease 265 employees of the Manila Hotel had to be dismissed. These employees were paid the value of their accumulated leave under sec. 286 of the Administrative Code, as amended by RA No. 611. Fifteen days before they were separated from the service RA No. 1081 was approved amending the same section of the Administrative Code. Under sec. 286 of the Administrative Code as amended by RA No. 611 the dismissed employees were entitled to an accumulated leave pay of 5 months; as amended by RA No. 1081, the same section entitled the employees 10 months accumulated leave pay. The employees, then, wanted to claim their separation pay under the amendment by RA No. 1081. The lower court dismissed the complaint for lack of cause of action. *Held*, art. 4 of the new Civil Code provides that laws shall have no retroactive effect unless the contrary is provided. As RA No. 1081 does not provide that is to have retroactive effect, it can only be given effect from the date of its approval. TAMAYO *v.* MANILA HOTEL COMPANY, G.R. No. L-8975, June 29, 1957.

CIVIL LAW — EFFECT AND APPLICATION OF LAWS — ARTS. 19, 21, 2229, 2232, 2234, 2142 AND 2143 OF THE NEW CIVIL CODE ARE RULES OF SUBSTANTIVE LAW AND WILL BE APPLIED, IF THEY ARE APPLICABLE TO THE FACTS OF THE CASE, IN AN APPEAL TO THE SUPREME COURT, EVEN IF THE APPEALED CASE WAS NOT LITIGATED ON THEM IN THE LOWER COURT. — Shell Company moved for the reconsideration of the Supreme Court's decision rendered against it, making it pay damages to plaintiff under the new Civil Code. The reason advanced by defendant on this point was that plaintiff's right of action was based and prosecuted in the lower court under the provisions of the Insolvency Law and, consequently, plaintiff was barred from pursuing another theory and was not entitled to damages under the provisions of the new Civil Code. *Held*, arts. 12, 21, 2229, 2232, 2234, 2142 and 2143 of the new Civil Code are rules of substantive law, and if they are applicable to the facts of this case, and they are, they must be made operative and given effect in this litigation. VELAYO *v.* SHELL COMPANY OF THE PHILIPPINES, G.R. No. L-7817, July 30, 1957.

CIVIL LAW — SURETYSHIP — A SURETY IS BOUND UNDER A CONTRACT OF SURETYSHIP FOR GUARANTEE OF FAITHFUL PERFORMANCE OF A CONTRACT OF AGENCY WHEN HE UNDERSTOOD THE CONTRACT AS SUCH EVEN IF CONTRACT TURNS OUT TO BE ONE OF PURCHASE AND SALE. — The Pearl Island Commercial was the manufacturer of floor wax under the name of "Bee Wax". It entered into a contract with Lim Tan Tong, wherein the latter was designated as the

sole distributor of the "Bee Wax" for Visayas and Mindanao. Plaintiff was to ship the supply of floor wax consigned to Lim Tong and the latter was to send the payment thereof within 60 days from the date of shipment. Tong was to furnish a surety bond to cover all shipments of the floor wax. Defendant Manila Surety & Fidelity Co. filed a surety bond with Tong as principal by reason of the appointment of Tong as exclusive agent for plaintiff for the Visayas-Mindanao provinces, the bond being conditioned on the faithful performance of Tong's duties, in accordance with the agreement. Plaintiff shipped to defendant Tong 299 cases of Bee Wax and defendant Tong failed to remit the payment of these wax, despite demands. Defendant Tong sent only ₱770.00, claiming plaintiff owed him a larger amount. To enforce payment of the balance account, plaintiff filed an action against Tong and his surety. The trial court held the surety liable, and surety appealed. Appellant surety argued that the contract entered into between plaintiff and Tong was one of purchase and sale as designated by its title "Contract of Purchase and Sale"; that under the surety bond, it made itself liable for Tong's faithful performance as agent of plaintiff; and since Tong was not an agent of plaintiff under the contract both latter parties entered therefore, defendant was not liable. *Held*, appellant must have understood the contract to be one of agency, because the bond itself states that the bounden principal was appointed exclussive agent for the Pearl Islands Commercial, plaintiff here. Under such circumstances, the Surety Company is not now in a position to deny its liability for the shipment of the 299 cases of Bee Wax duly received by Tong. PEARL ISLAND COMMERCIAL CORPORATION *v.* LIM TAN TONG, G.R. No. L-10517, June 28, 1957.

COMMERCIAL LAW — PUBLIC UTILITIES — WHEN THERE IS ALREADY AN EXISTING SERVICE WHICH THE COMMISSION HAS FOUND TO BE AMPLY SUFFICIENT, IT CANNOT BE SAID THAT PUBLIC CONVENIENCE STILL REQUIRES THE ESTABLISHMENT OF ANOTHER ICE PLANT. — Lanuza, owner of an ice cream business in the City of Davao, applied for a certificate of public convenience to operate a one-ton ice plant in said city. The application was opposed by Lat & Beltran, operator of an ice plant service in the same city. Oppositor maintained that its service was adequate and sufficient to fill the public need and that another ice plant would only result in ruinous and wasteful competition. The Commission heard the parties, their witnesses and their evidence. It denied the application on the ground that public convenience did not require the operation of another ice plant because the one operated by oppositor was already rendering an adequate and sufficient service. Applicant brought the case for review by the Supreme Court. *Held*, findings of fact of the Commission are binding on this court if supported by reasonable evidence. There is already an existing service which the Commission has found to be amply sufficient to fill in the public need. It cannot be said, therefore, that public convenience still requires the establishment of another ice plant. LANUZA *v.* LAT & BELTRAN, G.R. No. L-9555, July 31, 1957.

COMMERCIAL LAW — TRANSPORTATION — THE DETERMINATION OF THE INADEQUACY OF THE SERVICE ACTUALLY RENDERED BY EXISTING OPERATORS IS ONLY NECESSARY IN THE APPROVAL OF A NEW APPLICATION, AND NOT IN CASE OF AN

APPLICATION FOR CONTINUANCE OF OLD SERVICE. — An application to extend the life of a certificate of public convenience was approved by the public service commission upon the ground that public necessity and convenience require it without the determination by the commission that the services rendered by the oppositors were inadequate. *Held*, the determination of the inadequacy of the service actually rendered by existing operators is only necessary in the approval of a new application and not in case of an application for the continuance of an old service. LA MALLORCA *v.* REYES, G.R. No. L-8982, Aug. 30, 1957.

COMMERCIAL LAW — TRANSPORTATION — THE RIGHT TO PROTECTION OF AN ESTABLISHED OPERATOR ON THE LINES APPLIED FOR IS NOT DEFEATED BY MERE PRIORITY IN THE FILING OF THE APPLICATION OF THE NEWCOMER. — December 6, 1954 Guico applied for a certificate of public convenience for operation of bus service. On the 17th of said month, the estate of Buan, an old operator applied for an authority to run additional trips on the same line. Additional round trips a day was allowed but the operator chosen was the estate of Buan on the ground that it had means and the requisite capacity and experience to maintain the same and because as the authorized operator on the lines, it should under the doctrine of protection, be given opportunity to provide the additional service that had been found needed, then it applied later. *Held*, the right protection of an established operator on the lines is not defeated by mere priority in the filing of the application of the newcomer. GUICO *v.* ESTATE OF FLORENCIO BUAN, G.R. No. L-9769, Aug. 30, 1957.

CRIMINAL LAW — ROBBERY WITH HOMICIDE AND RAPE — LIFE IMPRISONMENT PLUS INDEMNITY IS IMPOSED DUE TO LACK OF SUFFICIENT VOTE FOR ROBBERY WITH RAPE AND HOMICIDE WITH THE CONCURRENCE OF THE AGGRAVATING CIRCUMSTANCES OF NOCTURNITY, DWELLING, ABUSE OF SUPERIOR STRENGTH AND DISGUISE AND WITHOUT ANY MITIGATING CIRCUMSTANCE. — Three men, with their faces covered by handkerchiefs and carrying guns and a knife, invaded a group of two families while the latter were at the foot of the stairs of their house. The time was about past 7 in the evening. From the dark one of the three shot one of the two men in the family group, hitting him on the waist. Then the three men approached, commanded the wounded man to produce his shotgun. The three ordered the other male member of the offended group to produce his money and valuables. For this purpose the three brought the man and his wife to the latter's house where money was taken from a trunk, jewelry and clothings. Then the three tied the husband and at gunpoint ordered his wife to lie down. Whereupon the three raped her. Though with disguise on, the three were recognized, and identified on the trial, by the offended parties because of the familiarity the latter had with the culprits. Before trial and a little after the shooting, the offended party who had suffered the gunshot wound died despite medical care. *Held*, there is no doubt that appellants are guilty of robbery with homicide and rape. The aggravating circumstances of nocturnity, dwelling, abuse of superior strength and disguise were present and no mitigating circumstance. But due to lack of sufficient vote the penalty imposed is life imprisonment, not death, plus indemnity and costs. PEOPLE *v.* CAYETA, G.R. No. L-5929, July 31, 1957.

CRIMINAL LAW — REBELLION — WHEN THE ACT OF KILLING WAS PERFORMED IN FURTHERANCE OF REBELLION, THE SAME CANNOT BE PROSECUTED AS A SEPARATE CRIME BUT IS ABSORBED IN THAT OF REBELLION. — 94 persons were charged by the provincial fiscal of Iloilo in the CFI of that province of the "crime of rebellion with multiple murder, arson, kidnapping, rape, robbery and physical injuries." At the trial of the case a great majority of the accused were, however, still at large. Appellant Fernandito Togonon was one of those convicted. He was convicted of simple rebellion and the separate crime of double murder. This latter conviction was based on the fact of Togonon's having beheaded two brothers, when their hands were bound, for having informed on the huks to the PC authorities. The killing took place outside the territorial jurisdiction of the CFI of Iloilo. The accused Togonon appealed the decision convicting him of double murder to the Court of Appeals which certified the same to the Supreme Court. *Held*, while there appears to be clear proof that it was this accused who beheaded the Dolinog brothers, there is no denying the fact that the act was perpetrated in furtherance of the rebellion and outside the territorial jurisdiction of the trial court. That court, therefore, had no authority to convict of murder as a separate crime. PEOPLE *v.* TOGONON, G.R. No. L-8926, June 29, 1957.

CRIMINAL LAW — SELF-DEFENSE — THE ELEMENTS OF SELF-DEFENSE MUST BE ESTABLISHED TO THE SATISFACTION OF THE COURT. — Vicente Cambronero was found dead with a bullet wound. The prosecution presented one eyewitness to prove that Domingo de los Santos, a policeman, did the killing. The death weapon was a carbine. The prosecution witness testified that while he was walking with deceased, Domingo approached them, asking them if they knew Ricardo de la Cruz. Domingo was riding a bicycle and carrying a carbine. Deceased was on a stooping position, his hands raised, as if in the act of running away, when Domingo, without a word, shot at him. When deceased fell down, Domingo got a hand granade from his pocket and placed it beside deceased. He told eye-witness to go away, warning him not to say anything about the incident. The account of this eye-witness was corroborated by another witness who saw Domingo, carbine in hand, looking down at deceased. He did not, however, saw the actual shooting. The defendant attempted to prove self-defense. He testified that when he was approaching deceased, the same drew a hand grenade and was throwing it at him. So he fired at deceased, killing him. The motive assigned for this aggression was deceased's alleged resentment against Domingo's having caused a criminal case to be brought against deceased. This testimony, however, was contradicted by that of eye-witness for prosecution who testified that deceased was in a stooping position when he was shot; by the finding of the doctor who examined deceased that the same was shot while on a stooping position and from a distance of four to five meters from his right. *Held*, the fact is that the deceased lost his life at the hands of appellant Domingo de los Santos and the elements that are required by law to exonerate him by way of self-defense have not been established to the satisfaction of the Court. PEOPLE *v.* DE LOS SANTOS, G.R. No. L-9241, June 29. 1957.

INTERNATIONAL LAW — APPLICABILITY OF FOREIGN LAWS — THE U.S. LAW INVOKED BY THE U.S. VETERANS ADMINISTRATOR IS APPLICABLE ONLY ON CLAIMS

PROPERLY SUBMITTED TO IT FOR RESOLUTION AND NOT WHEN HE IS ACTING AS A LITIGANT IN A PHILIPPINE COURT. — Severino Viloria was appointed guardian over the person and property of minor Roy Lelina. Roy's father was dead. During the war, Roy's father allegedly served in the armed forces and for this military service Roy had been receiving pensions from the US government. The US Veterans Administration, allegedly receiving certain letters from its central office in Washington, D.C., to the effect that Roy's father had never served in the military service, presented a motion in court praying that the guardian be stopped from withdrawing payment of the pensions. The USVA cited US law making its decisions final and conclusive on all questions of law or fact, reviewable only by US courts. Now the USVA wanted its decision on the pension of Roy to be final and binding on the court. For the USVA had already decided that Roy was not entitled to payment of the pensions since his father never served in the army during the war. *Held*, the provisions of the U.S. Code, invoked by the USVA, make the decisions of the USV Administrator final and conclusive when made on claims properly submitted to him for resolution; but they are not applicable where the Administrator is not acting as a judge but as a litigant, as in the case. VILORIA *v.* ADMINISTRATOR OF VETERANS AFFAIRS, G.R. No. L-9620, June 28, 1957.

LABOR LAW — INDUSTRIAL PEACE ACT — THE COURT OF INDUSTRIAL RELATIONS HAS JURISDICTION TO DISMISS A CASE ON THE PETITION OF THE MAJORITY OF THE PARTY WHICH BROUGHT THE CASE TO THE INDUSTRIAL COURT. — The Betting Ushers' Union filed a petition with the Court of Industrial Relations to have the Jai Alai Corporation pay its betting ushers the minimum wage fixed by RA No. 602. Subsequently, 64 of the 65 members of the union authorized the general manager of the Jai Alai, through a letter, to ask the dismissal of the petition for lack of cause of action. The CIR, acting on the motion of the general manager of the Jai Alai filed pursuance to the request of the majority of the members of the petitioning union, dismissed the petition. The attorneys for the union, upon learning of this dismissal, moved to reconsider the order of dismissal, contending that the court did not have jurisdiction to dismiss the petition because the union members did not have the authority to ask the general manager of the Jai Alai to move for the dismissal of the petition without their, the attorneys' for the union, knowledge. The CIR denied this motion. Hence the attorneys went to the Supreme Court. *Held*, the Court of Industrial Relations has the jurisdiction to dismiss the petition on petition of the majority of the members of the union which filed the petition with the same court. BETTING USHERS UNION *v.* JAI ALAI CORPORATION, G.R. No. L-9330, June 29, 1957.

LABOR LAW — LABOR DISPUTES — AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS WHEN THE LABORERS WORK FOR AND ARE PAID FOR BY THE SAME COMPANY, ALTHOUGH PAYMENT IS EFFECTED THROUGH ANOTHER AGENCY. — Petitioners were members of the Associated Watchmen doing work in the Manila South Harbor. They rendered services in the ships of respondent shipping company. The money for payment of their services came from the same company, however, payment was effected by the Watchmen Agencies with whom respondent contracted. Petitioners asked respondent that it enter into a collective bargaining with them. Respondent refused, maintaining that no employee-employee relationship existed between them; that petitioners' employer was the Watchmen Agencies. Petitioners picketed respondent's ships. Respondent went to court for a preliminary injunction to restrain petitioners from picketing. Respondent maintained there was no employer-employee relationship between petitioners and respondent; no labor dispute; that picketing was accompanied by intimidation. Petition was granted. Petitioners sought to set aside this preliminary injunction, claiming that respondent's refusal to enter into a collective bargaining with them constituted a labor dispute. *Held*, an employer-employee relationship exists when the laborers work for and are paid for by the same company, although payment is effected through another agency. A labor dispute exists and the court exceeded its jurisdiction in granting the preliminary injunction without the hearing required by law. ASSOCIATED WATCHMEN *v.* UNITED STATES LINES, G.R. No. L-10233, July 25, 1957.

LABOR LAW — PICKETING — ABUNDANT AUTHORITIES SUPPORT THE PROPOSITION THAT PICKETING TO ACCOMPLISH AN UNLAWFUL PURPOSE MAY BE ENJOINED BY THE COURTS. — The "New Society Theater" at Echague was formerly under the management of certain Chinese. The land on which this theater stands belongs to Angela M. Butte. The Chinese leased this land on a month to month basis, constructing thereon the former "Society Theater". Respondent union had members who were employed by the management of the "Society Theater". When the management defaulted in the payment of the rent, the owner of the land ejected the lessees from the land. With the management went the union employees. Petitioner Cruz leased the land from its owner, renamed the theater "New Society Theater" and started business, bringing her own set of employees. Respondent union requested for a collective bargaining with the new management. But the same informed the union that it could not accede because it had its own employees already. Whereupon, the union employees picketed the premises of the "New Society Theater". Upon the filing of a bond, injunction was issued at the request of the management of the theater. One judge made it preliminary; another made it permanent. Finally respondents went to the Supreme Court, claiming, as one cause of objection, that the judges erred in assuming jurisdiction in the issuance of the writ of injunction. *Held*, there are abundant authorities to support the proposition that picketing to accomplish an unlawful purpose may be enjoined by the courts. The picketers here want to eject the present employees of the "New Society Theater" when they themselves have never been under the employ therof. This is unlawful. CRUZ *v.* ENTERTAINMENT FREE WORKERS, G.R. No. L-9581, July 31, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — DECISIONS OF THE COURT OF INDUSTRIAL RELATIONS BECOME FINAL TEN DAYS FROM THE DATE THE PARTIES AFFECTED THEREBY ARE NOTIFIED OF THE DECISIONS OF THE CIR *en banc*. — The Rizal Cement Company, petitioner, employed members of the National Organization of Laborers and Employees (NOLE). It dismissed two of its employees, members of NOLE, for alleged negligent acts. NOLE petitioned the CIR for the reinstatement of its two dismissed members with backpay. The CIR heard and granted the petition with backpay. The question

arose as to when the backpay should begin. The Union (NOLE) contended that payment of the backpay should start from July 12, 1954, the date of the decision of Judge Castillo of the CIR which ordered reinstatement of the laborers, up to the date of their actual reinstatement, May 17, 1955. Judge Lanting of the CIR, however, dissented to the resolution of the majority of the members of the CIR *en banc* and maintained that the decision ordering reinstatement of the dismissed laborers became final ten days after petitioner was notified of the resolution *en banc* of the CIR approving Judge Castillo's decision that is, ten days from Mar. 16, 1955 when petitioner was notified of the resolution of the CIR *en banc* denying its motion for reconsideration to Judge Castillo's decision. The question was elevated to the Supreme Court on certiorari. *Held*, Judge Lanting is right. Decisions of the CIR become final ten days from the date the parties affected thereby are notified of the decisions of the CIR *en banc*. RIZAL CEMENT CO. *v.* BAUTISTA, G.R. No. L-10312, July 26, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — LEAVING OUT OF PART OF THE TESTIMONY OF THE WITNESSES FROM THE TRANSCRIPT OF WITNESSES' TESTIMONY SPECIALLY WHEN REPORT OF COMMISSIONER WAS EXCLUSIVELY BASED ON THE TRANSCRIPT IS A GROUND FOR NEW TRIAL. — Complaint for unfair labor practice was filed with the CIR in behalf of the complaining members of the CHUA WORKERS' UNION (NLU) against the City Automotive Company and Chua Hon, its manager. The case was eventually referred to Atty. A. Amistad who submitted a report to the court that no unfair labor practice was committed by respondents and recommended the dismissal of the case. The report was based on the transcript of the testimony of the witnesses. Petitioner objected to the dismissal of the case, and when dismissed, moved for new trail, on the ground, among others, that testimony of some of its witnesses were left out of the transcript of the testimony. The CIR denied the motion for new trial. The petitioner brought the case to the Supreme Court on certiorari. *Held*, the new trial was erroneously denied. In the first place examination of the transcript confirms the plaint that not all of the witnesses' testimony has been transcribed; and this fact is of importance considering that the report of Atty. Amistad had to be based necessarily on the transcript because he was not one of the hearing examiners; while the judge who made the decision did not preside over the trial when the missing evidence was rendered. CHUA WORKERS' UNION *v.* CITY AUTOMOTIVE COMPANY, G.R. No. L-9784, July 19, 1957.

LABOR LAW — JUDGMENT OF THE COURT OF AGRARIAN RELATIONS — THE FILING OF A BOND TO SECURE PAYMENT OF THE CLAIMS OF TENANTS DISPOSSESSED OF THEIR LANDHOLDINGS IS SUBSTANTIAL COMPLIANCE WITH SEC. 1 OF RULE 15 OF THE RULES OF THE COURT OF AGRARIAN RELATIONS.—Petitioner Ongsiaco owned a rice hacienda containing an area of 600 hectares situated in Nueva Ecija. Petitioner applied for certification that said hacienda was suitable for mechanization pursuant to the provisions of sec. 50(a) of RA No. 1199. The certification was issued. Petitioner decided to undertake the mechanization of a portion of her hacienda which was then cultivated by the 51 respondents here, as tenants. Ongsiaco's petition to the Court of Agrarian

Relations for authorization to dispossess her tenants from their landholdings was approved subject to the condition that respondents and the members of their immediate family should be preferred in the employment of the necessary laborers under the mechanized cultivation of petitioner's land. When this decision became final petitioner requested for the issuance of the writ of execution. Respondents opposed the issuance thereof because they had not been indemnified of their claims as provided for by sec. 1 of Rule 15 of the Rules of the Court of Agrarian Relations. The court ordered petitioner to file a bond to secure payment of respondents' claim and certified the order for the writ of execution. Whereupon the same was enforced. Respondents appealed, alleging this as one of their grounds for appeal. *Held*, the filing of a bond to secure payment of the claims of the tenants who were dispossessed of their landholdings is substantial compliance with sec. 1 of Rule 15 of the Rules of the Court of Agrarian Relations. ONGSIACO *v.* ABAD, G.R. No. L-12147, July 30, 1957.

LABOR LAW — TENANCY — THE SONS-IN-LAW AND GRANDSONS OF THE TENANT ARE WITHIN THE MEMBERS OF THE FAMILY OF THE TENANT. — Petitioners were tenants of Felisa Alvendia. They cultivated their landholdings with the help of their sons-in-law and grandsons who were not dependent on them and who were living apart and separately. Now Felisa wanted them ejected for violation of the Tenancy Act, RA No. 1199. Under this law tenant must himself cultivate his landholding and "with the aid available from within his immediate farm household" and according to the same Act "immediate farm household" includes "the members of the family of the tenant, and such other person or persons, whether related to the tenant or not, who are dependent upon him for support and who usually help him operate the farm enterprise." *Held*, petitioners were within their legal rights in asking assistance in their work from their sons-in-law or grandsons. Such relatives fall within the phrase "the members of the family of the tenant"; and the law does not require that these members of the tenant's family be dependent on him for support, such qualification being applicable only to "such other person or persons, whether related to the tenant or not". PANGILINAN *v.* ALVENDIA, G.R. No. L-10690, June 28, 1957.

LAND REGISTRATION LAW — CERTIFICATE OF TITLE — ISSUANCE OF TRANSFER CERTIFICATE OF TITLE SHOWS A STRONG PRESUMPTION THAT THE SAME HAD BEEN REGULARLY ISSUED AND IS VALID. — Lot No. 1282 of the Cadastral Survey of Bago was originally registered in the names of Ligoria Martir and Hilarion Martir, both deceased. It was included in the inventory filed by Hermogenes Martir in his capacity as judicial co-administrator of the intestate estate of Hilarion Martir. His other co-administrator was Angela Martir, defendant here. Plaintiffs had in their favor a transfer certificate of title over one-half of the land in question. Plaintiffs claimed they had purchased their one-half share in the land from Timoteo Bigatay in 1946 who had acquired the same from Amado Jalandoni who, in turn, had acquired it from Hermogenes Martir. But the land never left the possession of defendants herein. In 1952 plaintiffs sued in the municipal court of Bacolod City to recover their share of the produce of the land from 1946 to 1952, alleging co-ownership.

The lower court decided in their favor. Defendants appealed to the Supreme Court. They denied co-ownership over the land, alleging that the same was still subject to the special proceeding which was still pending in court, and therefore, was in *custodia legis* and, therefore, could not have been subject of any sale. *Held*, plaintiffs have the transfer title certificate in their favor. A strong presumption exists that such title had been regularly issued and is valid. Such presumption is not overcome; it is not even affected by the lot's previous inclusion in the inventory submitted in the special proceeding, such inclusion not being competent proof of ownership at that time, plaintiffs not being shown to be parties thereto. GACILA *v.* MARTIR, G.R. No. L-9233, June 29, 1957.

LAND REGISTRATION LAW—PUBLIC LAND LAW—THE FIVE-YEAR REDEMPTION PERIOD SHOULD BE COUNTED FROM THE DATE OF THE SALE OF THE HOMESTEAD LAND.—Plaintiff Manuel was the registered owner of a piece of land acquired by him as a homestead. He mortgaged it to the PNB for a loan. When he was not able to pay the loan per stipulation his land was sold to PNB. Thirteen years from the sale and four years after the final deed of sale was given by the sheriff and recorded in the register of deeds, plaintiff wanted to exercise his right of redemption given him by sec. 119 of the Public Land Act. Plaintiff contended that period of redemption should be counted from the date the final deed was issued and not from sale. The lower court, however, agreed with defendant that plaintiff's right had prescribed and dismissed the complaint. Hence plaintiff appealed to the Supreme Court. *Held*, the five-year redemption period under sec. 119 of the Public Land Act should be counted from the date of sale. MANUEL *v.* PHILIPPINE NATIONAL BANK, G.R. No. L-9664, July 31, 1957.

LAND REGISTRATION LAW — RECONVEYANCE — ONCE A REGISTERED LAND HAS BEEN ALIENATED TO AN INNOCENT PURCHASER FOR VALUE, THE SAME MAY NO LONGER BE RECONVEYED EVEN IF THE LAND HAS BEEN REGISTERED FRAUDULENTLY. — Plaintiffs' deceased father owned a piece of land which he entrusted to defendants' deceased father. The latter registered it in his name on Aug. 28, 1917. The land passed through the hands of several innocent purchasers for value until on Jan. 14, 1949 the land came into the possession of defendants by purchase. Plaintiffs wanted this land reconveyed to them, claiming, as a cause of action, breach of trust and fraudulent registration. *Held*, under this setup, even granting that there was a breach of trust, reconveyance of the land in question could no longer be made because the land has already passed to innocent purchasers for value, the last vendee being the defendants who happened to be the children of the original registered owner. The law on the matter is clear. Once a registered land has been alienated to an innocent purchaser for value, the same may no longer be reconveyed even if the land has been fraudulently registered. ROSARIO *v.* ROSARIO, G.R. No. L-9701, July 31, 1957.

LAND REGISTRATION LAW — REDEMPTION — IN GOVERNMENT SALES OF REGISTERED PROPERTY THE PERIOD OF REDEMPTION SHOULD START FROM THE DATE OF REGISTRATION OF THE CERTIFICATE OF SALE OR THE FINAL DEED OF SALE. — Registered property under the names of Juana and Francisco de la Cruz was sold for tax delinquency to Leon Santos. This same property had been subject of mortgage in favor of the RFC. The tax sale was made in the name of Eustaquia B. Vda. de la Cruz who was not one of the registered owners. The mortgage in favor of the RFC was duly annotated while the final deed of sale was registered and annotated on the certificate of title of the property sold only on Feb. 15, 1952. On Aug. 26, 1950 the City Treasurer notified the registered owners of the property sold that the same had been sold at public auction Oct. 29, 1949 and that the owners had one year from this date within which to redeem the property sold. On June 20, 1951 the registered owners deposited ₱1,014.65 with the City Treasurer for payment of taxes for the years 1948 to 1951. The lower court ruled that this deposit was a sufficient exercise of the right of redemption. But the question arose as to when the period of redemption should begin. Petitioner-appellant maintained that the redemption should start from the date of sale, Oct. 29, 1949. The lower court, however, held that the one-year period of redemption should be counted either from Aug. 26, 1950 when the registered owners were notified of the public sale or from Feb. 15, 1952 when the final deed of sale was annotated on the certificate of title of the property sold. *Held*, the one-year period of redemption should be counted from the date of the registration of the certificate of sale or the final deed of sale in favor of the purchaser. SANTOS *v.* REHABILITATION FINANCE CORPORATION, G.R. No. L-9796, July 31, 1957.

LAND REGISTRATION — REGISTRATION OF TRANSACTIONS — PRESENTATION OF THE DEED OF SALE OF REGISTERED LAND WITHOUT THE DUPLICATE TITLE CERTIFICATE IS NOT COMPLETE REGISTRATION THEREOF AND WILL NOT AFFECT AN ATTACHMENT THOUGH SUBSEQUENTLY REGISTERED. — A parcel of registered land was sold to Agustin Ramirez by its registered owner Rogaciano Espiritu. The land had been mortgaged to the PNB which held the duplicate certificate of the title thereof. Ramirez presented the deeed of sale without the duplicate certificate of title. This deed of sale was entered in the Day Book. Subsequently, this same piece of land was attached by virtue of a court decision. The order of attachment was inscribed on the title certificate. When the land attached went to sale, plaintiff Ramirez filed a third-party claim to the land. Failing, he went to court to dissolve the attachment and to enjoin sale of land. But bond was duly filed and the sale proceeded. Ramirez received the transfer certificate in his name over the land subject of sale. Claiming that the issuance of the title certificate retroacted to the date of entry of the sale in the Day Book, Ramirez contended that he had a prior right over the attachment which was entered after entry of the deed of sale in the Day Book. *Held*, if there was retroactivity of registration, the same is binding only between the parties and will not affect third persons. Presentation of the deed of sale alone without the duplicate title did not complete the registration of the same. Therefore, entry of the attachment, though later, had priority over that of the deed of sale. RAMIREZ *v.* CAUSIN, G.R. No. L-10794, July 31, 1957.

LAND REGISTRATION LAW — TAX SALES — TAX SALES ARE *IN PERSONAM* AND THE RIGHTS OF REGISTERED BUT UNDECLARED OWNERS, THEREFORE, ARE NOT

AFFECTED BY SAID TAX SALES. — Land was registered under the Land Registration Act under the names of Miguel Pantaleon and Florentina Pantaleon. Miguel Pantaleon sold his undivided share in the land to spouses Francisco Cruz and Bruna Pantaleon. This sale was annotated on the back of the title certificate of the land sold. Heirs of Florentina Pantaleon subsequently came into possession of the land in question. However, only the spouses Francisco and Bruna appeared as the declared owners of the land. The heirs of Florentina defaulted in the payment of the real estate taxes on the land and so the government sold the land. In the tax sale proceedings only the declared owners, the spouses Francisco and Bruna, were notified. Heirs of Florentina, who were in possession of the land, were not informed of the same. The land was sold to petitioners herein. When Florentina's heirs learned of the sale of the land, they sought to declare the same null and void. The lower court, however, upheld the validity of the tax sale. The Court of Appeals reversed the decision and declared the sale null and void. Hence this petition by tax sale purchasers. *Held*, as the proceedings in the case are but proceedings *in personam*, it follows that the rights of the registered but undeclared owners were not affected by the proceedings in the sale for delinquency. PANTALEON *v.* CATOPO, G.R. No. L-10289, July 31, 1957.

LAND REGISTRATION LAW — SALE OF REGISTERED LAND — ATTACHMENT OR LEVY ON EXECUTION THOUGH POSTERIOR TO THE SALE, IF REGISTERED BEFORE THE SALE WAS REGISTERED, TAKES PRECEDENCE OVER THE LATTER. — In 1946, the Moreno spouses sold the lot in question to Capistrano, but said sale could not be registered because of the refusal of the R.F.C. to surrender the duplicate certificate of title unless the buyer guaranteed payment of the mortgage it held over the land. The land was levied by the P.N.B. to satisfy judgment debt of Moreno. R.F.C. subsequently informed the bank of the sale of said land to Capistrano but after putting up the bond, the sale at public auction was continued, the sale in the meantime was recorded. In 1953 Capistrano had the deed of sale registered. Which now is preferred? *Held*, attachment or levy on execution though posterior to the sale, if registered before the sale was registered, takes precedence over the latter. CAPISTRANO *v.* P.N.B. G.R. No. L-9628, Aug. 30, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — WHEN THE SECRETARY OF FOREIGN AFFAIRS ACTS IN THE EXERCISE OF HIS SOUND DISCRETION IN CANCELLING A PASSPORT PREVIOUSLY ISSUED, HE CANNOT BE ENJOINED FROM CARRYING IT OUT. — Dr. Antonio Nubla, father of Alicia Nubla, a minor of 16 years, filed a verified complaint in the office of the City Attorney of Quezon City against Emilio Suntay. The complaint stated that Emilio took complainant's minor daughter, Alicia, to some place in the U.P. compound in Diliman, and there was able to have sexual intercourse with her. An Asst. City Attorney was assigned to investigate the complaint. He recommended the dismissal of the same for lack of merit. In the meantime, Emilio Suntay applied for a passport to the United States with the Department of Foreign Affairs. He was issued the same and he left for U.S.A. purportedly to study there. The formal complaint for seduction was then filed. In view of Emilio Suntay's sudden departure, Judge Yatco of the CFI of Quezon City directed the NBI and the

Department of Foreign Affairs to take the proper steps to bring Emilio Suntay back to the Philippines to answer the complaint against him. The Secretary of the Foreign Affairs ordered the Philippine Ambassador in the U.S. to cancel the passport previously issued to Emilio Suntay. Counsel for Emilio Suntay contended this act of the Foreign Affairs Secretary was an abuse of discretion because of lack of prior hearing. *Held*, in issuing the order in question, the respondent Secretary was convinced that a miscarriage of justice would result by his inaction and as he issued it in the exercise of his sound discretion, he cannot be enjoined from carrying it out. SUNTAY *v.* PEOPLE, G.R. No. L-9430, June 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — A MOTION FOR RECONSIDERATION OF THE DECISION OF THE AUDITOR GENERAL FILED WITH THE SAME SUSPENDS THE RUNNING OF THE PERIOD OF APPEAL FROM THE DECISION OF SAID OFFICIAL TO THE SUPREME COURT. — Pedro Libuet claimed to have been an employee of the Manila Railroad Company at the outbreak of the war. As such employee, Libuet wanted to claim backpays under RA No. 304, as amended. His claim to have been an employee of the MRR was supported by the affidavits of three employees of the MRR with whom he claimed to have worked. However, the plantilla of the personnel of the MRR and its payrolls for the month of December, 1941, did not include Libuet's name. So the Auditor General denied Libuet's claim for backpay. Libuet filed a motion for reconsideration of the decision denying his claim for backpay. The Auditor General denied the motion. During consideration of this motion, the period for appeal from the decision of the Auditor General to the Supreme Court elapsed. After denial of his motion for reconsideration, Libuet appealed to the Supreme Court. The Auditor General contended that this appeal was too late. *Helh*, a motion for reconsideration of the decision of the Auditor General filed with the same official suspends the running of the period of appeal from said decision to the Supreme Court. LIBUET *v.* AUDITOR GENERAL, G.R. No. L-10160, June 28, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — FINDINGS OF FACT OF THE PUBLIC SERVICE COMMISSION ARE BINDING ON THE SUPREME COURT AS LONG AS THEY ARE REASONABLY SUPPORTED BY THE EVIDENCE. — Petitioner R. Guico applied for the operation of direct TPU service to ply between certain provinces in northern Luzon. The application was opposed by several TPU operators, among them the Bachrach Motor Co. and the Pangasinan Transportation Co. The ground advanced was that their services were adequate to meet the demands of traffic in the routes applied for; that another TPU line in the same would only lead to wasteful competition. A long and protracted trial with the parties presenting voluminous exhibits and witnesses followed. The Commission denied the application on the ground that there had been no positive showing of the need for the proposed service, and as the services already existing along the lines applied for had not been proved to be inadquate, the granting of the application would only lead to wasteful competition. His motion for reconsideration denied, applicant appealed to the Supreme Court challenging the findings of fact of the Commission. *Held*, the issues raised by applicant-pe-

titioner are purely of fact and it is a settled rule that in appeals from the PSC, its findings of fact are binding on this Court as long as they are reasonably supported by the evidence. Examination of the records shows that the findings of fact of the Commission are reasonably substantiated by the evidence. GUICO *v.* BACHRACH MOTOR CO., G.R. No. L-9570, July 29, 1057.

POLITICAL LAW — ADMINISTRATIVE LAW — THE GOVERNMENT OF THE CITY OF MANILA IS A PART OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS. — A. Ascaño was an officer of the City of Manila in charge of the Division of Foreign Control of the Bureau of Treasury. As such he acquired by purchase in a public auction the property of C. Punzalan situated in Paco. The property was sold for taxes in arrears. C. Punzalan subsequently learned of the public sale of his property. He brought a suit to annul said sale on the grounds of irregularity of publication of the sale and legal prohibition against a government official's buying property in a tax sale. Counsel for Ascaño appealed from the decision of the lower court annuling the sale made in favor of his client on the ground that the prohibition of law was applicable only to officials and employees of the Government of the Philippine Islands and the City of Manila was not the Government of the Philippine Islands. *Held,* this allegation is devoid of merit because the government of the City of Manila is nothing but a political subdivision of the Government of the Philippine Islands, or or better said, it is but a part of said government to which sec. 579 of the Rev. Adm. Code refers and, consequently, employees of the central government as well as those of the City of Manila are covered by the prohibition of law. PUNZALAN *v.* ASCAÑO, G.R. No. L-9303, July 11, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — ACQUITTAL OF POLICEMEN CRIMINALLY CHARGED WOULD WORK REINSTATEMENT OF THE POLICEMEN ONLY WHEN THE SAME HAD BEEN SUSPENDED AND NOT LEGALLY SEPARATED FROM THEIR POSTS. — Four men were temporarily appointed as police officers by Manuel Villanueva in his capacity as Acting Mayor of Bacolod City. These men were not Civil Service eligibles. Subsequently, they were charged with a crime. The Acting Mayor suspended them. Later they were removed with the approval of the proper authorities. The Acting Mayor then appointed petitioners in place of the policemen removed. These new members were Civil Service eligibles. The court later acquitted the former policemen of the crime charged. The Acting City Mayor removed the incumbent policemen, petitioners, and restored the former policemen just acquitted. Petitioners then sought to compel the Acting City Mayor to reinstate them with payment of their back salaries and damages. The lower court ordered the Acting City Mayor to reinstate petitioners with back salaries and damages. The Mayor appealed presenting as one argument the fact of acquittal of the former appointees. He argued that their acquittal worked their reinstatement into office. *Held,* the provision cited by appellant refers to policemen who had merely been suspended without being legally dismissed from service. Acquittal of the policemen charged criminally would work their reinstatement only when the policemen had been suspended, but not when they had been legally separated from their posts, as in this case. QUIATCHON *v.* VILLANUEVA, G.R. No. L-9903, July 31, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — A SHIP'S PROVISIONS ARE NOT TO BE UNLOADED AND DELIVERED TO THE CONSIGNEE, THEY ARE NOT SUPPOSED TO BE INCLUDED IN THE "MANIFEST" AS REQUIRED BY SEC. 1228 OF THE ADMINISTRARIVE CODE. — Agents of the Customs Patrol Service boarded and searched the M/V Crete Maersk of which the respondent is the special agent. The ship's manifests listed cigarette cartons — 3260. There were an excess of 420 cartons which were seized and confiscated. The seizure was questioned on the ground that the cartons confiscated form part of the ship's store which were not to be entered in a detailed manifest. *Held,* a ship's provisions such as those in the ship's store are not to be unloaded and delivered to the consignees, they are not supposed to be included in the "manifest" as required by Sec. 1228 of the Administrative code. COMMISSIONER OF CUSTOMS *v.* COMPANIA GENERAL DE TOBACOS DE FILIPINO, G.R. No. L-9901, Aug. 30, 1957.

POLITICAL LAW — ELECTION LAW — AN ACTION OF *QUO WARRANTO* AGAINST AN OFFICIAL FOR VIOLATION OF THE ELECTION LAW IS DIFFERENT FROM A COMPLAINT FOR THE VIOLATION OF THE ELECTION LAW. — Zulueta and Peñaflorida were candidates for the provincial governor of Iloilo in the elections of Nov. 8, 1955. Peñaflorida was declared elected on Nov. 25, 1955. Zulueta filed a protest, contesting the election of Peñaflorida on the grounds of errors, irregularities, frauds and corrupt practices. Subsequently, Zulueta lodged a criminal complaint with the fiscal against Peñaflorida and Ladrido for the same offense. The fiscal set the complaint for investigation on Feb. 14, 1955. Respondents asked for the suspension of the investigation on the ground that the electoin contest then pending in court was a prejudicial question to the criminal case. Motion denied, respondents appealed to the Court of Appeals. The CA denied the petition but enjoined forever the fiscal from proceeding with the investigation of the criminal complaint. The theory of the CA was that the action for *quo warranto* and a complaint for the violation of the Election Law were the same, both having the cause of action — corrupt election practices, and the same object — disqualification. Therefore, like *quo warranto,* complaint for violation of the Election Law should be filed within one week from the proclamation of the winning candidate. The complaint in this case had been filed beyond one week. *Held,* this reasoning is erroneous. The action for *quo warranto* is different from the complaint for the violation of the Election Law. The former partakes of the nature of a civil case; the latter is a criminal action. GOROSPE *v.* PEÑAFRANCIA, G.R. No. L-11583, July 19, 1957.

POLITICAL LAW — ELECTION LAW — THE USE OF TWO OR MORE KINDS OF WRITING CANNOT HAVE THE EFFECT OF INVALIDATING THE BALLOT UNLESS IT CLEARLY APPEARS THAT THEY HAD BEEN DELIBERATELY PUT BY THE VOTER TO SERVE AS IDENTIFICATION MARK. — In the general elections held on Nov. 5, 1955 Alban and Ferrer were candidates for the position of mayor. Ferrer was proclaimed elected with a plurality of 12 votes. Alban filed a protest impugning certain votes. The lower court declared protestant elected with a plurality of 55 votes which, on appeal, the Court of Appeals reduced to 47. The Court of Appeals declared one ballot as marked and invalid because the names of the candi-

dates from the second space for members of the provincial board down to the 7th place for councilors were written in capital letters while those of other candidates were written in small letters. This court concluded that the use of two forms of writing can only mean an intent to identify the voter. When the protestee, Ferrer, appealed to the Supreme Court the latter reduced Alban's plurality into 14 votes only, thus making Alban the winning candidate. However the same court declared the one ballot found as marked by the Court of Appeals as valid. *Held*, the use of two or more kinds of writing cannot have the effect of invalidating the ballot unless it clearly appears that they had been deliberately put by the voter to serve as identifying mark. Here such intent does does not appear. FERRER *v.* ALBAN, G.R. No. L-12083, July 31, 1957.

POLITICAL LAW — TAXATION — INTERNAL REVENUE TAXES ASSESSED WITHIN THE TIME FIXED BY LAW MUST BE COLLECTED BY DISTRAINT OR LEVY OR BY COURT PROCEEDING WITHIN FIVE YEARS AFTER THE ASSESSMENT OF THE TAX, OTHERWISE IT WILL BE BARRED. — Dizon died in 1928 leaving real and personal properties to four of her cousins, one of them, the herein respondent. The administrator of the estate, filed in March, 1935 a return showing inheritance tax liabilities at ₱185.94 each, requiring payment on or before the 25th of said month. All paid except respondent due to failure of receipt of share and pendency of an action regarding distribution in court. Subsequent attempts to collect failed. On January 28, 1955, 20 years after, a warrant of distraint and levy was issued and executed, respondent paying under protest upon the ground of prescription. *Held*, Internal Revenue taxes assessed within the time fixed by law must be collected by distraint of levy or by court proceeding within 5 years after the assessment of the tax is made, otherwise the action will expire. THE MUNICIPAL TREASURER OF MARIKINA, RIZAL *v.* DE LOS SANTOS AND THE COURT OF TAX APPEALS, G.R. No. L-9899, Aug. 13, 1957.

POLITICAL LAW — TAXATION — THE HAULING AND TRANSPORTING WITHIN THE U.S. CLARK AIR BASE OF CARGOES BELONGING EXCLUSIVELY TO THE U.S. ARMY WHEN GIVEN TO A PRIVATE ENTITY IS A CONCESSION AND, THEREFORE, EXEMPTED FROM ALL TAXES AND DUTIES. — The Philippine Consolidated Freight Lines, a domestic corporation, entered into a contract with the U.S. Government, whereby the former undertook to haul and transport cargoes for the U.S. Army stationed at Clark Field Air Base. The freight Lines actually performed its work under the contract and the Collector of Internal Revenue wanted to impose the transportation contractor's tax under the Internal Revenue Code. The amount of the tax assessed was ₱12,217.26. The Freight Lines actually paid ₱3,317.26 of the tax, leaving a balance because it opined that if was a concessionaire in Clark Air Base and, therefore, was exempted from all taxes and duties by virtue of the Military Bases Agreement. The Collector of Internal Revenue refused to exempt the Freight Lines and hence both parties went to the Court of Tax Appeals. This court held that the Philippine Consolidated Freight Lines, which respondent Manila Pencil Company succeeded, was a concessionaire in Clark Air Base and, therefore, was exempted from all taxes and duties. The Collector of Internal appealed to the Supreme Court. *Held*, there is no question that the hauling and transporting within the Clark Air Base of cargoes belonging to the U.S. Army is essential to the

operation of said Base. When this work was given to the Philippine Consolidated Freight Lines, the latter became a concessionaire and, as such, was exempted from all taxes and duties by virtue of the Military Bases Agreement. ARANETA *v.* MANILA PENCIL COMPANY, G.R. No. L-8182, June 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE GOVERNMENT IS AN INDISPENSABLE PARTY IN AN ACTION AGAINST THE BUREAU OF PUBLIC WORKS UNDER THE WORKMEN'S COMPENSATION LAW — Hilario Asendido was an emergency laborer employed under the Bureau of Public Works. He worked from May 22, 1950 to Dec. 31, 1952. It appeared on record that on Dec. 31, 1952, he coughed blood and a subsequent examination by a doctor of the Phil.-American Life Insurance diagnosed his ailment as active pulmonary tuberculosis. Asendido filed his claim against the Bureau of Public Works under the Workmen's Compensation Act. The Wornmen's Compensation Commission assigned Priscilla Medina of said Office as the referee in the subsequent hearings conducted. Throughout the proceedings, the Bureau of Public Works was represented by an attorney of the Legal Division of said Bureau. Medina rendered a decision finding the Bureau liable for compensation due Asendido because of the TB he had contracted during his employment as a Bureau employee. The decision was forwarded to the Solicitor General for any action which he might deem proper. The Solicitor General filed with the Workmen's Compensation Commission a petition for relief from the decision of Referee Medina, stating that under the Revised Administrative Code the Solicitor General is the counsel for the Republic of the Philippines; that as the judgment to be enforced would cause a financial liability to the government, the proper party in this case should have been the Republic of the Philippines. This petition was denied and, on the elevation of the matter to the Workmen's Compensation Commissioner, the same affirmed the order of denial. Solicitor General went to the Supreme Court. *Held*, the government is an indispensable party in an action against the Bureau of Public Works under the Workmen's Compensation Act. The action, therefore, should have been directed against it. REPUBLIC *v.* DE LEON, G.R. No. L-9868, June 28, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — FAILURE OF APPELLANT TO POINT OUT THE ERROR OF THE COURT APPEALED FROM IS A GROUND FOR DISMISSING THE APPEAL. — Claudio Ubaldo filed in the CFI of Pangasinan a petition for a writ of *habeas corpus* to secure the release of Saturnina Ubaldo, his niece, from the custody of Tomas Salazar who, it was claimed, was unlawfully restraining her of her liberty. Saturnina was 17 years old and she was working as a domestic servant in the house of Tomas Salazar. She testified in court that Salazar was not restraining her of her liberty, was in fact kind to her. The court, therefore, dismissed the petition for *habeas corpus*. Claudio Ubaldo appealed to the Supreme Court, making no assignment of errors. He merely alleged that the court below erred in dismissing his petition. Appellee pointed out that this lack of an assignment of error was a ground for dismissal of the appeal. *Held*, appellant fails to point out any error claimed to have been committed by the trial court. Under Rule 52 of the Rules of Court, this appeal should be dismissed. UBALDO *v.* SALAZAR, G.R. No. L-10444, June 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — AN ORDER SETTING ASIDE A JUDGMENT BY DEFAULT SHALL NOT DISTURB THE PROCEEDINGS ALREADY TAKEN. — On Feb. 27, 1954, Melchor Maniego filed a complaint before the Nueva Ecija branch of the CIR to eject Daniel Jaime, his tenant, from his landholding. At the hearing set for Mar. 9, 1954, Jaime did not appear and was declared in default. Maniego was allowed to present his evidence *ex parte*. On Mar. 31, 1954, Jaime moved for the lifting of the order of default which was granted. He was required to file his answer to the complaint within five days from notice. Maniego moved for the reconsideration of the resolution lifting the order of default which was denied. The case was set for hearing on Sept. 21, 1954. On this date Jaime did not appear, although Maniego was present. The court considered the ex parte evidence presented by Maniego before the order of default against Jaime was given. It rendered a decision granting Maniego the authority to dispossess Daniel Jaime of his landholding. Now Jaime questioned the legality of the court's conduct in considering the *ex parte* evidence presented by Maniego when the order of default decreed by the court was subsequently lifted by the same. *Held*, an order setting aside a judgmest by default shall not disturb the proceedings already taken, except that the defendant who did not answer and appear for trial shall by opening said judgment be given the right to file his answer and to appear for trial to present his evidence as well as to cross-examine complainant's witnesses. JAIME *v.* MANIEGO, G.R. No. L-9421, June 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — REP. ACT NO. 1596 DOES NOT CONDONE ATTORNEY'S FEES. — On an appeal by defendant, plaintiffs were made to pay their first mortgage obligation consisting of P37,000, plus interest thereon and attorney's fees. Plaintiffs moved to reconsider the decision of the Supreme Court on the ground that the same had been rendered on Jan. 3, 1941. RA No. 1596 condoned certain interests on debts incurred before the war. Plaintiffs on their motion for reconsideration asked for the elimination from the judgment of their obligation to pay the attorney's fees of defendants, besides elimination of the judgment on payment of interest. *Held*, as RA No. 1596 does not provide for or makes any reference to the condonation of attorney's fees due, plaintiffs' motion for eliminaiton from the judgment of their obligation to pay the attorney's fees awarded to defendant is denied. GONZAGA *v.* REHABILITATION FINANCE CORPORATION, G.R. No. L-8947, July 26, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — ADMINISTRATIVE OFFICIALS HAVE NO POWER TO REMIT FINES AND FORFEITURES AFTER THE COURT ON APPEAL AND IN FINAL DECISION HAS SANCTIONED SUCH FINES AND FORFEITURES. — In a decision rendered by the Commissioner of Customs it was held that the 259 pieces of jewelry imported by Rovero were properly seized and subjected to forfeiture. However, the forfeiture was waived and in lieu thereof, a fine in an amount equal to 3 times the value was imposed. This was appealed to the Court of First Instance and subsequently to the Supreme Court which affirmed it. Thereafter, the jewelry was ordered reappraised which reduced price was made the basis of payment notwitstanding the fact that the decision of the Supreme Court had become final on the former amount. *Held*, administrative officials have no power to remit fine or forfeiture after the court on appeal and in final decisions has sanctioned such fines and forfeiture. REPUBLIC *v.* PEDROSA AND JACINTO, G.R. No. L-9527, Aug. 22, 1957.

REMEDIAL LAW — PROVISIONAL REMEDIES — THE PHRASE "GRAVE DAMAGE" IS IN FORM AND SUBSTANCE EQUIVALENT TO "GREAT AND IRREPARABLE INJURY". — Respondent Malasig filed with respondent CFI of Isabela an action for recovery of possession with injunction against petitioners. The court granted the injunction *ex parte* conditioned on the filing of a bond by Malasig. Now petitioners argued that respondent court acted with grave abuse of discretion in granting the writ of preliminary injunction *ex parte* because it did not appear from the complaint that great or irreparable injury would result to respondent Malasig before the matter could be heard on notice. Malasig, however, alleged in his complaint the petitioners were about to re-enter and reoccupy the land in dispute to the "grave damage and prejudice of respondent-plaintiff." *Held*, this phrase "grave damage" is in form and substance equivalent to "great or irreparable injury". The recitals, in the verified complaint show that great or irreparable injury would result to the applicant (respondent Malasig). RAMOS *v.* ARRANZ, G.R. No. L-19578, July 30, 1957.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — IF THE QUESTION OF POSSESSION IN A DETAINER CASE CANNOT BE PROPERLY DETERMINED WITHOUT SETTLING THAT OF OWNERSHIP, THE JURISDICTION OF THE MUNICIPAL COURT IS LOST. — Petitioners Emilio and Paz, all surnamed Andres, brought a detainer action in the municipal court of Manila against the Lisings. The property subject of controversy consisted of a building where a billiard hall was being operated. Petitioners claimed that they owned this building and that respondents were their employees. Respondents, on the other hand. claimed that they owned the building and petitioners were their lessees or tenants. Petitoners being the buyers and the respondents the vendors. Respondents presented a contract of lease executed between them and petitioners wherein the former were the lessors and the latter the lessees. The municipal court assumed jurisdiction of the detainer case and rendered judgment, ordering respondent Lisings to vacate the premises and to pay for the use of the same to the petitioners. Respondents duly appealed to the CFI. During the pendency of the appeal petitioners moved for the execution of the judgment of the municipal court, but the CFI denied the same on the ground that the municipal court did not have the jurisdiction to entertain to case appealed. Instead, the CFI directed the parties to prepare for trial in the same court on its original jurisdiction. Reconsideration refused, petitioners sought to compel respondent court to order the execution of the judgment rendered by the municipal court and to enjoin it from hearing the case under its original jurisdiction. *Held*, it appears that the question of possession cannot be properly determined without settling that of ownership. The jurisdiction of the municipal court which it assumed in the beginning was, therefore, lost. The action should be dismissed. ANDRES *v.* SORIANO, G.R. No. L-10311, June 29, 1957.

SPECIAL CIVIL ACTIONS — MANDAMUS—A GOVERNMENT OFFICER OR EMPLOYEE WHO HAD ASKED FOR LEAVE OF ABSENCE, PROLONGED THE SAME, AND DURING

THE CONTINUANCE THEREOF PERFORMED ALLEGED MISCONDUCTS CONTRARY TO THE CIVIL SERVICE RULES, CANNOT COMPEL HIS SUPERIOR BY MANDAMUS TO ALLOW HIM TO RESUME HIS DUTIES. — Petitioner R. Teodoro was appointed chief of the General Service and Records Section of the SWA by the President. He asked for leave of absence. He prolonged the same and, when told to return, asked for sick leave. The period for his sick leave over, he was again told to return. But he filed his resignation. His chief, Pacita Madrigal Warns, SWA administrator, held back his letter of resignation, requested him to account for his cash advance. Petitioner then sent another letter withdrawing his resignation. But at the time Mrs. Warns, she claimed, had already forwarded the letter of resignation to the Executive Office. By letters, petitioner asked respondent to allow him to resume his work; that, if disallowed, he would bring the proper action in court. Respondent in return informed petitioner that administrative charges were being prepared against him: for prolonging his absence and deceiving the government as regards its cause; for employing himself with a private firm without knowledge of the government, and for the unaccounted cash advance made in his favor. Petitioner refused to appear in the investigation conducted for the administrative charges; and respondent refused to allow petitioner to resume his work. Action for mandamus was brought by petitioner which he won. The court, however, did not grant him damages for back salaries, among others. Hence this appeal by both parties. *Held*, petitioner did not go to court with clean hands. There is evidence to show that he is guilty of the alleged misconducts imputed against him. A government officer or employee who had asked for leave of absence, prolonged the same, and during the continuance thereof, performed alleged misconducts contrary to the Civil Service rules, cannot compel his superior by mandamus to allow him to resume dis duties. TEODORO *v.* WARNS, G.R. No. L-9886, July 24, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — AN ORDER APPOINTING A SPECIAL ADMINISTRATOR OR A RECEIVER IS OF INTERLOCUTORY NATURE; AND THE COURT MAKING THE APPOINTMENT RETAINS CONTROL OVER IT. — Martin Garcia died intestate in Albay leaving as his heirs his widow and their six children. These heirs entered into an extrajudicial partition of the intestate estate left them. The widow of Martin Garcia died, also intestate. One of the heirs, Paula Garcia, about 37 years after the extrajudicial partition, commenced a civil case for partition of real and personal properties against his co-heirs. These properties referred to were the same properties left by deceased Matin Garcia. Plaintiff in this case filed an unverified petition for the appointment of an administrator or receiver. Petition was opposed by all of the defendants, except petitioner Ciriaco herein. The court denied the motion. About one year after the court denied the motion for the appointment of an administrator or receiver, defendant Ciriaco filed another motion for the appointment of an administrator. His co-defendants did not receive copy of this motion and so it was heard without opposition. The motion was granted and an administrator was appointed. One Melencio Orbase was appointed and he assumed his duties as such. Two days after the motion was heard, his co-defendants received a copy of the motion. Accordingly, they moved to set aside the order appointing an administrator. The court revoked its order appointing an administrator. Ciriaco, when his motion for reconsideration was denied, went to the Supreme Court on certiorari and mandamus. He claimed that once the

trial court had ordered the appointment of Orbase as administrator, and after the latter had assumed office, said trial court had lost control over said appointment and it could not set aside the same even on motion by the proper party. *Held*, an order appointing a special administrator or receiver is of interlocutory nature; and the court making the appointing retains control over it and that it may modify, rescind, or revoke the same on sufficient grounds at any time before final judgment. GARCIA *v.* FLORES, G.R. No. L-10392, June 28, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — PENDING REVIEW ON APPEAL OF AN ORDER OF THE COURT DENYING THE PROBATE OF AN ALLEGED WILL, THE UNIVERSAL HEIR AND EXECUTRIX DESIGNATED IN SAID WILL HAS A SPECIAL INTEREST TO PROTECT. — Aurea Matias was made a universal heir in a will. The will named her as the executrix. She petitioned for the probate of the will which was denied. She appealed to the Supreme Court. Pending appeal, the Court removed the special administrator which had been appointed by another judge of the same court, replaced him with three special administrators friendly to oppositors of the probate of the questioned will, approved the collection and sale of the produce of the estate pending determination and refused the intervention of Aurea Matias. Oppositors of the probate of the alleged will claimed that since the same had been refused probate, Aurea Matias, universal heir therein and designated executrix in the same, had already lost any interest that she might have had in the estate judicial administration. *Held*, the acts of the respondent Judge could not be fully sanctioned. Although the probate of the alleged will of Gabina Raquel was denied by respondent Judge, the order to this effect is not, as yet, final and executory. It is pending review on appeal. As such, Aurea Matias has — as the universal heir and executrix designated in said instrument — a special interest to protect during the pendency of said appeal. MATIAS *v.* GONZALES, G.R. No. L-10907, June 29, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — ACTS DONE BY AN EXECUTOR IN THE INTEREST OF HIS TRUST, PRIOR TO HIS QUALIFICATION AS SUCH, BECOME BINDING ON THE ESTATE UPON HIS QUALIFICATION. — R. Ozaeta was named executor of the testate estate of Carlos Palanca. Before he qualified as such, he employed the services of an accounting firm to make an inventory of the estate under him. He also employed the same firm to prepare the income tax return and engaged same in tax consultations. During this employment the Philippine Trust Company was the administrator of the deceased Palanca's estate. Subsequently, Ozaeta qualified as executor and special administrator. He presented for approval to the court a claim for payment of the services of the accounting firm he had employed. The heirs of Palanca opposed the approval of the claim on the ground that the services of the accounting firm had been solicited by Ozaeta while the latter had not yet qualified as executor of deceased Palanca's testate which was then under administration by the Philippine Trust Company. Therefore, Ozaeta himself should pay for the services he had solicited. The court was with the oppositors. Hence Ozaeta went to the Supreme Court. *Held*, the general rule is that acts done by an executor in the interest of his trust, prior to his qualification as such, become binding

on the estate upon his qualification. The services of the accounting firm were useful to the estate. The estate should pay for them. OZAETA *v.* PALANCA, G.R. No. L-9776 & 9851, July 31, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE COMPLAINT CONTEMPLATED BY THE LAW AND THE RULES IS NECESSARILY THAT ONE FILED IN COURT. — Engracio Santos was charged in the CFI of Rizal with the crime of rape. He was found guilty. He appealed to the Court of Appeals on the ground that there was no valid complaint subscribed and sworn to by the offended party as required by art. 344 of the Rev. Penal Code. Accused filed a motion to quash which the Court of Appeals granted. Offended party, Policarpia Bansuelo had executed and signed in the presence and before the fiscal a "salaysay" which was a narration of the facts surrounding the commission of the crime of rape. The prosecution contended that this was sufficient compliance with the requirement of law and the Rules of Court regarding the complaint for rape. The prosecution and the offended parties appealed to the Supreme Court. *Held*, the "salaysay" was not filed in court but with the fiscal. The complaint complated by the law and the rules is necessarily that one filed in court. PEOPLE *v.* SANTOS, G.R. No. L-8520, June 29, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE CRIMINAL RECORD OF WITNESS FOR PROSECUTION CANNOT BE CONSIDERED AS NEWLY DISCOVERED EVIDENCE BECAUSE THE SAME WAS AVAILABLE TO THE DEFENSE MUCH PRIOR TO THE TRIAL OF THE CASE. — Ernesto Basa was killed one night. He died from stab wounds. There was only one eye witness, the witness for the prosecution, one Ernesto Balaktaw. Ernesto Balaktaw testified in court and identified accused herein as the killers. Balaktaw's testimony was corroborated by the finding of the physician who examined the deceased. The physician found that the stab wounds were inflicted when deceased was lying down. This same finding contradicted the defense of accused that wounds were inflicted during a fight. With these findings, the lower court convicted accused of the charge of murder and sentenced them to death. Now it turned out that the witness for the prosecution, Ernesto Balaktaw, had been previously convicted of a crime. There was a criminal record of the witness in the possession of the Criminal Identification Section of the Manila Police Department. With this criminal record, accused presented a motion for new trial on the ground of newly discovered evidence. But the lower court denied the motion. When the case went to the Supreme Court *in consulta* accused pointed this as one error committed by the lower court. *Held*, the criminal record of Balaktaw cannot be considered as newly discovered evidence because the same was available to the defense much prior to the trial of this case. PEOPLE *v.* SOLIMAN, G.R. No. L-9723, June 28, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE CASES SHOULD BE DISMISSED BECAUSE OF LACHES ON THE PART OF THE PROSECUTING OFFICER. — Three persons were charged with slander in the municipal court of Manila for having uttered insulting words and expressions against Generoso Amosco. On motion of the three accused, however, the court dismissed the three cases on Aug. 11, 1954 for lack of cause of action and lack of jurisdiction. Amended

complaints were filed on Aug. 20, 1954. Again these complaints were dismissed on motion of the accused. The clerk of court entered the order of dismissal in the clerk's daily report of Oct. 18, 1954. Almost eleven months elapsed without any action on the part of the fiscal. It was only on Sept. 14, 1955, that he filed a notice of appeal against the order of Oct. 18, 1954. The CFI held that the order of dismissal of the inferior court could no longer be reviewed since the appeal taken by the fiscal was not perfected before 6:00 p.m. of the day after entry of the order of dismissal. The fiscal claimed he received the notice of the order of dismissal only on Sept. 14, 1955 and he filed his notice of appeal the same day. Therefore, he perfected his appeal on time. The issue presented by the Government was whether the period of appeal should be counted from the entry of the order appealed from or from receipt of the order appealed by the person appealing. *Held*, without determining the issue presented by the Government in this appeal, the cases should be dismissed because of laches on the part of the prosecuting officer. PEOPLE *v.* VILLAVICENCIO, G.R. No. L-10068-70, June 29, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE APPELLEE NOT HAVING ENTERED A PLEA TO THE INFORMATIONS, THE APPEAL BY THE STATE FROM THE ORDER QUASHING THE INFORMATIONS DOES NOT AND CANNOT CONSTITUTE DOUBLE JEOPARDY. — Teodoro Yuzon, together with four other defendants whose names were unknown, was charged in the CFI of Pampanga with the complex crime of kidnapping with murder of Francisco Pineda and Quintin Pineda in two separate informations. After the arraignment Teodoro Yuzon moved to quash the information in the two cases on the ground that he had been previously convicted of the crime of rebellion after withdrawing his plea of not guilty to the original information for rebellion with murder, robbery, arson and kidnapping and entering one of guilty to the crime of simple rebellion. The ground given for the motion to quash was double jeopardy. The prosecution objected that there was no danger of double jeopardy since there was neither identity nor similarity between the complex crime of kidnapping with murder and rebellion; that the crime of rebellion did not necessarily include or was included in that of murder, arson, kidnapping or robbery. The trial judge granted the motion to quash holding that the crime of rebellion included murder, arson etc. The State appealed. *Held*, there is no evidence to show that the murder committed in this case was in furtherance of the rebellion movement. The dismissal of the informations was rather premature and unwarranted. The appellee not having entered a plea to the informations filed in these two cases, the appeal by the State from the order quashing the informations cannot and does not constitute double jeopardy. PEOPLE *v.* YUZON, G.R. No. L-9462-63, July 11, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — TO BE BINDING, A JUDGMENT MUST BE DULY SIGNED AND PROMULGATED DURING THE INCUMBENCY OF THE JUDGE WHO SIGNED IT. — Accused was charged of a criminal offense in Branch II of the CFI of Rizal presided by Judge Demetrio B. Encarnacion. Judge Encarnacion signed the decision dated June 4, 1954 absolving accused of the crime. The judge delivered his decision to Deputy Clerk Javillonar on June 18, 1954. Javillonar notified the parties that the decision in the case would be

promulgated on June 30, 1954 at 8:30 a.m. On June 19, 1954 Judge Encarnacion ceased to be a member of the judiciary as a result of RA No. 1186 which abolished the positions of Judges-at-large and cadastral judges. The decision was not promulgated till Nov. 12, 1954. The fiscal appealed, contending that the decision could no longer be validly promulgated because Judge Encarnacion had vacated his post on June 19, 1954. *Held*, it is well settled that, to be binding, a judgment must be duly signed, and promulgated, during the incumbency of the judge who signed it. In criminal proceedings the decision may be read by the Clerk of Court in the absence of the judge who penned it provided the latter is still the judge therein. PEOPLE *v.* SO, G.R. No. L-8732, July 30, 1957.

REMEDIAL LAW — EVIDENCE — THE STRONGEST EVIDENCE AGAINST THE ACCUSED IS HIS OWN CONFESSION, WHERE HE ADMITS TO HAVING CHOKED THE DECEASED. — On the morning of Feb. 7, 1954, an old widow by the name of Canuta Pepino suddenly disappeared. The last time she was seen by an immediate member of her family, her son Simeon Gonza, was on the previous evening. Deceased was then in the store of one Miguel Pepino to whom she wanted to turn in the money for a pig. A patadiong, identified to be the one she was wearing on the morning she disappeared, was found floating in the river. The prosecution had these pieces of evidence in its favor: that of Gerardo Caitor who testified that accused Geronimo Incierto had approached him and asked him to help dispose of the dead body of deceased; Simeon Ganza who testified that when his mother, deceased Canuta Pepino, was counting the money accused was present and saw the money; Anatolio Nierra who testified that he heard the shriek of Canuta Pepino and saw appellant nearby who told him to be quiet lest he, accused, kill him; and the confession of accused, admitting he had chocked deceased to death. In court, however, accused testified that during the occasion in question he had been home all day. *Held*, the strongest evidence against the accused is his own confession, where he admits to having choked the deceased. This confession was given by him voluntarily before a competent officer, the justice of the peace, who testified to the voluntariness thereof and the regularity in the preparation of the same. Appellant did not deny having made that confession. PEOPLE *v.* INCIERTO, G.R. No. L-9246, June 29, 1957.

REMEDIAL LAW — EVIDENCE — IDENTITY OF PERSON KILLED IS SUFFICIENTLY ESTABLISHED BY SISTER OF DECEASED WHO IDENTIFIED HIS BONES AND BY ANOTHER PERSON WHO UNERRINGLY POINTED OUT TO THE AUTHORITIES THE PLACE WHERE DECEASED WAS BURIED DESPITE THE LAPSE OF MORE THAN FIVE YEARS FROM TIME OF KILLING. — Federico Elescupides disappeared completely after he was forcibly taken by accused and carried away, his hands bound behind him. More than five years later, Remigio Ramos led the authorities to a place where he claimed he saw accused bury the dead body of Elescupides and another dead person more than five years ago. The place was an old fox hole. Dug out, the well gave up the bones of two bodies, one set of bones with the wrists still tied with a wire. Loreta Elescupides, sister of deceased Federico Elescupides, identified this set of bones as those of her brother. Another witness pointed to accused as the person who had forcibly taken away

Federico Elescupides more than five years ago with his hands bound behind him. The defense questioned the sufficiency of the evidence as to the identity of the person killed. *Held*, the identity of Federico Elescupides has been sufficiently established by his sister who identified his bones and by Remigio Ramos who led the authorities to the place where Federico was buried with another person and who unerringly pointed to the old fox-hole where Federico and the other person laid buried despite the lapse of more than five years from the time of the burial. PEOPLE *v.* RAMOS, G.R. No. L-9579, June 29, 1957.

REMEDIAL LAW — EVIDENCE — HAVING VOLUNTARILY PLEADED GUILTY, APPELLANT MAY NOT PRESENTLY QUESTION THE SUFFICIENCY OF THE EVIDENCE PREVIOUSLY PRESENTED BY THE PROSECUTION. — Appellant Ricardo Naguit, with three others, was charged in the CFI of Manila with robbery with intimidation against persons. The information charged appellant of having conspired and confederated with his co-accused and by the use of knives took away from three named persons one gold bracelet worth ₱250, two diamond solitaire rings worth ₱280, and one Hamilton wrist watch worth ₱125. Appellant was tried alone, since his two co-defendants had pleaded guilty and one co-defendant had jumped bail. The prosecution presented three witnesses who testified. Then counsel for appellant moved to continue the hearing on another date. On this date appellant manifested his desire to enter a plea of guilty; whereupon the trial judge ordered his re-arraignment. The judge sentenced him to an indeterminate prison term of six months and one day of prision correccional to six years and one day of prision mayor plus the corresponding accessory penalties. Accused questioned the length of the penalty since his co-accused who had pleaded guilty had been sentenced to six months of imprisonment only. He moved for new trial so that he could present evidence of mitigating circumstances in his favor. Denied, he appealed. *Held*, having voluntarily pleaded guilty, this appelant may not presently question the sufficiency of the evidence previously presented by the prosecution. That is no longer the issue. PEOPLE *v.* ROQUE, G.R. No. L-9388, June 29, 1957.

REMEDIAL LAW — EVIDENCE — THE FINDINGS OF THE TRIAL COURT AS TO THE GUILT OF THE ACCUSED CANNOT BE OVERCOME BY AFFIDAVITS OF INVESTIGATING OFFICER, OF THAT OF WITNESSES WHO TESTIFIED DIFFERENTLY ON THE TRIAL AND OF THE OFFICIAL WHO TOOK DYING DECLARATION OF DECEASED. — Gamboa, Umali, Casalme, Caag and Seguñal were charged with, and found guilty of, attempted robbery with homicide and attempted robbery with slight physical injuries. The pieces of evidence which formed the basis of their conviction were: the dying declaration of the deceased; the testimony of Lucas Tolentino, son of deceased, and Honorata Barquilla, wife of deceased, the two being eyewitnesses to the commission of the crime. Gamboa, brought to the hospital for the treatment of the wounds he incurred as a result of the resistence put up by inmates of the house to be robbed, made an express statement, although he tried to exculpate himself from liability. Umali admitted being present during the commission of the crime but denied participation therein. The trial court found the accused guilty of the crimes charged against them. Accused appealed. But Gamboa and Umali withdrew their appeal. Casalme, Caag and Seguñal moved for new trial. Their new evidence consisted of the

affidavit of the investigating officer who expressed his opinion of the innocence of the appellants; the joint affidavit of Lucas Tolentino and Honorata Barquilla who made statements contrary to their testimony in court; and the affidavit of the of the Chief of Police who took the dying declaration of the deceased. *Held*, movants are not entitled to a new trail. It is clear that the affidavits of the investigating officer, the joint affidavit of Lucas and Honorata, and the affidavit of the Chief of Police cannot prevail over the findings of the trial court as to the guilt of these appellants, based on the evidence adduced at the trial. However, appellants are guilty of only one crime, namely, attempted robbery with homicide and slight physical injuries. PEOPLE *v.* CASALME, G.R. No. L-11057, June 29, 1957.

REMEDIAL LAW — EVIDENCE — CONVICTION OF A CRIME AFFECTS THE CREDIBILITY OF A WITNESS, NOT MERELY A CHARGE OR INFORMATION ACCUSING HIM THEREOF. — Arculano Cabrito was accused of murder with the aggravating circumstance of treachery. The offense consisted in his killing of one Lope Cartago who had been living with his half-sister, Herminia, in a husband and wife relation without benefit of marriage. Accused made two statements to investigating officers admitting the killing, alleging, however, self-defense. One witness for the prosecution, however, testified that he saw accused hit deceased Cartago with a pick while deceased, with hands bound behind him, was held by two companions of accused before a ditch which became deceased's grave. This eye-witness testified that accused and his companions threatened him if he should reveal that he had seen them. Defense sought to impeach this witness' credibility on the ground that he had been accused of robbery; that almost ten years had passed before he disclosed the commission of the crime. *Held*, conviction of a crime affects the credibility of a witness, not merely a charge or information accussing him thereof. The long silence is well explained by the threat made against witness that he did not find it safe to disclose till after accused was arrested. PEOPLE *v.* CABRITO, G.R. No. L-10404, July 25, 1957.

REMEDIAL LAW — EVIDENCE — THE THEORY THAT ERNESTO DEFENSOR ATTACKED LEONRICO MALFORI WITHOUT MUCH ADO CANNOT BE BELIEVED FOR THE REASON THAT THE DEFENSE HAS NOT PRESENTED ANY PROOF SHOWING THE MOTIVE FOR THE AGGRESSION. — On Nov. 28, 1954, Nilo Defensor died as a result of bolo wounds. His sister, Regina Pareja, bore slight injuries on her lip and a finger. The night before, Nilo had an altercation with Dominador Pasederio over some ladies. The prosecution showed that Nilo was attacked by Cirilo and Diminador Pasederio, Bernabe Gancia and Leonrico Malfori and Rafael Pasederio and another son, Andres. Nilo was then combing his hair in his sister's house. The time was about 6:00 a.m. Nilo's sister, Regina, shouted for her husband and another brother, Ernesto Defensor, who were about 50 meter away under a santol tree. The attackers turned on her and gave her the injury on her lip and finger. Defendant's theory was: On the morning of the killing Leonrico Malfori passed by the house of the offended parties. Ernesto Defensor suddenly attacked him. Regina's husband added to the aggression. Nilo was then in the house. But he too came down with a spear and attacked him. Cirilo Pasederio came to Malfori's aid. Whereupon, Nilo attacked him with the spear. But Cirilo succeeded in wounding Nilo without himself receiving any wound. Nilo died from these wounds. Regina got her injuries when she tried to grab Cirilo's bolo from him. *Held*, the theory that Ernesto Defensor attacked Leonrico Malfori without much ado cannot be believed for the reason that the defense has not presented any proof showing the motive for the aggression. PEOPLE *v.* PASADERIO, G.R. No. L-9427, July 31, 1957.

REMEDIAL LAW — EVIDENCE — THE THEORY OF DEFENSE AS TO THE KILLING CANNOT BE BELIEVED BECAUSE OF ITS IMPROBABILITY. — Candido Catapang died as a result of a gunshot wound and bolo wounds. There were two versions of the killing. The prosecution showed that deceased Candido Catapang had an altercation with his brother-in-law, Juanito Palo. Deceased's daughter, overhearing the argument, became alarmed and called three men. Deceased did not like his daughter's interference and chased her with a piece of wood. Suddenly a shot rang. The second shot hit Catapang. Idelfonso Palo emerged with a pistol in hand. He was followed by his brother, Pedro Palo, who had a bolo. The latter gave Catapang the bolo wounds. Witnesses for the defense showed that Catapang was chastising his daughter, niece of defendants. When defendants intervened, deceased brandished his bolo, chased them. In self-defense, defendants shot him, and finally felled him with bolo wounds. Which of the two theories should be believed? *Held*, the trial judge who saw the witnesses testify refused to believe the defendant's version, for seven reasons. Most important is the improbability of such version. PEOPLE *v.* PALO, G.R. No. L-9593 and 9594, July 31, 1957.

COURT OF APPEALS

CIVIL LAW — PERSONS — THE PROPERTY EARNED DURING THE COHABITATION IN A VOID MARRIAGE SHALL BE CONSIDERED THE COMMON PROPERTY OF THE COHABITATING PARTIES AND SHALL BE DIVIDED BETWEEN THEM SHARE AND SHARE ALIKE. — Macario del Castillo was married to Fausta Ricafrente. Subsequently, and during the existence of this marriage, Macario married Engracia Ventura with whom he stayed up to his death. Macario became a member of the Philippine Army during this latter relationship. Macario died, leaving backpay salaries, allowances and gratuity which were received by Engracia and her daughter with Macario. Now Fausta Ricafrente wanted to recover the amount of money received as administratrix of the intestate estate of Macario del Castillo and his legitimate wife. The lower court found that both Macario and Engracia were in bad faith in contracting the second marriage. The question to be resolved by the Court of Appeals referred to the character of the money earned during the existence of the void marriage and as to who was entitled thereto. *Held*, the provisions of the present Civil Code do not take into consideration the good or bad faith of the parties to the void marriage in determining the property relations of the spouses, the effects thereon being the same whether the marriage is in good faith or bad faith on the part of both or one of them. According to this, the money involved in this case having been earned during the cohabitation of Macario del Castillo and Engracia Ven-