CONVENIENCE AND NOT A JURISDICTIONAL REQUISITE. — Oppositors-appellants here questioned the jurisdiction of the probate court, contending that two heirs not having been notified in advance of the hearing for the allowance of the will the court did not acquire jurisdiction. **Held,** such "no notice" argument is without foundation. A court acquires jurisdiction over all persons interested in the estate through the publication of the petition in the newspapers. Service of notice on individual heirs of legatees or devisees is a matter of procedural convenience, not a jurisdictional requisite. **In Re Petition for the Summary Settlement of the Estate of the Deecased, Caridad Perez,** G. R. No. L-12359, July 15, 1959.

COURT OF APPEALS CASE DIGEST

CIVIL LAW — CREDIT TRANSACTIONS — ACTUAL KNOWLEDGE OF A VENDEE THAT THE CHATTEL SOLD TO HIM WAS THE SUBJECT OF A PRIOR UNREGISTERED MORTGAGE IS EQUIVALENT TO REGISTRATION. — Juanito Miranda was the owner of a jitney. To secure payment of a loan, he executed a chattel mortgage over said vehicle in favor of plaintiff. When plaintiff foreclosed, Miranda having defaulted, the vehicle was no longer in latter's possession, but in that of his co-defendant Vargas in favor of whom he executed an absolute deed of sale. Plaintiff's mortgage was unregistered at the time of the sale. It was shown, however, that Vargas had actual knowledge of plaintiff's mortgage. **Held,** the actual knowledge of Vargas of the prior unregistered mortgage in favor of plaintiff was equivalent to registration. In plain, whatever right she acquired by virtue of the sale was subject to plaintiff's superior lien although unrecorded at the time of the sale. **Lim v. Miranda,** CA-GR No. 19818-R, August 14, 1958.

CIVIL LAW — PERSONS — IN DETERMINING PARENTAL RIGHT TO THE CUSTODY OF A CHILD, (1) THE BEST INTEREST OF THE CHILD — WHICH IS PARAMOUNT, AND (2) UNFITNESS OF THE PARENT — WHICH MAY WARRANT THE LOSS OR SUSPENSION OF **PATRIA POTESTAS,** MUST BE CONSIDERED; IF AT WAR WITH THE CHILD'S WELFARE, PARENTAL RIGHT TO CUSTODY MUST YIELD. — Petitioner, in a fit of anger, fatally stabbed his wife. While in jail, respondent, petitioner's father-in-law, took custody of petitioner and deceased's children. Respondent refusing to surrender custody of the children to petitioner, the latter petitioned for **habeas corpus** which the lower court granted, apparently bottomed on the proposition that the mere fact that petitioner was accused of parricide did not deprive him nor suspend his parental authority. **Held,** in determining parental right to the custody of a child, (1) the best interest of the child — which is paramount, and (2) unfitness of the parent — which may warrant the loss or suspension of **patria potestas,** must be considered; if at war with the child's welfare, parental right to custody must yield. Petitioner is quarrelsome. On the other hand, the children are apparently enjoying the blessings of peace and comfort — thanks to their substantial and loving grandfather who had taken them into his fold. Now, petitioner seeks to have them returned. That is for the worse. Petition denied. **In Re Petition for Habeas Corpus of Nadia Ortega,** CA-GR No. 18831-R, June 4, 1958.

CIVIL LAW — SALES — ARTICLE 1544 OF THE NEW CIVIL CODE IMPLIES THAT THE VENDOR MUST NECESSARILY BE THE OWNER OF THE PROPERTY SOLD AS NO ONE COULD TRANSMIT DOMINION ON ANYTHING HE DOES NOT OWN. — On the strength of a power of attorney duly executed in his favor, Dionisio sold his father's property, the land in question, to plaintiff-appellant. Thru a series of falsities and fraudulent misrepresentations, Dionisio once more sold the property to defendants-appellees. Plaintiff did not register his interest while defendants had theirs recorded in the proper Register of Deeds. Discovering the subsequent sale, plaintiff commenced action to annul the title issued in defendants' favor. Applying Article 1544 of the New Civil Code, the lower court dismissed the complaint on the ground that defendants recorded their right of ownership. **Held,** article 1544 does not apply. Although the provision does not specify, it could well be implied that the vendor must necessarily be the owner of the property sold as no one could transmit dominion on anything he does not own. The first sale was by the owner, it being made under the power of attorney, but not the second, as it was effected, altho by the same son, without the knowledge, much less intervention of his father, and through a series of falsities and fraudulent misrepresentations. **Layag v. Barbero,** CA-GR No. 16784-R, July 31, 1958.

CIVIL LAW — SUCCESSION — THE REQUISITES OF **RESERVA TRONCAL** ARE (1) PROPERTY RECEIVED BY A DESCENDANT BY GRATUITOUS TITLE FROM AN ASCENDANT OR FROM A BROTHER OR SISTER, (2) SAID DESCENDANT DIED WITHOUT ISSUE, (3) THE PROPERTY IS INHERITED BY ANOTHER ASCENDANT BY OPERATION OF LAW, (4) EXISTENCE OF RELATIVES WITHIN THE THIRD DEGREE BELONGING TO THE LINE FROM WHICH SAID PROPERTY CAME. — Romualdo Aranda died. Survivors — Juana de Lara, spouse, and Filomena Aranda, only child. Filomena subsequently died survived by Patricio and Juan Aranda, brothers of deceased Romualdo. In the intestate proceedings filed after Filomena's death, a project of partition was submitted to the court. Before its approval, Juan died. Thus, in the order approving the project, which gave to the spouse, in addition to her half share in the conjugal estate, other properties as her inheritance from her daughter, Filomena, who had inherited the same from her deceased father, Romualdo, Patricio, only surviving brother of the intestate, was declared the only reservee to the aforementioned properties. Plaintiff, Juan's son, filed the action to annul the project and the court's order approving it. **Held,** the requisites of **reserva troncal** are (1) property received by a descendant by gratuitous title from an ascendant or from a brother or sister, (2) said descendant died without issue, (3) the property is inherited by another ascendant by operation of law, (4) existence of relatives within the third degree belonging to the line from which said property came. Plaintiff not being a third degree relative counted from Filomena, he could not have been a reservee to the aforementioned properties. His action necessarily fails. **Aranda v. De Lara,** CA-GR No. 15302-R, August 27, 1958.

COMMERCIAL LAW — PRIVATE CORPORATIONS — IN THE ABSENCE OF A CONTRARY PROVISION IN THE BY-LAWS, THE QUORUM FOR THE VALID EXERCISE OF CORPORATE ACTS IS A MAJORITY OF ALL THE MEMBERS COMPOSING THE BOARD OF DIRECTORS. — Petitioner-appellee was employed as manager of the Bauang FACOMA by its board of directors. Subsequently, the board passed a resolution removing him from said office. The by-laws of the association placed the administration of corporate business in a board of directors of 15 members. However, when the resolution in question was passed, only seven members were present, one member being absent, the rest, vacant. **Held,** although the seven members present unanimously voted for the approval of the resolution in question, it is obvious that it was not and could not have been a valid corporate act because there was lacking the necessary quorum in the meeting in which it was passed. There should have been eight (8) members present, because the board of directors was composed of 15 members. **Calica v. Libatigue,** CA-GR No. 19742-R, August 28, 1958.

CRIMINAL LAW — ESTAFA — IN ESTAFA UNDER ARTICLE 316 OF THE REVISED PENAL CODE, PREJUDICE OR DAMAGE NEED NOT INVOLVE THE OWNER OF THE OBJECT SWINDLED. — Defendant-appellant, sub-agent of complainant bank, manipulated certain commercial documents by making it appear that one Ilustre was the owner of 14 hectares of land and that he wanted to obtain a loan of ₱600 to secure which he was willing to execute a mortgage over the aforementioned property. Defendant made it appear that Ilustre filed an application for the loan. Acting on his strong recommendation, the loan was granted. The loan unpaid upon maturity, the complainant was about to foreclose when it discovered that Ilustre did not own the mortgaged property. It was also shown that Ilustre never received the loan granted as in fact he did not apply for any, although he admitted having signed the papers which turned out to be the ones manipulated by defendant, on the understanding that he was merely being made a witness to another transaction. Prosecuted for estafa under Article 316 of the Revised Penal Code, he was convicted. **Held,** the conviction of the defendant is correct. It is not necessary that the act be made out to prejudice the owner of the land which in this case does not exist. The prejudice or damage may involve even a third person like the complainant bank. **People v. Luzentales,** CA-GR No. 14488-R, August 1, 1958.

CRIMINAL LAW — ILLEGAL POSSESSION OF FIREARMS — WHERE THE POSSESSOR HAS A PENDING APPLICATION FOR A PERMANENT LICENSE TO POSSESS, AND HIS POSSESSION IS NOT UNKNOWN TO AN AGENT OF THE LAW, THERE IS NO ILLEGAL POSSESSION. — Defendant here was prosecuted for illegal possession of firearms. Defendant possessed the firearm in question under a temporary permit which he renewed from time to time, the last of which he failed to renew, hence the prosecution. It appeared, however, that sometime before and after the expiration of his temporary permit, defendant went to the Constabulary Headquarters at Camp Crame and asked the help of an acquaintance, a PC agent, to secure a permanent license for his revolver. He was then advised by the agent to keep his revolver, pending issuance of the permanent permit. An

application for the license was duly filed. **Held,** it is true that in statutory offenses it is enough that the statute has been violated, without inquiring whether there was intent to violate. However, bearing in mind the circumstances of the case, we are inclined to take a liberal view. It seems that the spirit of the law regarding the possession of firearms is to punish only those who possess the same without the knowledge of the authorities concerned, and without even bothering themselves to legalize such possession. Acquitted. **People v. Mallari,** CA-GR No. 7716-R, October 4, 1958.

LAND TITLES AND DEEDS — PUBLIC LAND LAW — ONCE ENTRY OR POSSESSION OVER A PUBLIC LAND IS AUTHORIZED BY THE BUREAU OF LANDS PURSUANT TO LAW, THE APPLICANT-POSSESSOR MAY LOOK UPON THE EXECUTIVE AND JUDICIAL DEPARTMENTS FOR THE PROTECTION OF HIS RIGHTS — FROM THE FORMER FOR THE ISSUANCE OF A HOMESTEAD PATENT, AND FROM THE LATTER FOR THE MAINTENANCE OF HIS PEACEFUL POSSESSION. — The land in question was the subject of separate homestead applications filed by the plaintiff and the defendant. Plaintiff's application was accepted, recorded and given due course. Subsequently, defendant took possession of the land, hence the action for recovery of possession. Judgment was rendered in plaintiff's favor. In his appeal, defendant contended, among others, that the lower court erred in not dismissing the complaint on the ground that the decision of the Director of Lands in the homestead conflict has not yet become final as plaintiff falsely alleged, an appeal therefrom having been taken by defendant to the proper department. **Held,** assuming the allegation was false, plaintiff acted in good faith. Granting that the administrative case is not yet final, the same pending appeal, the propriety of the present action for possession cannot be questioned. Once entry or possession over a public land is authorized by the Bureau of Lands pursuant to law the applicant-possessor may look upon the executive and judicial departments for the protection of his rights — from the former for the issuance of a homestead patent, and from the latter for the maintenance of his peaceful possession. **Suanson v. Magallones,** CA-GR No. 13578-R, September 30, 1958

POLITICAL LAW — ADMINISTRATIVE LAW — REPUBLIC ACT 546 DID NOT TRANSFER TO THE BOARD OF EXAMINERS FOR MARINE OFFICERS THE AUTHORITY OF THE COMMISSIONER OF CUSTOMS AND, WITH HIS AUTHORIZATION AND APPROVAL OF THE SECRETARY OF FINANCE, THE COLLECTORS OF CUSTOMS TO APPOINT BOARDS TO INVESTIGATE MARINE ACCIDENTS UNDER SECTION 1198 OF THE REVISED ADMINISTRATIVE CODE. — Petitioner, a master mariner and commissioned pilot had his vessel ran aground. The Special Board of Marine Accidents constituted to investigate the incident found him responsible for the grounding and recommended suspension of his license. The recommendation was confirmed by the Board of Marine Inquiry, in turn approved by the Commissioner of Customs and subsequently confirmed by the Secretary of Finance. Petitioner petitioned for **certiorari** to annul the proceedings conducted by the Special Board, contending that under Republic Act 546 the investigation properly pertains to the Board of Examiners for Marine Officers. **Held,** it is true that with the enactment of Republic Act 546 the Com-

missioner of Customs has lost his authority to appoint Boards of Examiners for Marine Officers — evidently for the purpose of conducting the required examination for such marine officers and granting them the necessary permits and licenses. However, the power to investigate through the appointment of a Board of Accidents remains with the Commissioner of Customs. **Isaac v. Jacinto,** CA-GR No. 15823-R, August 30, 1958.

POLITICAL LAW — LAW OF PUBLIC OFFICERS — TAKING THE OATH OF OFFICE, RECEIVING THE SALARY ACCRUING TO THE OFFICE, AND OTHERWISE DISCHARGING THE DUTIES OF THE OFFICE DISTINCTLY MAKE AN APPOINTEE A **DE FACTO** OFFICER. — Petitioner was appointed chief of police of a certain municipality. Subsequently, by resolution of the municipal council, the post of deputy chief of police was created and petitioner was appointed thereto. It appeared that due to ill health to perform patrol duties, petitioner was relieved of his post and just to accommodate him his new position was created. Respondent was appointed to take his place as chief of police. Hence, the **quo warranto** proceedings. In denying him relief, one of the grounds relied upon by the court was abandonment of office brought about by petitioner's acceptance of his new position. He assailed this ground contending that since the resolution had not yet been acted upon by the provincial board, it did not create any office. **Held,** while the general power of the municipality to enact ordinance and pass resolutions is not subject to approval by the provincial board, and the same are valid, unless and until properly disapproved by the provincial board, Section 2258 of the Revised Administrative Code, expressly provides and requires that the action of the council be "with the approval of the provincial board." Under the facts, it may be said in a sense, that the creation of the position of deputy chief of police is not illegal. It would do well to remember that petitioner herein took the oath of office as deputy chief of police, received the salary accruing to said office, and otherwise discharged the duties of the office. Those acts of the petitioner distinctly made him a **de facto officer. Cumigad v. Soriano,** CA-GR No. 20779-R, September 22, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — COURTS OF FIRST INSTANCE ARE ABSOLUTELY WITHOUT JURISDICTION IN CUSTOMS FORFEITURE CASES. — Defendants-appellants were prosecuted for violation of Sections 2703 and 2709 of the Revised Administrative Code for filing with the Bureau of Customs a false and fraudulent customs entry, to evade higher duties and taxes, and for fraudulently removing and spiriting away the importations involved while still warehoused and under the official custody of the Bureau of Customs. After trial, they were convicted, ordered to pay the necessary customs duties, and the goods involved ordered forfeited. **Held,** the law, Sections 1360 to 1366 of the Revised Administrative Code, confers exclusive jurisdiction regarding the imposition of penalties of fine and/or forfeiture for evasion or non-payment of customs duties upon the Commissioner of Customs. As to cases relating to Section 2709, under this section the authority of the Court of First Instance in criminal cases brought before it for its violation is limited to the imposition of "a fine of not more than P2,000 or by imprisonment of not more than one year or

both." Obviously, the limitation is due to the fact that the power to decree forfeiture and order payment of customs duties have been lodged exclusively in the Commissioner of Customs, whose decisions may be appealed formerly to the CFI (Sec. 1383, Rev. Adm. Code) and presently to the Court of Tax Appeals (Secs. 7 & 22, R. A. 1125). **People v. Soria,** CA-GR Nos. 16771-R & 16771-R, August 29, 1958.
