R.A. No. 2039. An Act transferring the seat of government of the Municipality of Kayan, Mountain Province, from its present site to the site of the barrio of Tadian in the same municipality.

R.A. No. 2040. An Act to extend the corporate existence of the Baguio Country Club Corporation.

R.A. No. 2041. An Act to grant to the Metropolitan Express Company, Incorporated, a franchise to conduct a messenger and delivery express service.

R.A. No. 2042. An Act appropriating the sum of three million twenty-eight thousand pesos for the salary adjustments of high school teachers in provinces and cities and of intermediate school teachers in cities in pursuance of Republic Act Numbered Eight hundred and forty-two.

R.A. No. 2043. An Act changing the name of the barrio of Taguimtin, Municipality of Dao, Province of Antique, to Paciencia.

R.A. No. 2044. An Act granting Joseph de Castro a franchise to construct, install, maintain and operate radiotelegraph and/or radiotelephone stations in Manila, Legaspi, Tacloban, Davao, Zamboanga and Cagayan de Oro.

R.A. No. 2045. An Act granting the Municipality of San Mateo, Province of Rizal, a franchise for an electric light, heat and power system.

R.A. No. 2046. An Act creating a public corporation to be known as the Cavite Electricity Distributing Authority.

R.A. No. 2047. An Act amending section one of Republic Act Numbered One thousand five hundred thirty-seven, creating the Municipal District of Tangcal in the Province of Lanao.

R.A. No. 2048. An Act creating the Municipality of Callang, Province of Isabela.

R.A. No. 2049. An Act to amend the first paragraph of section one of Republic Act Numbered Eight hundred twenty-one. (re loan to fishermen engaged in deep-sea fishing)

CASE DIGEST

SUPREME COURT

CIVIL LAW — NATURALIZATION — A STUDENT RECEIVING ₱120 MONTHLY SALARY FOR BEING A COMMERCIAL AGENT OF HIS FATHER AND WHO OWNS A REFRESHMENT PARLOR WHICH GIVES HIM A NET PROFIT OF ABOUT ₱400 EVERY QUARTER HAS A LUCRATIVE TRADE. — Jesus Lim, a Medical student of UST, applied for Filipino citizenship. The trial court was satisfied that Lim had all the qualifications required by the Naturalization Law and so granted his petition for Filipino citizenship. The Government appealed, contending that petitioner did not have either real property in the Philippines worth not less ₱5,000 or some lucrative trade or profession as required in sec. 2 of par. 4 of the Rev. Naturalization Law. Lim acted as agent in Manila of his father's copra business in Mambajao for which he received ₱120 a month. He also ran a refreshment parlor in Mambajao from which he derived some ₱400 net profit every quarter. Lim also received ₱200 from his father for his expenses in school. The prosecution contended that the ₱120 monthly salary was a mere camouflage and not really a salary. *Held*, there is nothing to support this assertion of the prosecution. The fact that petitioner is a student does not necessarily prevent him from having a gainful occupation. A student receiving ₱120 a month as his salary for being commercial agent of his father and who owns a refreshment parlor from which he derives some ₱400 net profit every quarter has a lucrative trade. LIM *v.* REPUBLIC, G.R. No. L-8862, April 22, 1957.

CIVIL LAW — NATURALIZATION — A PETITIONER FOR NATURALIZATION WHO HAS ALL THE QUALIFICATIONS AND NONE OF THE DISQUALIFICATIONS PRESCRIBED BY LAW AND AGAINST WHOM NO UNFAVORABLE EVIDENCE HAS BEEN PRESENTED EXCEPT THAT OF AN ALLEGED ILLEGITIMATE CHILD WHO HAS NOT BEEN PRESENTED IN COURT DESPITE OPPORTUNITIES TO DO SO CAN BE GIVEN THE BENEFIT OF THE NATURALIZATION LAW — Tio Tiam, a Chinaman, filed with the CFI of Cebu a petition for naturalization as Filipino citizen. The evidence presented by him showed that he had all the qualifications and none of the disqualifications prescribed by the Naturalization Law. The government, however, attempted to cast doubt on petitioner's good moral character. For this purpose the government presented the Chief of the NBI who declared that Agent No. 64 was assigned by him to cover the case of petitioner. Said agent was able to obtain a sworn statement of one Sonia Tiu to the effect that petitioner had had illicit relations with another woman and begot Sonia Tiu as a result. The government, however, did not present the alleged sworn statement of Sonia Tiu as mentioned by the NBI Chief. Neither did it present Sonia Tiu. The court granted Filipino citizenship to petitioner. *Held*, the

evidence for petitioner shows he possesses all the qualifications and none of the disqualifications laid down by law. The testimony of the NBI Chief presented by the government is hearsay and incompetent not only because the alleged sworn statement of Sonia Tiu was not presented in court but also because Sonia Tiu herself was not presented in court, despite opportunities to do so. TIO TIAM *v.* REPUBLIC, G.R. No. L-9602, April 25, 1957.

CIVIL LAW — NATURALIZATION — APPELLANT'S LEGAL MARRIAGE HAVING TAKEN PLACE EVEN BEFORE HIS PETITION FOR NATURALIZATION WAS FILED, HE MAY NOT BE CHARGED WITH HAVING INTENDED TO NULLIFY OR CIRCUMVENT A DECISION BY HASTENING TO MARRY BEFORE IT HAD BECOME FINAL. — Chua appealed from the decision of the CFI of Manila which denied his petition for naturalization on the sole ground that in 1947 appellant married his wife Ligaya Cheng before a Chinese consul in accordance with the customs of his country instead of before a Philippine authority, thus showing, according to the court, that he had not conducted himself in a proper and irreproachable manner in his relation with the constituted government during the entire period of his residence here. Upon having learned, however, that his marriage before the Chinese consul was not valid, Chua had remarried before a Philippine JP court. This took place one year before he filed his petition for naturalization. *Held*, Appellant's legal marriage having taken place even before his petition for naturalization was filed, he may not be charged with having intended to nullify or circumvent a decision by hastening to marry before it had become final. By remarrying under Philippine laws he may well be said to have thereby evinced a desire to embrace Philippine customs and follow its laws. CHUA *v.* REPUBLIC, G.R. No. L-9983, April 22, 1957.

CIVIL LAW — NATURALIZATION — IF IT IS SHOWN FROM THE EVIDENCE PRESENTED THAT THE PETITIONER LOVES THE COUNTRY AND WANTS TO BE A FULL-PLEDGED FILIPINO, AN INCIDENTAL DESIRE TO PRACTICE HIS PROFESSION IS NOT AN OBSTACLE TO ADMISSION. — Tan, a Chinese citizen, single and 27 years of age, presented a petition for naturalization containing appropriate allegations. It was accompanied by the necessary affidavits of the witnesses. The lower Court declared him possessing all the qualifications of a Filipino citizen among other things he considered himself a Filipino citizen having been born here of a Filipino mother, constantly associated with Filipinos and studied in public schools and went to the extent of undergoing compulsory military training. When asked during the cross examination of his motive about the application, his answer was due to the desire to practice his profession. The objection of the state was based on this. *Held*, if it is shown from the evidence presented that petitioner possesses all the qualifications of a Filipino citizen, an incidental desire to practice a profession is not a bar to admission. TAN *v.* REPUBLIC, G.R. No. L-9976, April 29, 1957.

CIVIL LAW — NATURALIZATION — A PETITIONER WHO LEFT THE PHILIPPINES AFTER TAKING HIS OATH AND WITHIN 2 YEARS FROM GRANTING OF HIS PETITION VIOLATES SEC. 1 OF REPUBLIC ACT NO. 350 AND HIS NATURALIZATION MUST BE CANCELLED. — On October 28, 1949, petitioner, a Spanish subject, filed a petition for naturalization. After the case was heard on May 16, 1950, the court granted the petition. On May 15, 1950, Republic Act No. 530 was passed. June 10, 1950 he took oath and left the Philippines. On August 21, 1951 his oath of allegiance and certificate of naturalization were cancelled. After his arrival and upon learning the cancellation, he filed a new petition, but was withdrawn due to the order of the judge and thereafter depending only in the former action. The order of the Court of First Instance was attacked as superfluous and unnecessary because the former order was still executory. *Held*, a petitioner who left the Philippines after taking his oath of allegiance violates Sec. 1 of Republic Act No. 530 and his certificate of naturalization and oath of allegiance are subject to cancellation. ISASI *v.* REPUBLIC, G.R. No. L-9823, April 30, 1957.

CIVIL LAW — PERSONS — PLAINTIFFS-APPELLANTS CANNOT BRING AN ACTION AGAINST THE ESTATE OF THEIR ALLEGED FATHER BECAUSE THEY ARE NOT NATURAL CHILDREN BUT ADULTEROUS CHILDREN BECAUSE THEIR MOTHER WAS MARRIED TO ANOTHER MAN AND COULD NOT HAVE CONTRACTED MARRIAGE WITH THEIR ALLEGED FATHER AT THE TIME OF THEIR CONCEPTION. — S. Cleopas, single, died intestate, leaving two parcels of land registered in his name and a house on one of them. He was survived by two minor children, begotten by him with Esperanza de la Cruz. Esperanza, however, was legally married to Antonio Aurique and the marriage was existing before and after the conception of the two minor children. Maria Fernando, mother of Cleopas, claimed to be the sole heir of the deceased and executed an affidavit adjudicating the two parcels of land left by Cleopas to herself. Minor children, represented by their mother Esperanza, brought a joint action for recognition and recovery of the properties left by their deceased father. The lower court dismissed the action. *Held*, the real ground for dismissal is the fact that the mother of the minors is a married woman. Therefore, plaintiffs-appellants are not natural children, because their mother was married and could not contract marriage at the time of their conception. The minors are adulterous children and neither are they entitled to inherit as recognized natural children of their parents. DE LA CRUZ *v.* FERNANDO, G.R. No. L-10587, April 26, 1957.

CIVIL LAW — PROPERTY — RIGHT OF REPURCHASE AS PROVIDED FOR IN ART. 1067 OF THE N.C.C. CANNOT BE EXERCISED AFTER PARTITION OF THE PROPERTY. — Hacienda Montelibano was owned by the spouses Juan Carain and Maria Gacibe having as issues, Miguel, Fermin, Magdalena, Elena and Salud. Upon the demise of the spouses, Salud and Elena conveyed their shares in the said hacienda to Montilla. After the approval of the partition agreement, Miguel and Fermin notified Montilla that they wanted to exercise the right of repurchase as provided for in Art. 1067 of the New Civil Code to which request the latter refused to honor. *Held*, the right of repurchase as provided for in Art. 1067 of the new Civil Code can only be exercised before partition. After partition such action is not tenable. CARAM *v.* MONTILLA, G.R. No. L-7820, April 30, 1957.

CIVIL LAW — SALES — THE HUSBAND IS OBLIGED TO ADVISE THE WIFE IN CASE OF SALE OF A CONJUGAL PROPERTY, OTHERWISE IT WILL AMOUNT TO

FRAUD OF HER RIGHTS. — A homestead title was issued in favor of Catalon, who was married to the plaintiff. They were living at the time of issuance of such title separately. Catalon sold the homestead to the herein defendant without advising his wife of said transaction. The wife now brought the present action alleging fraud due to failure of the husband to advise her of the transaction, the homestead being conjugal. *Held*, the homestead being conjugal partnership property of both spouses in which the wife even if living separately had a right and interest, the dictates of reason and fairness demand that the husband advice or inform the wife of the alienation thereof. Absence of such advice amounted to a fraud of her rights. TABUNAN *v.* MARIGEN, G.R. No. L-9727, April 29, 1957.

CIVIL LAW — SURETY — IN CONTRACT OF SURETYSHIP THE CREDITOR WAS GIVEN THE RIGHT TO SUE THE PRINCIPAL OR THE LATTER AND THE SURETY AT THE SAME TIME BUT THIS DOES NOT IMPLY THAT THE SURETY COVENANTED OR AGREED WITH THE PRINCIPAL THAT IT WOULD PAY THE LOAN FOR THE BENEFIT OF THE PRINCIPAL. — Manila Fidelity and Surety Co. delivered to Manila Ylang Ylang Distillery a surety bond undertaking to pay jointly and severally with plaintiff as principal, ₱90,000.00. To secure surety against loss, plaintiff executed a second mortgage over properties which were transferred to Manila Ylang Ylang Distillery. The Surety Co. failed to pay 1st and 2nd installments due to lack of funds. Plaintiff then made arrangement with P.N.B. to raise amount guaranteed by mortgage. P.N.B. wanted that the property be released from mortgage which could not be done unless payment was made to Manila Ylang Ylang Co. which he did. The complainant then sought for payment of premium which plaintiff had to pay due to failure of Surety Co. to fulfill its obligation. *Held*, in contract of suretyship the creditor was given the right to sue the principal or the latter and the surety at the same time but this does not imply, however, that the surety agreed with the principal that it would pay the loan for the benefit of the principal. Failure of surety to pay debt does not relieve the principal from paying the premium of the bond furnished. ARRANZ *v.* MANILA FIDELITY AND SURETY CO. INC., G.R. No. L-9674, April 29, 1957.

CIVIL LAW — ADOPTION — A NATURAL MOTHER CAN ADOPT HER OWN AND ONLY NATURAL DAUGHTER. — Marietta Durang-Parang was a minor child of 11 years old. She was the natural daughter of petitioner. As such, she took care of the minor. On April 4, 1955 petitioner filed with the Court of First Instance of Manila a petition for the adoption of the child. The Solicitor-General opposed the petition for adoption on the ground that since, as petition alleged, the child had always been under her care, the same had acquired the status of an acknowledged natural child and, therefore, could no longer be adopted by her mother, petitioner herein. *Held*, Art. 335 of the Civil Code clearly refers to persons who have legitimate, legitimated, acknowledged natural children or natural children by legal fiction and yet desire to adopt another. On the other hand, par. 1 or Art. 338 clearly provides that the natural child may be adopted by the natural father or mother in order to allow the parents to make amends for the wrong done to the child and to raise the latter to the status of a legitimate child. JIMENEZ *v.* REPUBLIC, G.R. No. L-9911, May 22, 1957.

CIVIL LAW — DAMAGES — THE LIABILITY OF THE EMPLOYER FOR THE NEGLIGENT ACTS OF ITS EMPLOYEES UNDER THE CIVIL CODE IS PRIMARY AND DIRECT AND NO RESERVATION IS REQUIRED TO INSTITUTE AN ACTION TO ENFORCE SUCH PRIMARY LIABILITY. — As a result of a fire which broke out in the office and garage of the Rural Transit (owned and operated by the Bachrach Motor Co.) in Cabanatuan, Nueva Ecija, Angeles and Guzman, employees of the Rural Transit, were accused of the crime of arson through reckless imprudence. 57 persons were enumerated in the information as having suffered damages from the fire, including appellee Gamboa. Gamboa was cited to appear but failed to appear and to be presented as witness for the government. Angeles and Guzman were convicted for the crime charged. The judgment, however, did not render damages in favor of the offended parties. Subsequently, Gamboa brought a civil case against Angeles and Guzman and their employer, the Bachrach Motor Co., for the recovery of damages suffered by him as a result of the same fire involved in the criminal case. Angeles and Guzman, who were then in prison, were declared in default for failing to answer. Bachrach Motor Co. alleged, among others, that as plaintiff Gamboa did not reserve his right to file a separate civil action for damages in the criminal case of arson, the judgment therein convicting accused but failing to award damages in his favor was *res judicata* and constituted a bar to the civil action for damages. *Held*, the principle of *res judicata* does not operate because there is no identity of parties and of issues. This is an action for damages under the Civil Code and the liability of the employer for the tortious acts of its employees and servants under Art. 1903 of the old Civil Code (Art. 2177 of the new) is primary and direct, rooted in the employer's own negligence in selecting and supervising the employees who caused damage to the plaintiff. No reservation is required to institute an action to enforce such primary liability based on *culpa aquiliana*. BACHRACH MOTOR *v.* GAMBOA, C.R. No. L-10296, May 21, 1957.

CIVIL LAW — MORAL DAMAGES — AN ACTION TO RECOVER MORAL DAMAGES DUE TO A MALICIOUS FILING OF A DETAINER BEFORE THE LATTER IS ACTED UPON IS PREMATURE, BECAUSE SUCH ACTION WILL DEPEND UPON THE OUTCOME OF THE DETAINER CASE. — A lease contract was entered into between the plaintiff and the defendant herein for the lease of a parcel of land together with building thereon, the plaintiff, acting as lessee. The terms of the contract was to last for three years, renewable for another three years at the option of the lessor, the lessor not obligated to construct another building, if the building thereon would burn and the monthly rental was ₱8,000.00. The building was burned and another building was constructed apparently by Brown, the herein lessee. Thereafter a detainer case was filed in the municipal court of Manila, due to violations of the terms of the contract among which was the failure to pay rentals, which action was acted affirmatively. On appeal to the Court of First Instance, Brown filed the herein action for moral damages, due to malicious filing of the detainer case causing him to lose up to ₱600,000.00. *Held*, an action to recover moral damages due to malicious filing of a detainer case during the pendency of the latter case is prematurely instituted. BROWN *v.* BANK OF PHILIPPINE ISLANDS, G.R. No. L-10688, April 29, 1957.

COMMERCIAL LAW — TRANSPORTATION — THE PARTIES TO A BILL OF LADING MAY STIPULATE THAT THE CARRIER DOES NOT ASSUME LIABILITY FOR ANY LOSS OR DAMAGE TO THE GOODS ONCE THEY HAVE BEEN TAKEN INTO THE CUSTODY OF THE BUREAU OF CUSTOMS OR OTHER AUTHORITIES. — Petitioner ordered certain photographic supplies from the Delta Photo Supply of New York. The Delta shipped the same on board the M/S "Fernside" and consigned to Binamira. The cargo of M/S Fernside was unloaded in Cebu Port, including the goods ordered by petitioner. Said cargo was double checked, both by the checker hired by petitioner and by the checker of the Visayan Cebu Terminal which received the cargo. There were certain cargoes found in bad order but petitioner's photographic supplies were not among them. The cargo unloaded by M/S Fernside, including that of petitioner's, had to pass the Bureau of Customs. Three days after the unloading, Binamira took delivery of the goods ordered by petitioner from the arrastre service. He found that the cases containing the photo supplies showed pilferage. On proper examination, it was found photo supplies worth ₱324.63 were missing. In the bill of lading of the photo supplies it was stipulated that the responsibility of the carrier would cease and the goods would be considered to be delivered when taken into the custody of the customs or other authorities. The lower court, and on appeal the Court of Appeals, held that delivery to the customs was not delivery to the consignee and that the carrier was still liable for the loss, despite the stipulation to the contrary. *Held*, the parties may agree to limit the liability of the carrier considering that the goods have still to go through the inspection of the customs authorities before they are actually turned over to the consignee. And a stipulation that the carrier does not assume liability for any loss or damage to the goods once they have been taken into the custody of the Customs or other authorities is not contrary to morals or public policy and, therefore, valid. LU DO & LU YM CORPORATION *v.* BINAMIRA, G.R. No. L-9840, April 22, 1957.

COMMERCIAL LAW — PUBLIC SERVICE — A CERTIFICATE OF PUBLIC CONVENIENCE SHOULD BE GRANTED IF THE PRESENT AUTHORIZED SERVICE IS INSUFFICIENT TO MEET THE DEMANDS OF THE PUBLIC. — Vegamora applied for a certificate of public convenience to operate TPU Truck service between Lucena and Sairoya, Quezon and opposed by present petitioner. It was shown that between 6:00 to 9:00 A.M. and from 2:00 to 6:00 P.M. the volume of traffic was big that buses traveling were always loaded. In other hours the traffic had tendency to diminish. *Held*, due to insufficiency of the present authorized service to meet the demands of the public in the disputed line, the application for certificate of public convenience should be granted. LAGUNA TAYABAS BUS CO. *v.* VEGAMORA, G.R. No. L-9445, April 29, 1957.

CRIMINAL LAW — CONSPIRACY — LIABILITY OF DEFENDANT IS THAT OF A PRINCIPAL BECAUSE, ASIDE FROM ACTUALLY TAKING PART IN THE ATTACK AND INFLICTING SOME OF THE WOUNDS, HE WOULD APPEAR TO BE IN CONSPIRACY AND ACTING IN CONCERT WITH HIS CO-APPELLANT AND BROTHER-IN-LAW FOR THE ACCOMPLISHMENT OF A COMMON PURPOSE. — Ricardo Salbero and Panfilo Maquinta were brothers in-law and neighbors. They had for their neighbor Filemon Catan. One evening Filemon Catan came home drunk accompanied by his brother and another fellow. Before leaving, his brother warned him not to go out anymore since he, Filemon, was drunk. Later that evening Filemon's house was stoned and Josefa Nacario, Filemon's common-law wife, saw that there were three men outside, two of whom she recognized as her neighbors Ricardo Salbero and Panfilo Maquinta. Filemon asked Josefa who the men were. When Ricardo heard him, he dared him to come down. Whereupon Filemon, though Josefa tried to prevent him, went down with his bolo. Josefa went down with him. The two searched for the three men who had run away, going as far as Ricardo's house where, however, Ricardo was not in, according to Ricardo's wife. Filemon and Josefa walked home but Josefa heard her baby crying and left Filemon. While inside in the house Josefa heard the contact of bolos on flesh and her husband shouting: "Epay, help; they are attacking me." Going down, Josefa saw her husband sprawled on the ground still being boloed by Ricardo and Panfilo and the third man. Josefa pleaded for the life of Filemon but was threatened with death by Panfilo. Whereupon she ran to Filemon's brother for help. Going to Ricardo's house, Santos Catan, Filemon's brother, and Josefa, the same were threatened with death and Josefa saw Panfilo below Ricardo's house approaching them, a bolo in his hand. Whereupon Josefa and Santos ran for help. Filemon died with 27 wounds. Ricardo was convicted as principal for murder; Panfilo as accomplice; the third man, Victor Aragones, was acquitted. *Held*, liability of appellant Panfilo is that of principal because, aside from actually taking part in the attack and inflicting some of the wounds, he would appear to be in conspiracy and acting in concert with his co-appellant and brother in-law for the accomplishment of a common purpose, for together they stoned the house of deceased; together they attacked him; and later in the evening he scared away deceased's brother within his menacing attitude. PEOPLE *v.* SABORO, G.R. No. L-11087, May 29, 1957.

CRIMINAL LAW — MITIGATING CIRCUMSTANCE — A PLEA OF GUILTY TO AN AMENDED CHARGE IS A MITIGATING CIRCUMSTANCE. — After the prosecution had rested its case and the defense presented three witnesses, the accused manifested to the court his willingness to plead guilty to the lesser crime of double homicide. The prosecution offered no objection. Subsequently it moved to allow it to amend the information to change it from double murder to double homicide. Both motions were granted. The defense then moved that his plea of guilty be considered a mitigating circumstance to which the state objected. *Held*, a plea of guilty to an amended charge is a mitigating circumstance. PEOPLE *v.* INTAL, G.R. No. L-10585, April 29, 1957.

CRIMINAL LAW — LIGHT FELONIES — THE OPERATION AND MAINTENANCE OF SLOT MACHINES IS A VIOLATION OF ART. 195 OF THE REVISED PENAL CODE AND IS A LIGHT FELONY AND, THEREFORE, THE OFFENSE PRESCRIBES IN TWO MONTHS. — Defendant-appellees were charged in 11 separate informations for a violation of Art. 195 of the Revised Penal Code for having maintained and operated slot machines. Counsel for defendants moved to quash the 11 cases on the ground of prescription of the offense. The Justice of the Peace Court dismissed the cases, two months having elapsed from the commission of the defense. The prosecution appealed, contending that the offense was punishable by a fine of ₱200 and, therefore, was a correctional penalty and, therefore,

the offense should prescribe in ten years. *Held*, a violation of Art. 195 of the Revised Penal Code, punishable with *arresto menor* or a fine not exceeding ₱200, is a light felony under Art. 9 of said Code and prescribes in two months, according to Art. 90, par. 6, of the same Code. PEOPLE *v.* JOHN CANSON, G.R. No. L-8848-58, May 23, 1957.

CRIMINAL LAW — PRESCRIPTION OF OFFENSES — FOR PURPOSES OF PRESCRIPTION OF THE OFFENSE DEFINED AND PENALIZED IN ART. 319 OF THE REVISED PENAL CODE THE FINE IMPOSABLE THEREIN IF CORRECTIONAL OR AFFLICTIVE UNDER THE TERMS OF ART. 26 OF THE SAME CODE SHOULD BE MADE THE BASIS RATHER THAN THAT OF ARRESTO MAYOR. — Basolo was charged with a violation of Art. 319 of the Revised Penal Code in that he disposed of property mortgaged without the knowledge and consent of the mortgagee. From the time of the unlawful disposition to the time of the criminal action therefor five years had elapsed. The trial court dismissed the case on the ground of prescription of the offense. Art. 319 provides an alternative penalty of arresto mayor or a fine twice the value of the mortgaged property unlawfully disposed of. The trial court ruled that even should the fine be made the principal penalty, as argued by the prosecution, the maximum penalty of the imprisonment in case of insolvency should not exceed 6 months. Therefore, the period was the same as that of arresto mayor and, therefore, the same should prescribe in 5 years. The prosecution argued that since double the value of the mortgaged property was ₱640, the alternative penalty of fine was a correctional penalty and, therefore, the same should prescribe in 10 years. *Held*, to determine the prescriptibility of an offense penalized with a fine, whether imposed as a single or as an alternative penalty, such fine should not be reduced or converted into a prison term, but rather it should be considered as such fine under art. 26 of the Rev. Penal Code. For purposes of prescription of the offense under Art. 319 the fine imposable therein if correctional or afflictive under Art. 26 should be made the basis rather than that of arresto mayor, also imposable under Art. 319. PEOPLE *v.* BASOLO, G.R. No. L-9892, April 15, 1957.

CRIMINAL LAW — SERVICE OF SENTENCE — A DECISION OF THE COURT HOWEVER ERRONEOUS CANNOT BE MODIFIED ON APPEAL IF IN THE MEANTIME THE JUDGMENT HAS BECOME FINAL BY SEFVICE OF THE SENTENCE. — Defendant was charged with a violation of circulars Nos. 20 and 45, as amended by Circular No. 55, all of the Central Bank of the Philippines, in relation to Sec. 34 of Republic Act No. 265, committed as follows: "That on or about the 20th day of December, 1954 in the City of Manila, the said accused, having in his possession the amount of $400.00, did then and there wilfully and unlawfully fail and refuse to declare the same with any authorized agent of the Central Bank of the Philippines upon his arrival in this country." Upon being arraigned, he entered a plea of guilty and was sentenced to five days imprisonment and to pay a fine of ₱50.00. The $400.00 was ordered to be exchanged at the Central Bank with Philippine Currency and delivered to the defendant, owner of said money. The Solicitor General appealed from this portion of the decision on the ground that the RPC being supplementary to special laws, Art. 45 should apply referring to confiscation and forfeiture of the proceeds of the crime and the instruments with which the crime was committed. *Held*, at the time of this appeal, the decision is already final and conclusive, for the reason that the terms thereof had been satisfied and complied with by the accused, he having not only paid the fine of ₱50.00, but also served the five-day imprisonment. Under Sec. 7, Rule 116, a judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served or the defendant has expressly waived in writing his right to appeal. Under the circumstances, the sentence having become final, no court, not even this high tribunal, can modify it even if erroneous. PEOPLE *v.* SANCHEZ, G.R. No. L-9768, June 21, 1957.

CRIMINAL LAW — FALSIFICATION OF PUBLIC DOCUMENTS — A PERSONNEL INFORMATION SHEET REQUIRED BY THE NATIONAL BUREAU OF INVESTIGATION FOR PURPOSES OF ITS RECORD AND INFORMATION IS A PUBLIC DOCUMENT. — Santiago Uy, being a field agent of the NBI, was required to fill up a Personnel Information Sheet and to state therein his citizenship and qualifications. Uy made several false statements in the sheet in order to convince the NBI that he was fit and qualified to continue in his employment and to mislead the same into retaining him as field agent. The false statements made by Uy consisted in his writing down in the information sheet that he was a first-grade civil service eligible; that he attended first year law; and was a naturalized Filipino citizen. The government prosecuted Uy for falsification of a public document. Uy moved to quash the information on the ground that the facts stated therein did not constitute the crime of falsification of public document. The trial court granted the motion to quash. *Held*, the allegations in the information must be taken as admitted in a motion to quash. The facts as alleged in the charge are material and it cannot be seriously contended that a document required by the NBI to be filled by its officers for purposes of its record and information is not a public document. PEOPLE *v.* UY, G.R. No. L-9460, April 23, 1957.

CRIMINAL LAW — INDECENT EXHIBITION OF THE SEXUAL ACT, PRECEDED BY ACTS OF LASCIVIOUSNESS IS INDECENT AND AN OFFENSE AGAINST PUBLIC MORALS. — On September 13, 1953, at a building on the corner of Camba Extension and Morga Extension, Tondo, Manila, was exhibited one of those human "fighting fish", the actual act of coitus or copulation. Tickets were sold at ₱3.00 by Jose Fajardo as manager and Ernesto Reyes as ticket collector. In all, there were around 106 persons inside the building. The show started at 9:15 p.m. Jose Fajardo ordered that an army steel bed be placed at the center of the floor, covered with an army blanket, and provided with a pillow. Fajardo, evidently to arouse more interest among the customers, asked them to select among two girls present who was to be one of the principal actors. By pointing over the head of each of the two women one after the other, and judging by the shouts of approval emitted by the spectators, he decided that Marina Padan was the subject of popular approval. Then he selected Cosme Espinosa to be Marina's partner. Thereafter, Cosme and Marina proceeded to disrobe while standing around the bed. When completely naked, they turned around to exhibit their bodies to the spectators. Then they indulged in lascivious acts, consisting of petting, kissing, and touching the private parts of each other. When sufficiently aroused they lay in bed and proceeded to con-

summate the act of coitus in three different positions. Some of the spectators were detectives of the MPD in plain clothes and made the arrest after the whole show was over taking pictures of the scene. The four were prosecuted for violation of Art. 201 of the Revised Penal Code. Convicted, they appealed. *Held*, this is the first time that the courts in this jurisdiction, at least this Tribunal, have been called upon to take cognizance of an offense against morals and decency of this kind. We have had occasions to consider offenses like the exhibition of still or moving pictures of women in the nude, which we have condemned for obscenity and as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models or in tableaux vivants. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. All can see nothing in it but clear and unmitigated obscenity, indecency, and an offense to public morals, inspiring and causing as it does, nothihg but lust and lewdness, and exerting a corrupting influence specially on the youth of the land. PEOPLE *v.* PADAN, G.R. No. L-7295, June 28, 1957.

CRIMINAL LAW — SPECIAL OFFENSES — WHEN THE CRIME CHARGED IS PUNISHED BY A SPECIAL LAW, A MALUM PROHIBITUM, NO MALICE OR INTENT TO COMMIT A CRIME NEED BE PROVED.—Appellant was charged for illegal possession of firearms in violation of sec. 2692 of the Rev. Adm. Code as amended. He was found guilty and he appealed on the ground that there was no malice or *animus possidendi* attached to the act complained of. As evidence of his lack of malice, he had been issued a provisional permit to possess the firearm by the municipal mayor when he went to surrender the same to him. *Held*, the permit to possess the firearm and ammunition in question, issued by the municipal mayor, is invalid. The offense committed by appellant is punished by a special law and no malice or intent to commit a crime need be proved. PEOPLE *v.* LUBO, G.R. No. L-8293, April 24, 1957.

LABOR LAW — CERTIFICATION ELECTION — A PETITION FOR CERTIFICATION ELECTION FILED BY A LABOR UNION MAY BE HEARD PENDING THE RESOLUTION OF COMPLAINT FOR UNFAIR LABOR PRACTICE FILED BY THE SAME PETITIONER. — On Sept. 25, 1954, petitioner union filed charges of unfair labor practice against respondent company which employed the members of petitioner-union. Pending preliminary investigation of its unfair labor practice complaint, the complainant-union filed a petition for certificate election for the determination of the sole and exclusive collective bargaining representative of the employees and laborers in the respondent company. Respondent company answered asking that petition be dismissed because another union, respondent Workers' Organization, had already been designated as the bargaining representative of all the employees in the company. The CIR dismissed the petition on the ground that the charge of unfair labor practice by the respondent company went to the root of the right to vote of the members of petitioner-union. The complaint for unfair labor practice did not mention that one or more labor unions participating in the certification election were company unions or employer-dominated. *Held*, a complaint for unfair labor practice may be considered a prejudicial question in a proceeding for certification election when it is charged therein that one or more labor unions participating in the certification were company unions or employer — dominated. Otherwise, a petition for certification election filed by a labor union may be heard even pending the resolution of the complaint for unfair labor practice filed by the same labor union. STANDARD CIGARETTE WORKERS' UNION *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-9908, April 22, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE AGGRIEVED PARTY MAY APPEAL TO THE SUPREME COURT WITHIN TEN DAYS FROM ANY ORDER OF THE COURT OF INDUSTRIAL RELATIONS WITH RESPECT TO QUESTIONS OF LAW, OTHERWISE HE WILL BE BARRED FOREVER. — Juan Soriano was employed by plaintiff as driver of one of its motor vehicles. Said car was sold. He did not report for work after that and when asked why he insisted that a new car be bought. The Company was willing to give him another job, but he left. Subsequently the National Labor Union on behalf of Juan Soriano filed a complaint for unfair labor practice in dismissing him and asking that he be reinstated. Without changing the income, the court of Industrial Relations granted the action. A motion for reconsideration was filed but denied. Then a certiorari action to the Supreme Court but was also denied, since the period for appeal had already expired, the plaintiffs then filed a special civil action in the Court of First Instance. *Held*, the facts of the special being based on the same complaint in the Court of Industrial, since the period for the latter for appeal has already expired, the action cannot prosper. YUCUANSEH DRUG CO., INC. *v.* NATIONAL LABOR UNION AND JUAN SORIANO, G.R. No. L-9900, April 30, 1957.

LABOR LAW — JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS — WHEN A LABOR UNION HAS TAKEN UP AS A BODY THE DISMISSAL OF THREE OF ITS MEMBERS FROM THEIR EMPLOYMENT BY THE COMPANY EMPLOYING THEM AND HAS DECIDED UPON COLLECTIVE ACTION, SUCH DETERMINATION POSES THE DANGER OF A STRIKE AND THE INDUSTRIAL COURT MAY ASSUME JURISDICTION OF THE MATTER WHEN ITS INTERVENTION IS SOUGHT ON THE SAME BY THE LABOR UNION. — The petitioner dismissed two of its employees for having caused breakage of some truck parts belonging to said company. It also dismissed another employee because the same had refused to sign a document incriminating his two co-employees who had been subject of dismissal. These three employees were members of respondent labor union. Respondent labor union decided to take collective action on the matter and brought the same to the CIR. The CIR decreed that the dismissed employees should be reinstated. Petitioner company appealed to the Supreme Court maintaining that the CIR did not have jurisdiction over the case because there was no labor dispute between the respondent union and the company that caused a strike or likely to cause one. *Held*, when a labor union as a body has taken up the dismissal of three of its members from their employment by their employer and has decided upon collective action, such determination poses the danger of a strike if peaceful remedies should prove unavailing. It is not incumbent upon the CIR to cross its arms and refuse to act until the strike is actually called and social peace

is disrupted. The CIR had the power to act in order to forestall resort to such drastic remedy as soon as the union sought its intervention. WESTERN MINDANAO LUMBER CO., *v.* MINDANAO FEDERATION OF LABOR, G.R. No. L-10170, April 25, 1957.

LABOR LAW — POWER OF THE COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS IN AN ORDER NEED NOT MAKE ANY FINDING OF FACTS OR DISCUSSION OF EVIDENCE IF IT IS SATISFIED WITH THE REPORT OF ITS EXAMINER WHICH ALREADY CONTAINS FULL DISCUSSION OF EVIDENCE AND THE FINDING OF FACTS BASED THEREON. — A complaint was filed by the petitioner alleging that the respondent was engaged in unfair labor practice, which was denied by the latter. Hearings were conducted by an examiner at which both parties, represented by counsel, appeared. After the presentation of the evidence, the examiner rendered his report that the charge was not substantiated by evidence, that the dismissal of the petitioner was for cause. The Court approved the examiner's recommendation, stating that after perusal of the record of the case, "it finds no sufficient justification for modifying said recommendation, findings and conclusions and consequently, this case is hereby dismissed." The petitioner questioned said order due to failure to state the facts and the law in support thereof. *Held,* discussion of the evidence or findings of facts in an order of the Court of Industrial Relations is not necessary if the Court is satisfied with the report of its examiner or referee which already contains a full discussion of the evidence of the findings of facts based thereon. INDIAS *v.* PHIL. IRON MINES, INC., G.R. No. L-9987, April 29, 1957.

LABOR LAW — INDEPENDENT CONTRACTOR — A BAND LEADER IS NOT AN EMPLOYEE BUT AN INDEPENDENT CONTRACTOR. — For several years Tirso Cruz with his orchestra furnished music to the Manila Hotel at ₱250.00 per night. The Hotel Management had no say as to the kind of music furnished, the number of musicians, their salary and as to their employment. When the management intended to lease the Manila Hotel to Bay View Hotel, it gave notice to the employees to be laid would be granted a separation gratuity computed according to the specified terms and conditions. Tirso Cruz and the members claiming as employees wanted to draw their gratuity from the management. *Held,* a band leader is an independent contractor and not an employee. CRUZ *v.* THE MANILA HOTEL CO., G.R. No. L-9110, April 30, 1957.

LABOR LAW — PUBLIC SERVICE COMMISSION — THE PUBLIC SERVICE COMMISSION DOES NOT COMMIT A GRAVE ABUSE OF DISCRETION WHEN IT GRANTS A PROVISIONAL PERMIT TO CONTINUE OPERATION OF APPLICANT'S BUSES DURING THE PENDENCY OF THE HEARING OF ITS PETITION FOR EXTENSION OF TIME WHEN IT IS SHOWN THAT PUBLIC NECESSITY NEEDS SUCH OPERATION. — Respondent Tengco was a holder of various certificates of public convenience issued by the Public Service Commission besides being a holder of compromise five year certificate of public convenience. She filed an extension of the period of said compromise certificate which was to expire soon. Sh then filed a petition for provisional authority to continue the operation of the service due to the fact that public convenience and necessity required its operation during pendency

of final determination of her petition for extension. The same was opposed by de Leon. The petition for provisional service was granted which forced de Leon to file a petition for certiorari imputing grave abuse of discretion to the Commission. *Held,* there is no grave abuse of discretion, when a provisional authority is granted to continue operation of the service during the pendency of a petition for extension of an operator's certificate, so long as public necessity and convenience demands such continued operation. DE LEON *v.* THE PUBLIC SERVICE COMMISSION AND VICTORIA VDA. DE TENGCO, G.R. No. L-11100, April 29, 1957.

LABOR LAW—RECISION OF AGREEMENT—AN AGREEMENT OR COMPROMISE ENTERED INTO BY A COMPANY AND A LABOR UNION CANNOT BE RESCINDED BY EITHER PARTY UNLESS ASSENTED TO BY THE OTHER OR UNLESS FOR CAUSES SUFFICIENT IN LAW AND PRONOUNCED ADEQUATE BY A COMPETENT TRIBUNAL.—In 1950 an industrial dispute arose between petitioner labor union and the Caltex. To settle the dispute, the case was submitted to the CIR for compulsory arbitration and, through the intervention of the court, the parties reached amicable settlement providing that no dismissal, lay-off, or suspension of employees should take place before notice and hearing thereof. On August 1, 1955 petitioner union filed an incidental motion alleging that sometime in September, 1950, its president, Avelino Morales, was arbitrarily, illegally and without previous investigation and hearing as provided in the amicable settlement of the parties was separated from the service. Petitioner urged reinstatement of its president. The respondent company moved to dismiss the motion on the ground that the court had no jurisdiction over the same since there was no dispute between the parties pending in the CIR. The CIR dismissed the petition of the labor union on lack of jurisdiction because, the court ruled, the company had already applied for the recision of the agreement or compromise entered into, and approved by the CIR, between the labor union and the company before the filing of the labor union's petition for reinstatement of its president who had been dismissed in violation of said agreement or compromise. *Held,* the compromise is governed by the basic principle that obligations arising therefrom have the force of law between the parties. This means that neither party may unilaterally and upon his own exclusive volition escape his obligations under the compromise, unless the other party has assented thereto, or unless for causes sufficient in law and pronounced adequate by a competent tribunal. KATIPUNAN LABOR UNION *v.* CALTEX (PHILIPPINES) INC., G.R. No. L-10337, May 27, 1957.

LABOR LAW — RICE TENANCY — THE 25% EXEMPTION AS PROVIDED FOR IN SEC. 19 OF R.A. NO. 1199 IS NOT A PERSONAL RIGHT AND THEREFORE CANNOT BE WAIVED. — The 145 cavans and 11 kilos of palay belonging to Jaime raised in his landholding as tenant were levied upon by virtue of a Writ of Execution in a former civil case. The same were sold at public auction with petitioner as highest bidder. Upon payment, the petitioner then demanded delivery of the palay which could not be made because of the refusal of Jaime unless the 25% of the 145 cavans of 11 kilos which is provided for in Section 19 of Rep. Act No. 1199 as exempted from execution he deducted. The petitioner argued that such an exemption was a personal right which was waived due to failure

to interpose the same in due time. *Held*, the 25% exemption as provided for in Sec. 19 of R.A. No. 1199 is not a personal right but a reservation made by law and therefore cannot be waived by reason of public policy. MANIEGO *v.* CASTELO, G.R. No. L-9855, April 29, 1957.

LAND REGISTRATION — PUBLIC LAND LAW — IN AN ACTION FOR CANCELLATION OF FREE PATENT ISSUED UNDER THE PUBLIC LAND ACT ALL ADMINISTRATIVE REMEDIES MUST BE EXHAUSTED BEFORE RESORT TO THE COURTS. — Cortez had been in long, continuous and open occupation of land of the public domain and applied for a homestead patent. He had all the legal requisites and his application had been favorably endorsed by the District Land Officer. But, however, his homestead patent was not issued. Pending issuance of the homestead patent, one Avila applied for free patent over the same land, he, in the meantime, having excluded Cortez from the possession of the said land. In due time Avila's free patent application was approved and the corresponding free patent and title certificate were issued to him. Cortez then brought a complaint in court for the cancellation of the free patent and the title certificate and the delivery to him of the possession of the land in question. Cortez, however, had not asked the Director of Lands to reconsider his decision decreeing the free patent to Avila, but instead went to court directly. *Held*, before the decisions of administrative bodies can be brought to courts for review, all administrative remedies must first be exhausted, especially in disputes concerning public lands, where the finding of said administrative bodies, as to questions of fact, are declared by statute to be conclusive. CORTEZ *v.* AVILA, G.R. No. L-9782, April 26, 1957.

LAND REGISTRATION — CORRECTION OF MISTAKES IN CERTIFICATE OF TITLE — UNDER SECTION 112 OF ACT 496 ANY REGISTERED OWNER OF PERSON IN INTEREST MAY APPLY BY PETITION TO THE COURT FOR CORRECTION OF MISTAKES MADE IN ENTERING A CERTIFICATE BUT, HOWEVER, THE COURT CAN ONLY ACT THEREON AFTER NOTICE TO ALL PARTIES IN INTEREST, WHICH MAY BE SERVED EITHER BY THE PETITIONER OR BY ORDER OF THE COURT. — C. Patingo claimed to be entitled to part ownership of certain portions of land which were decreed, in a cadastral case, to certain persons. The certificates of titles issued, however, failed to mention C. Patingo. Claiming this was merely a mistake in entering the certificate of title, C. Patingo filed a petition in the same cadastral case for correction of said alleged mistakes. Believing that there was no more need of notice to the other interested parties since the court had already obtained jurisdiction of the principal case, C. Patingo did not serve notice of his petition to the other interested parties. The cadastral court granted the petition and ordered the register of deeds to issue a new certificate with the proper correction. Learning of this order of the court from a private source, D. Patingo, an interested party, filed a motion for reconsideration in the same court. Petition denied, D. Patingo asked for certiorari. *Held*, under sec. 112 of Act 496 any registered owner or person in interest may apply by petition to the court upon the ground that errors, omissions or mistakes were made in entering a certificate or a memorandum thereon or on any duplicate certificate. However, the court can only act thereon after notice to all parties in interest, which may be served either by the petitioner or by order of the court. PATINGO *v.* PELAYO, G.R. No. L-10288, April 15, 1957.

LEGAL ETHICS — DISBARMENT — CONVICTION FOR ESTAFA WHICH INVOLVES MORAL TURPITUDE IS SUFFICIENT GROUND FOR DISBARMENT. — Jaramillo was convicted of estafa in the Court of First Instance. On appeal to the Court of Appeals said judgment was affirmed. While serving, the Solicitor General brought the present action for disbarment proceedings. *Held*, the crime of estafa involves moral turpitude which is a sufficient ground to disbar a lawyer convicted of said crime. IN THE MATTER OF DISBARMENT PROCEEDINGS *v.* JARAMILLO, ADMINISTRATIVE CASE No. 229, April 30, 1957.

LEGAL ETHICS — DISQUALIFICATION FOR ADMITTANCE TO THE BAR — A SUCCESSFUL BAR CANDIDATE WHO LACKS THE GOOD MORAL CHARACTER REQUIRED BY THE RULES OF COURT DUE TO IMMORALITY IS DISQUALIFIED FROM BEING ADMITTED TO THE BAR. — On April 16, 1939 respondent was married to Valdez. About March 8, 1951 he courted the herein complainant who fell in love with him. The respondent subsequently procured a fake marriage contract which was then in blank document. A week later said document was brought to the complainant signed by the Justice of the Peace and Civil Registrar of San Miguel, Tarlac and two witness. They then lived as husband and wife. A religious ratification of the alleged civil marriage was had. Subsequently, complainant learned of the previous marriage of the respondent. The respondent herein was a successful bar candidate in 1954. Disqualification proceeding was instituted against him. *Held*, the respondent is immoral, thus lacking the good moral character required by the Rules of Court, he is declared disqualified from being admitted to the bar. IN RE CHARGES OF LILLIAN F. VILLASANTA *v.* A. PERALTA, 1954 SUCCESSFUL BAR CANDIDATE, ADMINISTRATIVE CASE No. 230 April 30, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — HAVING LOST THEIR RIGHT TO REENTRY AS PERMANENT RESIDENTS, AND HAVING BEEN ADMITTED AS TEMPORARY VISITORS OR NON-IMMIGRANTS, AND THE PERIOD ALLOWED FOR THEIR TEMPORARY SOJOURN IN THESE ISLANDS HAVING ALREADY EXPIRED, APPELLANTS ARE SUBJECT TO DEPORTATION BY THE COMMISSIONER OF IMMIGRATION. — Petitioners were permanent residents in this country prior to Feb. 1940. Sometime in Feb. 1940 petitioners went to China, a temporary sojourn from which they were expected to return to this country securing for this purpose special return certificates. Petitioners were unable to return to the Philippines within the period of the validity of their special return certificates and the Pacific war caught them in the Chinese mainland. Petitioners were admitted to this country on May 10, 1948 as temporary visitors. Their stay as such expired on Jan. 20, 1950. For overstaying in this country, warrants for their arrest were issued on Feb. 27, 1950. After deportation proceedings, petitioners were ordered deported on Mar. 9, 1950. On Sept. 7, 1954 petitioners requested the correction of their status from temporary visitors to returning residents. The Acting Commissioner of Immigration, after investigation, ordered the records of the Bureau of immigration to be corrected to make it appear therein

that petitioners were readmitted into this country as returning residents and immigration certificates to this effect were issued. Petitioners now urged this *res judicata* on the incumbent Commissioner of Immigration. *Held*, having lost their right to reentry as permanent residents, and having been admitted as temporary visitors or nonimmigrants and the period allowed for their temporary sojourn in these Islands having already expired, appellants are subject to deportation by the Commissioner of Immigration. Decisions of the immigration officials do not constitute *res judicata* so as to bar reexamination of the aliens' right to enter or stay. SY HONG *v.* COMMISSIONER OF IMMIGRATION, G.R. No. L-10224, May 11, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — LEASE BY THE LANDLORD OF HIS LAND UNDER TENANCY BY ANOTHER FOR THE PURPOSE OF BEING TURNED INTO A ZACATAL BY THE LEASEE IS NOT A CAUSE FOR TERMINATING THE TENANCY RELATIONSHIP AND FOR EJECTING THE TENANT FROM THE LAND UNDER TENANCY CONTRACT. — Ponciano Primero owned a piece of riceland situated in the province of Cavite. This land, which bore a torrens title, was under a tenancy contract. The tenant was one Sinforoso Quion. Desiring to lease said land to one Porfirio Potente for the purpose of raising zacate thereon, Primero served a notice to his tenant and requested him to vacate said premises. The later refused to do so. Primero then executed the lease with Potente but tenant Quion refused to vacate the land, thus hindering the delivery thereof to the lease. Hence Primero petitioned the Court of Agrarian Relations seeking an order from said court, ordering his tenant Quion to vacate the land leased. Quion subsequently answered, moving for the dismissal of the petition for lack of cause of action. The Court of Agrarian Relations decided that the facts alleged by petitioner in his petition did not constitute a cause recognized by law. Hence petitioner went up to the Supreme Court. *Held*, under the provisions of law governing the case, petition under consideration is completely untenable, for once a tenancy relationship is established, the tenant is entitled to security of tenure with right to continue working on and cultivating the land until he is dispossessed of his holdings for just cause provided by law or the tenancy relationship is terminated legally. Mere leasing of the land under tenancy contract to another and conversion of said land into a zacatal is not a cause recognized by law. PRIMERO *v.* COURT OF AGRARIAN RELATIONS, G.R. No. L-10594, May 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — AN APPEAL FROM THE DECISION OF THE DIRECTOR OF LANDS TO THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES MAY COVER ALL QUESTIONS OF LAW AND FACT FOR ITS PURPOSE IS TO GIVE A CHANCE TO THE CHIEF EXECUTIVE OFFICIAL TO CORRECT WHATEVER ERRORS MAY BE COMMITTED BY HIS SUBORDINATES AND THUS AVOID A COURT ACTION. — The government bought the Lian Estate situated in barrio Lumanag, Lian, Batangas, for the purpose of subdividing it into small lots and reselling these lots to qualified purchasers. Plaintiffs' father had been occupying a portion of this Lian Estate. Plaintiffs had been in possession of the same. One Nicolas Malinay applied for this same portion of land with the Bureau of Lands. Plaintiffs filed a protest contesting the application of Malinay and claiming that they were the ones entitled to the purchase of said piece of lot. The Bureau of Lands conducted an investigation and, thereafter, the Director of Lands rendered a decision dismissing the claim of plaintiffs and ordering them to vacate the lot in question, at the same time, giving due course to the application of Malinay. No appeal was taken to the Secretary of Agriculture and Natural Resources and, as a consequence, the decision became final. Plaintiffs went to court seeking the annulment of all the proceedings had in the Bureau of Lands on the ground that the Director of Lands did not have jurisdiction to determine questions relative to the possession of a parcel of land. The court dismissed the action since appeal to the Secretary of Agriculture and Natural Resources had not been made. To this ruling of the lower court, plaintiffs, on appeal, maintained that they were not obligated to make the appeal since their ground rested on lack of jurisdiction of the Director of Lands which question could only be determined by the court. *Held*, an appeal may cover all questions of law and fact for its purpose is to give a chance to the chief executive official to correct whatever error may be committed by his subordinates and thus avoid a court action. LUBUGAN *v.* CASTRILLO, G.R. No. L-10521, May 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — WHERE THE PHILIPPINE CITIZENSHIP OF THE PERSON THREATENED WITH DEPORTATION IS NOT ADMITTED OR CONCLUSIVELY SHOWN, THERE BEING RELIABLE EVIDENCE THAT PETITIONERS ARE ALIENS WHO SUCCEEDED IN GAINING ENTRY INTO THIS COUNTRY THROUGH FALSE REPRESENTATIONS, DEPORTATION PROCEEDINGS MAY BE ALLOWED AND CONDUCTED TO DETERMINE WHETHER OR NOT THE PETITIONERS ARE ALIENS. — Deportation proceedings were conducted by the Board of Special Inquiry of the Bureau of Immigration against Melanio Perez and his alleged wife, Tan Tin Tin. The latter, claiming that they were not aliens but Filipino citizens, filed a petition to stop the deportation proceedings conducted against them because, they claimed, as Filipino citizens they were not subject to deportation proceedings. To prove they were Filipino citizens, Melanio Perez introduced several documents consisting of a birth certificate, stating that one Melanio Perez was born Filipino citizen; an identification certificate signed by the First Deputy Commissioner of Immigration to the effect that Melanio Perez was permitted to land as Philippine citizen. and two letters, one from the Philippine Consulate in Hongkong stating that Melanio Perez was a holder of a Philippine passport and was a Filipino citizen and the other letter came from Department of Foreign Affairs, signed by Sec. Raul S. Manglapus stating that Melanio Perez was a Filipino citizen. However, one Tecla Socella, supposed mother of the petitioner Melanio Perez as given in the birth certificate presented by him made a sworn statement to the effect that petitioner Melanio Perez was not the one referred to in the birth certificate but one Melanio Perez who was living in Paglipao, Quezon Province. *Held*, the present case is not one where the Philippine citizenship of the person threatened with deportation is admitted or conclusively appears, there being reliable evidence that herein petitioners are aliens who succeeded in gaining entry into this country through false representations. It would be sound discretion to allow the respondents to continue the proceedings already begun by them until they have determined whether or not the petitioners are aliens. PEREZ *v.* BOARD OF SPECIAL INQUIRY, G.R. No. L-9236, May 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — THE ESSENCE OF APPOINTMENTS

AS "ACTING" OFFICERS LIES IN THEIR TEMPORARY CHARACTER AND TERMINABILITY AT PLEASURE BY THE APPOINTING POWER. — Juan Mendez was appointed acting second asst. chief of police of the city of Iloilo by the mayor of Iloilo City. After serving several months, Mendez received a letter from the city mayor removing him from his position because of his ineligibility and because of the lack of confidence of the city mayor in him and because another person was to take his place. Mendez petitioned the CFI to enjoin his removal, claiming that the same was done without lawful cause. The CFI dismissed his petition. *Held*, the judgment must be affirmed. The court has already had occasion to consider and rule on the effect of appointments as "acting" officers and has held that their essence lies in their temporary character and terminability at pleasure by the appointing power. MENDEZ *v.* GANZON, G.R. No. L-10483, April 12, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — THE LAW CONSIDERS AS CUSTOMS LAW ALL LAWS AND REGULATIONS SUBJECT TO ENFORCEMENT BY THE BUREAU OF CUSTOMS. — E. Leuterio appealed from the decision of the Court of Tax Appeals holding that the seizure and forfeiture of 100 crates of onions belonging to petitioner Leuterio were in accordance with the customs law. Said 100 crates of onions were imported by petitioner from Kobe, Japan. Petitioner declared that the value of said merchandise was $1.20 per crate at the port of shipment when in fact the actual market value per crate was $3.20. The court held that while no evasion of customs duties was contemplated by the importer there was intent to evade the internal revenue tax collectible by customs officers as deputies of the Collector of Internal Revenue. The seizure and confiscation by the customs authorities then was, said the court, justified and forfeiture of the merchandise legal. Petitioner contended that the Internal revenue Law did not fall within the jurisdiction of the Bureau of Customs. Therefore, petitioner contended that the undervaluation of the onions, though a violation of the Internal Revenue Law, was not a violation of the customs laws or the laws and regulations enforced by said Bureau of Customs. Therefore, the seizure and confiscation of petitioner's onions by the customs authorities was not warranted. *Held*, there is no merit in this contention. The law considers as customs law all laws and regulations subject to enforcement by the Bureau of Customs. LEUTERIO *v.* COMMISSIONER OF CUSTOMS, G.R. No. L-9810, April 27, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW—ADMINISTRATIVE CHARGES AGAINST MEMBERS OF THE LOCAL POLICE FORCE MUST BE INVESTIGATED BY THE MUNICIPAL OR CITY COUNCIL, AND THAT AN INVESTIGATION CONDUCTED BY EITHER A MEMBER OR A COMMITTEE THEREOF IS NULL AND VOID, EVEN IF THE COUNCIL SHALL HAVE APPROVED THE ACTION AND RECOMMENDATION OF ITS INVESTIGATING MEMBER OR COMMITTEE. — Petitioner Cuyo was a regular member of the Baguio Police Department. On February 20, 1946 he was investigated in connection with administrative charges against him. Pending investigation, he was suspended. The investigation was conducted by councilor Luis Lardizabal of the City of Baguio. Councilor Lardizabal found him guilty and the City Council passed a resolution approving the findings of Councilor Lardizabal and ordering the dismissal of Policeman Cuyo. Cuyo appealed to the Commissioner of the Civil Service who modified the decision of the Baguio City Council in the sense that Cuyo was to be transferred to another branch of the government. Cuyo appealed, contending that the investigation of the administrative charges against him was illegal and therefore his dismissal from service was null and void. *Held*, administrative charges against members of the local police force must be investigated by the Municipal or City Council and that an investigation conducted by either a member or a committee thereof is null and void, even if the Council shall have approved the action and recommendation of its investigating committee. CUYO *v.* CITY MAYOR, G.R. No. L-9912, May 23, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — AS THERE IS NO SHOWING OF ANY SPECIFIC RULES GOVERNING THE PRESENTATION OF EVIDENCE IN THE COURT OF TAX APPEALS, THE GENERAL RULES OF PROCEDURE CONCERNING THE ORDER OF TRIAL OUTLINED IN THE RULES OF COURT SHALL GOVERN. — Eugenio Perez filed his income tax returns for the years 1946, 1947, 1948, and 1950 within the time prescribed by law based on his declared net income. After an investigation, the Collector of Internal Revenue demanded from Perez payment of P369,708.27, inclusive of surcharge and compromise, as deficiency income tax for the years 1946 to 1950. Perez then requested that he be given full opportunity to present his side before the conference staff of the BIR, which was granted. As a result thereof, his income tax deficiency was reduced to P197,179.85, exclusive of surcharge and interests. Then the Collector required petitioner Perez to pay the same not later than February 28, 1954. Petitioner made a motion to reconsider the decision of the Collector and when denied, appealed to the Court of Tax Appeals. The parties agreed to present additional evidence which the Court of Tax Appeals approved. In accordance with this agreement, petitioner presented oral and documentary evidence. Inasmuch as petitioner was still in America undergoing treatment, the parties agreed that presentation of evidence would be continued as soon as petitioner could be presented as witness in his behalf. But counsel for petitioner asked that petitioner be allowed to present more evidence after respondent Collector of Internal Revenue had rested its case. This motion was denied by the Court of Tax Appeals. The same wanted the parties to follow the order of trial as laid down in the Rules of Court. Hence this petition for certiorari. *Held*, as there is no showing of any specific rules governing the presentation of evidence in the Court of Tax Appeals, the general rules of procedure concerning the order of trial outlined in the Rules of Court shall govern. PEREZ *v.* COURT OF TAX APPEALS, G.R. No. L-9193, May 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — BEFORE APPEAL TO THE COURTS OF JUSTICE FROM A DECISION OF THE CIVIL SERVICE BOARD OF APPEALS, ALL ADMINISTRATIVE REMEDIES PROVIDED FOR BY LAW SHOULD FIRST BE EXHAUSTED. — Petitioner-appellant was a watchman of the Harbor Division, Bureau of Public Works. As such worker, a dredge under him sunk because of water in the bilge which he did not pump out while under his care. An administrative case was prepared against him for negligence in the performance of duty. The Commissioner of Civil Service exonerated him on the basis of findings made by a committee. But the Civil Service Board of Appeals modified the decision, finding petitioner guilty of contributory negligence, and ordered that he be considered resigned effective his last day of duty with pay,

without prejudice to reinstatement at the discretion of the appointing officer. Petitioner filed an action in the Court of First Instance of Manila to review the decision but said court dismissed the action. Com. Act No. 598 which created the Civil Service Board of Appeals provides that its' decisions shall be final, unless revised or modified by the President of the Philippines. *Held*, the doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, as in this case, relief must be sought by exhausting this remedy before the courts will act. MONTES *v.* CIVIL SERVICE BOARD OF APPEALS, G.R. No. L-10759, May 20, 1957.

POLITICAL LAW — ELECTION CONTESTS — THE FILING OF AN ELECTION CONTEST DOES NOT GIVE THE COURT JURISDICTION TO DISMISS A QUO WARRANTO PROCEEDING INSTITUTED BEFORE THE ELECTION CONTEST AND FOR THE SAME GROUND BUT THE COURT SHOULD SUSPEND THE LATER CASE AND ADJUDICATE THE QUO WARRANTO ON ITS MERIT. — Luison filed a petition for *quo warranto* against Garcia in that the latter had been illegally proclaimed mayor-elect of the Municipality of Tubay, Agusan, despite the fact his certificate of candidacy had been declared null and void by the Commission on Elections. This declaration of nullity proceeded from the defect in the certificate of candidacy, the defect being that Garcia did not sign the same, nor the president and the secretary of the Liberal Party at his place, but only by the chairman thereof. Despite the nullity on his certificate of candidacy, Garcia ran for mayor, votes cast for him counted, and was proclaimed municipal mayor. Pending the *quo warranto* proceeding, Luison filed an election protest against Garcia in the same court based virtually on the same ground as that alleged in the petition for *quo warranto*. The court dismissed the *quo warranto* and decided the election protest in favor of Garcia. The court ruled that by the filing of the election protest, Luison was deemed to have waived the *quo warranto*. *Held*, the ruling depended upon by the lower court is not applicable where, as in this case, *quo warranto* and election contest were separately filed. The logical step was to suspend the second and later case, and adjudicate the *quo warranto* on its merit, since the decision in that proceeding would be likewise determinative of the second. LUISON *v.* GARCIA, G.R. No. L-10916, May 20, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — IN AN ACTION BASED ON A MORTGAGE TO SECURE OBLIGATION ENTERED INTO BY A SURETY IN BEHALF OF AN EMPLOYEE AND IN FAVOR OF THE LATTER'S EMPLOYER, THE PERIOD OF PRESCRIPTION FOR SAID ACTION SHOULD START FROM THE DATE THE SURETY WAS MADE TO SATISFY THE OBLIGATION IT CONTRACTED IN BEHALF OF THE EMPLOYEE AND NOT FROM THE DATE THE MORTGAGE WAS ENTERED INTO. — The Luzon Surety agreed to guarantee faithful performance of the duties of Briones as an employee of the Standard Vacuum. It filed a surety bond therefor. In their turn, Nabong and his wife executed an indemnity agreement in favor of the Luzon Surety, whereby they jointly and severally bound themselves to indemnify and save harmless the Luzon Surety from any damage it may sustain by reason of the surety bond. To secure performance of this indemnity agreement the couple executed a real estate mortgage on about six parcels of land. This real estate mortgage was executed on April 28, 1939, same date of the indemnity agreement. On Oct. 6, 1941, the Luzon Surety was made to pay

to the Standard Vacuum ₱398.73 by reason of its surety bond on behalf of Briones. By reason of the death of Nabong and his wife, Nabong, Jr. was appointed administrator of the former's property in 1951. On June 28, 1954, Nabong, Jr., as administrator, sought the cancellation of the mortgage plus damages and attorney's fees through a civil action. The Luzon Surety answered on Sept. 24, 1954, setting up a counterclaim of ₱398.73 which amount it had paid to the Standard Vacuum, plus interest thereon and attorney's fees. The court dismissed the counterclaim by reason of prescription of 10 years, taking the date of the execution of the contract of mortgage as the beginning of the prescription. The Luzon Surety appealed, claiming that the prescription should be counted from the date it paid to the Standard Vacuum and the period during which the Moratorium Law existed to be deducted from the period of prescription. *Held*, the period of prescription should start from Oct. 6, 1941, when the cause of action of the Luzon Surety accrued by reason of its payment of the obligation of Briones. Until Sept. 24, 1954, when it filed its counterclaim, there was an interval of 12 years, 11 months, and 18 days. From this period should be deducted the time when the Moratorium Law was in effect, leaving a period of 9 years, 7 months, and 2 days. Consequently, the counterclaim was filed on time, that is, within 10 years. NABONG *v.* LUZON SURETY CO., G.R. No. L-10034, May 17, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — DEFENDANTS, BY THEIR REPEATED REQUESTS FOR TIME TO REDEEM PROPERTIES SOLD AT A SHERIFF'S SALE HAD IMPLIEDLY ADMITTED AND WERE ESTOPPED TO QUESTION THE VALIDITY AND REGULARITY OF THE SHERIFF'S SALE. — On Mar. 25, 1954 plaintiff filed his complaint to recover defendants' overdue mortgage debt of ₱30,000 plus interest at 12% and attorney's fees. Defendants admitted the unpaid indebtedness but alleged they were trying to effect a full settlement thereof. On hearing, and with plaintiff's conformity, defendants were given 30 days within which to pay their monetary obligation with the understanding that upon their failure to do so, judgment would be rendered in accordance with the prayer of the complaint. The 30 day period passed without the debt being paid and, consequently, judgment was entered against defendants. Defendants were given a period within which to satisfy the judgment otherwise their properties subject of the mortgage would be executed upon and sold. The properties were sold in a sheriff's sale and the highest bidder was the plaintiff himself. The sheriff issued the certificate of sale. On Mar. 22, 1955 plaintiff moved for confirmation of the sale. Defendants requested for several postponements in order to give them time to exercise their equity of redemption. The court gave them two continuances, with a warning, on the second, that upon failure of defendants to exercise their right of redemption, the court would issue the order of confirmation. Defendants came up, for the first time, questioning the regularity of the sheriff's sale due to lack of sufficient publication of the notice of sale and inadequate price of the properties sold. *Held*, it was unnecessary for plaintiff to prove due publication of the sale because defendants, by their repeated requests for time within which to redeem had impliedly admitted — and were estopped to question — the validity and regularity of the sheriff's sale. TIAOQUI *v.* CHAVES, G.R. No. L-10086, May 20, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A MOTION FOR EXTENSION FILED

WITHIN THE PERIOD FOR PERFECTING APPEAL GIVES THE COURT JURISDICTION TO ACT ON THE CASE AND THE COURT HAS JURISDICTION TO GRANT SUCH PERIOD OF EXTENSION EVEN IF THE PERIOD FOR PERFECTING APPEAL HAS ALREADY ELAPSED. — On Dec. 8, 1953, petitioner received a copy of an adverse decision rendered by respondent judge in a civil case wherein petitioner was plaintiff. On Jan. 5, 1954 petitioner filed his notice of appeal and a motion to extend the period for filing his appeal bond and record on appeal which he set for hearing on Jan. 9, 1954. On this date the motion was heard. On Jan. 11, 1954 the court issued an order granting petitioner 15 days within which to file the appeal bond and the record on appeal. On Jan. 13, 1954 petitioner filed his record and on appeal and appeal bond. On Jan. 23, 1954, upon objection of the defendants in the civil case, the court disapproved the record on appeal on the ground that the period for perfecting appeal expired on Jan. 7, 1954, and, therefore, it had lost jurisdiction over the case when it granted the motion for extension of the period for filing of appeal bond and record on appeal. Consequently such order issued by the court on Jan. 11, 1954 giving plaintiff an extension of 15 days was null and void. *Held*, under sec. 3 of Rule 41, Rules of Court, the notice of appeal, the appeal bond and the record on appeal should be filed within 30 days, but the trial court, at its discretion, may extend this period and, in the case at bar, the court rightly exercised said discretion when it issued an order granting 15 days to petitioner. And within the extended period petitioner filed said appeal bond and record on appeal. The motion for extension was filed within the period for perfecting appeal. This gave the court jurisdiction to act on the case and this jurisdiction was not lost simply because the court granted said motion for extension, after hearing thereof, after the lapse of the period for perfecting appeal. BUENA *v.* SURTIDA, G.R. No. L-9439, May 17, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A DEFENSE RAISED IN THE LOWER COURT MAY BE RAISED AGAIN AND CONSIDERED IN THE SUPREME COURT EVEN IF THE COURT OF APPEALS, IN AN APPEAL THEREIN, DID NOT CONSIDER THE SAID DEFENSE BUT DECIDED THE CASE ON OTHER POINTS. — In 1943 Carmen Lapuz, sister of herein appellart Regina Lapuz, filed a suit in the CFI of Manila against her husband, the herein appellee Sy Uy. Sy Uy answered with a counterclaim and petitioned for the issuance of a writ of preliminary attachment against the properties of Carmen Lapuz, including some pieces of jewelry which Regina Lapuz, then living with Carmen, claimed as her own. Regina filed a third party claim with the sheriff who attached the properties applied for by virtue of the writ of attachment. Sy Uy, however, posted a bond to indemnify the sheriff against any loss or damage which might be suffered by the claimant by reason of the attachment of the jewelry. So the same remained in the possession of the sheriff. During the battle for the liberation of Manila in 1945 the pieces of jewelry were looted from the sheriff's safe. On Jan. 10, 1950 the case between Carmen and her husband Sy Uy was amicably settled and permanently dismissed. On April 27, 1952 Regina filed a complaint against Sy Uy, the sheriff and surety for the recovery of her jewelry wrongfully attached by the sheriff. The complaint was dismissed as to the sheriff and the surety. The case proceeded against Sy Uy. The latter raised the defense, among others, of prescription. The court decided in favor of the defendant on the theory that the loss of the jewelry was due to *force majeure*, not by fault of Sy Uy. Plaintiff appealed and the Court of Appeals affirmed the judgment, not passing on the question of prescription. Plaintiff appealed to the Supreme Court and defendant reiterated his defense of prescription. *Held*, complaint must be dismissed on the ground of extinctive prescription. This defense had been raised by plaintiff in the lower court and the same may be raised in this court again. There was no need for appellee to himself appeal from the decision of the Court of Appeals simply because it did not touch on the question of prescription. Having been absolved on other grounds, appellee Sy Uy had no reason to appeal from the decision of the Court of Appeals. LAPUZ *v.* SY UY, G.R. No. L-10079, May 17, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE EXECUTION OF JUDGMENT PENDING APPEAL ALLOWED BY SEC. 2 OF RULE 39 CAN ONLY BE ISSUED AGAINST ONE WHO IS A PARTY TO THE ACTION AND NOT AGAINST ONE WHO, NOT BEING A PARTY TO THE CASE, HAS NOT YET HAD HIS DAY IN COURT. — Four policemen of the City of Bacolod, having been dismissed by Acting City Mayor Manuel Villanueva, brought a civil case in the CFI of Neg. Occ. to compel the defendant Villanueva by mandamus to reinstate plaintiffs as policemen and to pay them their salaries during the period of their ouster plus moral and exemplary damages. Plaintiffs won in the civil case and the court ordered respondent Villanueva to reinstate them with payment of their salaries and to pay them damages out of his personal funds. Respondent Villanueva appealed the case. But before perfection of his appeal, the court, over the objection of Villanueva, issued an order for the immediate execution of the judgment, authorizing a levy on the properties of the city to satisfy the terms of its judgment. The City of Bacolod joined Villanueva in appealing this order for execution. *Held*, it is true that sec. 2 of Rule 39 allows execution to issue pending appeal. But such execution can only be issued against one who is a party to the action and not against one who, not being a party in the case, has not yet had his day in court. The record shows that the City of Bacolod was not made a party to the case of mandamus filed against its acting mayor. CITY OF BACOLOD *v.* ENRIQUEZ, G.R. No. L-9775, May 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A WRIT OF PRELIMINARY MANDATORY INJUNCTION IS NOW AVAILABLE TO PLAINTIFF DURING THE PENDENCY OF HIS ACTION TO RECOVER POSSESSION. — Piao was placed in possession of a piece of land by the sheriff. Later on petitioners started disturbing her in her possession and exercise of acts of ownership of the land. Petitioners took possession of the land and Piao brought an action to recover possession of the land. She asked for a writ of preliminary mandatory injunction which was granted. Defendants therein opposed the motion, claiming that the trial court was not authorized to issue the writ of preliminary mandatory injunction during the pendency of the civil case for recovery of possession. *Held*, plaintiff was actually placed in possession of the land in question by the sheriff in the execution of a final judgment in her favor. The defendants-petitioners were appraised of said action of the sheriff and yet they apparently entered the land by force and intimidation and deprived Piao of the possession given her by the sheriff. Under art. 539 of the new Civil Code a writ of preliminary mandatory injunction is now available to the plaintiff during the pendency

of his action to recover possession. TORRE *v.* QUERUBIN, G.R. No. L-9519, April 15, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHILE IT WAS NEGLIGENCE TO RELY ON OPPOSING COUNSEL, SUCH NEGLIGENCE WAS EXCUSABLE CONSIDERING THAT THE TRIAL HAD BEEN PREVIOUSLY POSTPONED SEVERAL TIMES AT THE REQUEST OF DEFENDANT'S LAWYER, TO WHICH PLAINTIFFS' COUNSEL HAD AGREED AND, THEREFORE, IT WAS ABUSE OF DISCRETION FOR THE LOWER COURT TO DENY A MOTION FOR RECONSIDERATION AND NEW TRIAL FILED BY PLAINTIFF'S COUNSEL. — On May 10, 1946 plaintiffs-appellants filed a complaint for forcible entry against defendant-appellee in the JP court of Manapla, Negros Occ. Judgment was rendered for plaintiffs and defendant appealed to the CFI. The case kept pending in the CFI until June 29, 1955 with several postponements had through request of defendant's counsel and *motu propio* action of the court. When the case was finally tried on June 29, 1955 plaintiffs and their attorney failed to appear. Defendant moved to dismiss the case which was granted by the court. Notified of the order dismissing their case, plaintiffs moved for reconsideration and new trial, claiming that their counsel failed to appear at the hearing on June 29, 1955 because he was of the impression that the hearing was to be in the month of July and he did not receive copy of the court's order setting the case for trial on June 29, 1955; that plaintiff's counsel had met defendant's attorney in the office of the clerk of court on the morning of June 29, had acquainted the latter with these facts, and had requested him to ask for postponement in his behalf if he would be late in appearing at the hearing. The motion was supported by an affidavit of merit of one of the plaintiffs and the facts alleged in plaintiffs' motion were not denied by defendant. Plaintiff's attorney appeared in court barely 5 minutes after the dismissal of their case. Plaintiff's motion was provisionally denied. *Held*, it is apparent that plaintiff's counsel failed to appear at the hearing due to accidental circumstances beyond his control. While it was negligence to rely on opposing counsel such negligence was excusable, considering that the trial had been previously postponed several times at the request of defendant's lawyer, to which plaintiff's counsel had agreed. MACASA *v.* HERRERA, G.R. No. L-9962, April 11, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN PLAINTIFF'S CLAIM IS NOT MERELY FOR A SUM OF MONEY, BUT IS DIRECTLY ADDRESSED TO OBTAINING CONVEYANCE OF, AND TITLE TO, SPECIFIC REAL PROPERTY, THE SAME CAN AND SHOULD BE PROTECTED AGAINST FRAUDULENT CONVEYANCES BY THE APPROPRIATE LIS PENDENS ANNOTATION. — During the war Robert Manly charged Brigida Garchitorena with custody of three trunks containing valuable documents. Garchitorena was compensated with certain real properties by the heirs of Robert Manly for this service. Garchitorena, in turn, transferred the care of the three trunks during the war to Senen Asuan with the promise of giving him 1/3 of whatever would be given her by the heirs of Manly. Asuan took charge of the three trunks and their contents. But after the war, when Manly's heirs gave Garchitorena certain real properties as payment for her services in taking good care of said three trunks, Garchitorena refused to share the same with Asuan. Asuan brought an action for specific performance in the CFI of Manila, that is, for conveyance to him of 1/3 of the real properties

given by the heirs of Manly to Garchitorena. Asuan then served upon the register of deeds of Camarines Sur where the said real properties were located a notice of *lis pendens* to the effect that the plaintiff Asuan sought payment in the form of 1/3 of the real properties described in his complaint. Pursuant to the notice of *lis pendens*, the register made the requisite entries in his records. Brigida Garchitorena with her husband filed a petition in the CFI of Camarines Sur against the register of deeds and Asuan, asking that the notice of *lis pendens* be ordered cancelled on the ground that the same was improper and without support in law in view of the fact that Asuan's action was for the recovery of compensation. *Held*, Asuan's claim is not merely for a sum of money, obtainable indiscriminately from any leviable property of the Garchitorenas; it is directly addressed to obtaining conveyance of, and title to, 1/3 of specific real property. That claim can and should be protected against fraudulent conveyances by the appropriate *lis pendens* annotation. GARCHITORENA *v.* REGISTER OF DEEDS, G.R. No. L-9731, May 11, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THERE IS A MISJOINER OF CAUSES OF ACTION WHEN THERE IS MISJOINER OF PARTIES DEFENDANTS OF IMPROPER VENUE. — P. Guanzon filed a complaint against her husband containing two causes of action: one for the annulment of a deed of sale in favor of Sulpicio Guanzon of certain real properties situated in the province of Negros Occ. and the annulment of a deed of donation inter vivos in favor of Joven Guanzon of another set of real properties situated in the province of Cebu; the other cause of action was for the separation of their conjugal properties, which include both real and personal properties, acquired during the marriage. The complaint was filed in the CFI of Cebu. Plaintiff moved to bring into the case Sulpicia Guanzon and her husband Vicente Mijares as parties defendants, alleging that their presence therein was indispensable. The new defendants filed a motion to dismiss, alleging that there was a misjoiner of causes of action and of parties defendants and that the venue was improperly laid. The court denied the motion. *Held*, there is a misjoiner of causes of action not only as regards venue but also as regards the defendants. With regards to the venue, the first cause of action refers to the annulment of a deed of sale of real properties situated in Neg. Occ. and of a deed of donation inter vivos of another set of real properties situated in Cebu. The venue, therefore, has been improperly laid as regards the real properties in Neg. Occ. With regards to the second, it also appears that the deed of sale which is sought to be annulled was made in favor of Sulpicio Guanzon whereas the deed of donation was made in favor of Joven Guanzon, and there is nothing from which it may be inferred that the two defendants have a common interest that may be joined in one cause of action. MIJARES *v.* PICCIO, G.R. No. L-10458, April 22, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — IN AN ACTION FOR QUASI-DELICT COMMITTED BY A MINOR THE FATHER, IF LIVING AND CAPABLE, SHOULD BE PROCEEDED AGAINST WITHOUT JOINING THE MOTHER OF SAID MINOR AS PARTY DEFENDANT. — Plaintiffs instituted an action for damages against defendants, father and mother of Antonio Parinas, a minor, for having allowed the latter to drive a motor vehicle having as passenger one Editha Romano who died as a result of a motor accident. The accident occurred due to the lack of fore-

sight and experience of the minor Parinas. After filing their answer, defendants also filed a motion asking that Caridad Donato, wife of defendant Crisostomo Parinas and mother of Antonio Parinas, be dropped from the complaint on the ground of misjoiner of parties-defendants, contending that under art. 2180 of the new Civil Code, the father is primarily responsible for the damages caused by the minor children, except only in case of his death or incapacity when the mother also becomes liable. The lower court ordered that Caridad Donato be dropped from the complaint. Hence this appeal. *Held*, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done, and this obligation is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible. But the responsibility of the father and mother for the quasi-delict of their minor children is not simultaneous, but alternate. The father is primarily responsible and the mother is answerable only in case of his death or incapacity. ROMANO *v.* PARINAS, G.R. No. L-10129, April 22, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — PERSONS WHO HAVE JOINT INTEREST IN THE SUBJECT MATTER OF THE LITIGATION MUST ALL BE JOINED AS PARTIES DEFENDANTS AND, FAILING IN THIS, PLAINTIFF CANNOT INSIST IN THE EXECUTION OF A JUDGMENT IN HIS FAVOR TO THE INJURY AND DAMAGE OF SAID PERSONS WITH JOINT INTEREST. — E. Mendoza filed in the municipal court of Manila two separate complaints for ejectment against C. Cruzcosa and C. Cruzcosa, Jr. Mendoza claimed to be the owner of a lot on which defendants had built a house. This lot was leased to defendants with the monthly rental of ₱24. Defendants having failed to pay the monthly rental for several months, plaintiff brought this action for ejectment. C. Cruzcosa, upon issuance of unfavorable judgment, asked to reconsider the judgment against him on the ground that he was not the real party in interest because the building on the lot did not belong to him but to his children, Catalino, Jr., Remedios and Virginia. His motion denied, he appealed to the CFI which affirmed the decision appealed. Obtaining a favorable judgment on appeal, Mendoza moved to execute said judgment by demolishing the house on his lot, in case defendants should not remove the same. Defendants opposed said motion on the ground that the house did not belong to Catalino, Jr., alone but belonged to him and his sisters Remedios and Virginia and the latter had not been made parties to this case. The motion granted, Remedios and Virginia went to the Supreme Court. *Held*, respondent Mendoza had been aware of petitioners' joint interest in the house even when his actions were still pending in the inferior court. It was respondent's duty to amend his complaint and implead petitioners as defendants. Failing in this, respondent cannot insist in the execution of the judgment in his favor to the injury and damage of the interests of petitioners. CRUZCOSA *v.* CONCEPCION, G.R. No. L-11146, April 22, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN THERE IS INTIMATE RELATION BETWEEN THE ALLEGATIONS OF TWO CAUSES OF ACTION IT IS ERROR ON THE PART OF THE JUDGE TO DENY AMENDMENT OF COMPLAINT AFTER ANSWER THERETO HAS BEEN FILED IN ORDER TO INCLUDE ALL THE PARTIES DEFENDANTS IN ONE SINGLE PROCEEDING. — Petitioner filed a complaint for replevin against respondents Ortega and Caceres in connection with an alleged illegal

impounding of certain trucks. Respondents answered, alleging that said trucks had been used by petitioner in violation of the Rev. Adm. Code and, therefore, the impounding of the same was legal. In the meantime, Fiscal Estipona charged petitioner for having violated the Rev. Adm. Code but petitioner was acquitted on reasonable doubt. Following his acquittal, petitioner moved in the replevin case to amend his complaint by including Fiscal Estipona as party defendant, alleging as second cause of action, that respondents, in order to evade responsibility for their acts complained of in the first cause of action, induced Fiscal Estipona to file, as in fact he did file, a criminal case against petitioner, knowing fully well that he did not commit it. The judge denied petitioner's motion to amend twice on the justification there would be misjoiner of parties. *Held*, the first cause of action alleges the illegal impounding of petitioner's trucks by original defendants, while the second cause of action avers that impounding is sought to be justified by the malicious prosecution of petitioner by Fiscal Estipona through the inducement of respondents. There is, therefore, intimate relation between the two causes of action. It was error, therefore, for the judge to refuse to admit the motion to amend the complaint. MONTE *v.* MOYA, G.R. No. L-10754, April 23, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A NOTICE OF LIS PENDENS ANNOTATED ON THE BACK OF A CERTIFICATE OF TITLE CANNOT BE ORDERED CANCELLED BY A PRIOR MORTGAGEE WHOSE RIGHT IS ALSO ANNOTATED THEREIN AND PRIOR TO THAT OF THE LIS PENDENS EVEN SHOULD SAID MORTGAGEE HAVE BOUGHT THE REAL PROPERTY SUBJECT OF THE MORTGAGE AND NOTICE OF LIS PENDENS IN A PUBLIC AUCTION AFTER ANNOTATION OF THE LIS PENDENS. — Consuelo Agoncillo, installment purchaser of a piece of land from the Gregorio Araneta, Inc., sold said property with its improvements to Buen Morales. The transfer certificate would be given to Morales as soon as Agoncillo satisfied her obligation to Gregorio Araneta, Inc. By reason of this agreement, the sale was not recorded in the office of Araneta, Inc. Without the knowledge of Morales, Agoncillo mortgaged the land to the RFC for a loan, said RFC agreeing to pay the balance to Araneta, Inc. When the certificate of title was issued in the name of Agoncillo, the mortgage to the RFC was annotated on the back thereof. Learning of this fraud, Morales brought a criminal action for estafa against Agoncillo, at the same time filing a civil action for recovery of the property against Agoncillo and the RFC. Notice of *lis pendens* was annotated on the back of the certificate of title to the property. The RFC succeeded in buying the land in a public auction brought about by the foreclosure of the mortgage in its favor. Now the RFC petitioned the proper court for the cancellation of the notice of *lis pendens*. *Held*, a notice of *lis pendens* annotated on the back of a certificate of title cannot be ordered cancelled on petition of a prior mortgagee whose right is also annotated therein prior to that of the notice of *lis pendens* even should said mortgagee have subsequently bought the land in question in a public auction brought about by foreclosure of the mortgage. RFC *v.* MORALES, G.R. No. L-10064, April 23, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — FOR APPEAL TO BE PERFECTED FROM THE JUSTICE OF THE PEACE COURT TO THE COURT OF FIRST INSTANCE THE DOCKETING FEE MUST BE DEPOSITED WITHIN FIFTEEN DAYS FROM NOTICE OF THE

JUDGMENT OF THE JUSTICE OF THE PEACE. — Petitioners were defendants in the Justice of the Peace Court. The Justice of the Peace's decision was received on September 12, 1955. The appeal bond was received by the clerk of court of the Court of First Instance on October 1, 1955, the docketing fee on October 4, 1955. The petitioners moved for the dismissal of the appeal it not having been perfected within the time provided for by law. *Held*, for appeal to be perfected from the Justice of the Peace Court to the Court of First Instance the docketing fee must be deposited within 15 days from receipt of the notice of the decision of the Justice of the Peace. BERMUDEZ *v.* BALTAZAR, G.R. No. L-10268, April 30, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — TO ENTITLE A PARTY TO REOPEN A CASE UNDER RULE 38 OF THE RULES OF COURT, IT IS NOT ENOUGH TO STATE IN A SWORN MOTION THAT THE MOVANT HAD A GOOD AND SUBSTANTIAL DEFENSE. THE FACTS CONSTITUTING THE SAME MUST BE ALLEGED TOO. — Action was filed against the defendants for recovery of money. The defendants answered the amended complaint. On the date set for hearing they failed to appear thus causing the court to order the plaintiff to present its evidence. Twice the case was reopened for them to examine the witnesses. Again they failed to appear at the hearing, so that a decision was rendered. They subsequently moved for reopening of the case upon the ground that they have a good and valid defense without stating the facts constituting the same. The motion was denied. *Held*, it is not sufficient in a motion to reopen the case as provided in Art. 38 of the Rules of Courts to state that the defendants had a good and valid defense. The facts constituting such defense must also be alleged. MANILA SURETY & FIDELITY CO., INC. *v.* DEL ROSARIO, G.R. No. L-10056, April 30, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — AN ACTION TO REVIVE A JUDGMENT PRESCRIBES IN TEN YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES. — The plaintiff obtained a judgment against the defendants for recovery of money which became final on May 1, 1940. December, 1945 and May, 1948, he petitioned for execution of judgment but was not granted due to the moratorium law. His third petition in December, 1949 was granted but was set aside on a certiorari proceedings by the defendants to the Supreme Court due to the expiration of five years wherein judgment maybe executed even deducting the period within which the moratorium law was in operation. Thus the present action for revival of judgment to enforce that portion in his favor. *Held*, the ten-year period granted for revival of judgment not having expired, deducting the period when the moratorium law was in operation, the action will prosper. TIOSECO *v.* DAY & MANALESE, G.R. No. L-9944, April 30, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE A PARTY HAS TWO ATTORNEYS, NOTICE TO ONE OF THEM IS NOTICE TO SUCH PARTY. — Felipe Deluao and Supremo Deluao applied for two lots for fishpond purposes. The Secretary of Agriculture and Natural Resources approved both applications, awarding Lot No. 3907 to Felipe and Lot No. 3162 to Supremo. But Felipe claimed both lots. So he brought a civil action to modify the award of the Secretary.

After due hearing, the judge rendered judgment for the plaintiff, declaring him to be the rightful applicant and possessor of both lots. Notice of the decision was served on Atty. Marfori who represented the Solicitor General's office and who had appeared for the Secretary of Agriculture and Natural Resources on March 27, 1956. Notice of the decision was also served on the Assistant Fiscal of Davao on April 11, 1956 because said fiscal had also appeared for the same Secretary and his co-petitioner. On April 12, 1956 the Assistant Fiscal filed a notice of appeal which was objected to by Felipe Deluao on the ground that it had been submitted beyond the period of appeal, counted from the receipt of notice by Atty. Marfori. Petitioners claimed Atty. Marfori had withdrawn as counsel for them and the Assistant Fiscal had been substituted in his place. Therefore, the period of appeal should be counted from the receipt of the Assistant Fiscal of the decision of the court. *Held*, there was no substitution proceeding. Where a party has two attorneys, notice to one of them is notice to such party. Appeal was interposed too late, counting from the receipt of notice of decision by Atty. Marfori. RODRIGUEZ *v.* FERNANDEZ, G.R. No. L-10823, May 28, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN AN ACTION BASED ON A MORTGAGE HAS PRESCRIBED, ANNOTATION ON THE BACK OF THE TITLE CERTIFICATE TO THE PROPERTY MORTGAGED MAY BE CANCELLED AT THE INSTANCE OF PERSONS WHO HAVE ACQUIRED THE PROPERTY MORTGAGED. — On July 22, 1940, Cabral executed a mortgage of his property covered by a transfer certificate for an indebtedness of ₱1,500, payable in four monthly installments of ₱375 each, from August 10, 1940. This mortgage was annotated at the back of Cabral's title certificate. On January 25, 1954, petitioners prayed for the cancellation of the mortgage on the ground that they had acquired the property from Cabral and were absolute owners thereof. The annotation on the title certificate of Cabral had been carried to that of the petitioners. Petitioners claimed that any cause of action on the mortgage had already prescribed and expired, in addition to the fact, that the debt on the mortgage had already been paid. Respondent-mortgagee opposed the petition for cancellation on the ground that Cabral, predecessor-in-interest of petitioners, were still indebted to it and that the transfer of property had been done without its consent in violation of the stipulations noted on the title certificate. *Held*, deducting the period during which the moratorium law was in force, it is found that the petition for cancellation was filed only after 9 years, 8 months and 20 days had elapsed. In their brief, however, petitioners claim that at the time of the filing of the brief, an additional period of 1 year, 7 months and 6 days have passed, which brings this case beyond the period of prescription. For these reasons, the action to enforce the mortgage has now lapsed. DAVID *v.* PIO BARRETTO SONS, INC., G.R. No. L-10882, May 21, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A JUDGMENT TO BE EFFECTIVE MUST BE PROMULGATED ACCORDING TO THE RULES OF COURT. — Plaintiff filed an action against defendant for recovery of possession of a parcel of land with damages. After hearing, the court rendered a decision, declaring plaintiff entitled to the possession of the land and ordered defendants to vacate the same. Said hearing was conducted in the absence of defendants who did not appear after having been duly notified. Copies of the judgment were sent by

registered mail to each of the defendants, and according to the affidavit of the postmaster, the letters were received by Isidoro Calapis, son of Pedro Calapis, who signed for the addressees. Defendants subsequently filed a petition for relief from judgment, alleging that they have not been properly notified of the trial of the case, nor of the decision rendered therein. *Held*, under Sec. 7, Rule 27, judgments must be served personally or by registered mail. If the service is by mail, proof thereof shall consist of an affidavit of the person mailing, together with the registry receipt issued by the mailing office if the letter has been registered. The registry return card shall be filed, immediately upon receipt thereof by the sender, or in lien thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to the addressee. Tested by the above-quoted provision, we find that the service of the judgment rendered in the case suffers from two defects namely, there is no affidavit of the clerk of court, the person mailing, and there is no registry return card, or a certified or sworn copy of the notice given by the postmaster to the addressee. It also appears that the delivery of the letter (containing the decision) to Isidoro Calapis was not made in accordance with the practice followed by the Bureau of Posts in such cases. The practice is for the notice of the registered letter to be sent or given to the addressee, and for the addressee, in case he does not receive the registered letter himself, to authorize, in writing upon the notice received, the postmaster to deliver the letter to another person designated therein. It does not appear that this practice was followed; it does not appear that the original notice was received by the addressee, or that they had authorized Isidoro Calapis to receive the letters containing the decisions for them. DELGADO *v.* CENIZA, G.R. No. L-10463, June 18, 1957.

REMEDIAL LAW — SPECIAL CIVIL ACTION — A PETITION FOR CERTIORARI WILL NOT BE GRANTED TO SET ASIDE A LOWER COURT ORDER IN CASE OF FAILURE TO PROVE THAT SAID LOWER COURT ABUSE ITS DISCRETION IN DENYING A MOTION FOR POSTPONEMENT. — Sequina pleaded guilty in a criminal case for homicide and serious physical injuries thru reckless imprudence. Sequina was driving a T.P.U. jeepney owned by Cementerio by which he hit Galila and Taba killing the former and injuring seriously the latter. He was convicted and ordered to pay indemnity. The writ of execution being unsatisfied, the heirs of Galila brought a civil action against the owner Cementerio. She then made an answer signed by de Leon in behalf of the Law Firm of Garszon de Leon and Militar. On the day of the hearing de Leon appeared seeking for postponement due to his appointment as Assistant Registrar of Deeds and due to the sickness of defendant. It was proven that shortly before trial defendant was seen in the court premises. The motion was denied and plaintiff allowed to present evidence. The court granted then plaintiffs demands. Thus the present petition for certiorari due to abuse of discretion in denying the motion for postponement. *Held*, a petition for certiorari will not be granted to set aside a denial by a lower Court of a motion for postponement in case of failure to prove that the lower Court acted with grave abuse of discretion. CEMENTERIO *v.* C.F.I. OF ILOILO, G.R. No. L-9571, April 29, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — AN ORDER OF THE COURT DIRECTING THE PAYMENT OF A CLAIM WHICH WAS APPROVED BY THE COMMITTEE ON

CLAIMS APPOINTED BY THE COURT IN CONNECTION WITH A SPECIAL PROCEEDING FOR SETTLEMENT OF AN INTESTATE ESTATE, SAID CLAIM HAVING BEEN APPROVED SOME 20 YEARS AGO, IS APPEALABLE. — A special proceeding for the settlement of the intestate estate of deceased Primitivo Elizalde was pending in the Court of First Instance of Negros Occidental. Levy Hermanos, Inc. filed its claim against the intestate estate. The Commissioner on Claims approved said claim of Levy Hermanos on May 14, 1932. There was no appeal from this approval. This claim of Levy Hermanos remained unpaid. On June 14, 1954, after the lapse of 22 years, Levy Hermanos filed a motion praying for the payment of its claim. Elizalde, administrator of the intestate estate, opposed said motion on these grounds; question of the existence of said claim; question of payment of said claim; and the question of whether or not the right to claim had already prescribed. The court granted the motion of Levy Hermanos and directed the administrator Elizalde to pay the claim. Elizalde perfected his appeal in due time. Levy Hermanos opposed the approval of the appeal on the ground that the order of the court in question was unappealable, it merely directing payment of a claim that had long been approved. The court was convinced by this argument and refused to give due course to Elizalde's appeal. Hence, this petition for mandamus. *Held*, there is no doubt that the order in question is appealable. The appealable court can pass upon the conclusions of the lower court as to whether the claim of Levy Hermanos has or has not been paid; whether it has not already prescribed. Mandamus will lie. ELIZALDE *v.* TEODORO, SR., GR. No. L-10592, May 20, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE REMEDY IN CASES OF FORFEITURE OF BOND IS NOT CERTIORARI BUT APPEAL. — The petitioner was surety on a bond for the provisional release of Alfaro. For failure to appear for arraignment the court ordered the bond forfeited and given 30 days from receipt of notice to produce the body and show cause why judgment should not be rendered. The 30 days having expired without the production of the accused, judgment was rendered on the bond. Subsequently, the surety petitioned the court to reconsider its order because of the death of the accused. This was denied though the amount was reduced. The petitioner instead of appealing filed a certiorari proceedings. *Held*, the remedy in cases of judgment for forfeiture of bonds is not certiorari but appeal. PLARIDEL SURETY & INSURANCE CO., INC. *v.* MONTESA, G.R. No. L-10153, April 30, 1957.

REMEDIAL LAW — CRIMINAL LAW — IN UNLAWFUL DETAINER CASES ELECTION TO STAY IN THE PREMISES AFTER NOTICE TO VACATE, THE OCCUPANT IS PRESUMED TO CONTINUE OBLIGATION OF PAYING NEW RENTAL AND COULD NOT BE EJECTED UNLESS HE DEFAULTED AND DEMAND IS NECESSARY. — The plaintiff is the owner of a parcel of land in Juan Luna, Manila, and occupied by the defendant on the agreed monthly rental of ₱6.25. The monthly rental was increased by the plaintiff due to increase in land tax. The defendant refused to pay the increased and insisted in paying the old rental. In March, 1953 plaintiff notified defendant to vacate the premises unless he agreed to pay the increased rental, defendant refused to pay but did not leave the premises. Action for ejectment was filed in the Municipal Court of Manila in August, 1954. The defendant contended that the Municipal Court has no jurisdiction because the one-year period from March, 1953, has already elapsed wherein

action for ejectment could be filed. *Held*, in unlawful detainer cases, election of the occupant to stay in the premises after notice to vacate is a presumption of continuance of paying the new rentals and could not be ejected unless he defaulted in payment and demand is necessary. MANOTA *v.* GUINTO, G.R. No. L-9540, April 30, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — COURTS MAY MODIFY JUDGMENTS OF CONFISCATION OF BONDS EVEN IF THE ORDINARY PERIOD FOR ORDERS AND JUDGMENTS TO BECOME FINAL HAD LONG PASSED. — When the case was called for arraignment and trial of the accused, the latter failed to appear and the court issued an order for the confiscation of his bond. Subsequently, due to failure of the bondsmen to produce the accused, judgment was rendered against the surety for ₱2,000.00. The accused thereafter appeared and pleaded guilty to the offense charged and was then sentenced. Thereafter due to petition of the surety the court reduced the amount of payment of the surety from ₱2,000.00 to ₱200 which order was opposed by the People due to the loss of control of the judgment of said court, said order having become final and executory. *Held*, the court may modify its judgment for confiscation of bonds even if the ordinary period for orders and judgments to become final had long passed. PEOPLE *v.* TAN AND MANILA SURETY & FIDELITY CO., INC., G.R. No. L-6239, April 30, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — SEC. 7 OF RULE 114 OF THE RULES OF COURT ALLOWING THE ACCUSED AS A MATTER OF RIGHT AT LEAST 2 DAYS TO PREPARE FOR TRIAL IS MANDATORY AND THAT DENIAL THEREOF IS A GROUND FOR NEW TRIAL. — The accused here were charged of inducing a minor to abandon his home. On the day of the hearing, the same was postponed due to the fact that Nabaluna had no lawyer and that of Cicon, for failure to appear. It was reset for another date with a warning that no further postponement will be granted. On the morning of the day for the trial a lawyer was contacted and during the trial said lawyer asked for postponement under Sec. 7 of Rule 114 of the Rules of Court but was refused. *Held*, Sec. 7 of Rule 114 of the Rules of Court allowing the accused as a matter of right at least 2 days to prepare for trial is mandatory and that denial thereof is a ground for new trial. PEOPLE *v.* NABALUNA AND CICON, G.R. No. L-9638, April 30, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE COURT MAY REDUCE THE LIABILITY OF THE BONDSMEN UNDER A BOND THAT HAD BEEN FORFEITED BY VIRTUE OF A PREVIOUS ORDER OF THE SAME COURT EVEN AFTER THE ORDER OF FORFEITURE HAD BECOME FINAL PROVIDED THE PROPERTIES COVERED BY THE BOND HAD NOT YET BEEN SOLD. — R. Daisin was charged with *estafa* before the CFI of Cotabato. The People's Surety posted a bond of ₱5,000 for his provisional release. The court directed the defendant to appear for arraignment and trial after due notice to his bondsmen. Defendant failed to appear. The court directed his arrest and ordered his bond of ₱5,000 confiscated should his body be not produced within 30 days from the issuance of the order. The 30 days passed without the bondsmen succeeding in producing the body of the accused. The prosecution then moved for the forfeiture of the bond. The court sentenced the bondsmen. No appeal was taken

to this order of confiscation and forfeiture. After the period of appeal, the People's Surety succeeded in locating Daisin in Baguio and in turning him over to the Manila Police Department for the transfer of the accused to Cotabato. The People's Surety then moved and prayed that the order of confiscation and forfeiture issued by the court be lifted and cancelled, stating that it thereby surrendered the body of the accused. The court considering the time and effort employed by the People's Surety in locating and arresting the accused lowered the surety's liability to ₱500. The prosecution appealed from this, maintaining that once an order of confiscation of a bail bond had become final, the court cannot reduce the liability therein imposed upon the surety. *Held*, there is no merit in this pretense. The court may reduce the liability of the bondsmen under a bond that had been ordered forfeited even after the order of forfeiture had become final provided the properties covered by the bond had not yet been sold. PEOPLE *v.* DAISIN, G.R. No. L-7613, April 29, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — SEC. 17 OF REP. ACT NO. 296 IS NOT APPLICABLE UNLESS THE ISSUES, OR AT LEAST, SOME OF THE ISSUES RAISED, BEFORE THE COURT OF APPEALS AND THE SUPREME COURT, OR IN BOTH SET OF CASES, ARE IDENTICAL OR SUBSTANTIALLY THE SAME. — Appellant Cariño was charged as being a ranking member of the Huks which movement has to overthrow by force of the Philippine government. The information specified 13 acts of subversion and rebellion as having been committed by the Huks. Though a member thereof, there was no evidence that appellant participated in the 13 acts listed. Convicted for the charge, appellant brought his case to the Court of Appeals. At the time of the appeal there were several cases pending in the Supreme Court involving the charge of rebellion with multiple murder of which the alleged confederates of the appellant were convicted as principals, particularly the cases of "People *v.* Lava," and "People *v.* Hernandez." The Court of Appeals certified the case of appellant to the Supreme Court under the provisions of sec. 17-(4) of Rep. Act No. 296 on the theory that "the offense charged therein arose out of the same occurrence as that giving rise to the serious offense of rebellion with multiple murder for which offense appellant's alleged confederates were convicted in the cases then pending in the Supreme Court. *Held*, the purpose of sec. 17-(4) of Rep. Act No. 296 is to avoid possible conflicts between decisions of this Court in criminal cases involving offenses for which the penalty imposed is death or life imprisonment, and decisions of the Court of Appeals in criminal cases involving offenses which, altho not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion as that giving rise to the more serious offense. Such conflict could not possibly exist, however, unless the issues, or at least, some of the issues raised, before both courts, or in both sets of cases, are identical or substantially the same. Hence this case does not fall within the purview of said provision of Rep. Act No. 296. PEOPLE *v.* CARIÑO, (UNDOCKETED) May 11, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE DISMISSAL OF A CASE AFTER ARRAIGNMENT IN THE JP COURT WITHOUT THE CONSENT OF THE ACCUSED CONTITUTES DOUBLE JEOPARDY IN ANOTHER CASE IN THE COURT OF FIRST INSTANCE FOR THE SAME CRIMINAL ACT COMPLAINED OF IN THE JP COURT. — Jovelo was

charged with a violation of a municipal ordinance in the JP court of Victorias, Neg. Occ. for having carried a deadly weapon. He was arraigned and the Provincial Fiscal moved for the dismissal of the case on the ground that another criminal case had been filed against Jovelo in the CFI of Neg. Occ. for the same act of carrying a deadly weapon while attending as member of the board of canvassers during a session in Precinct No. 13-A of Victorias, in violation of Act No. 1780. The JP warned the fiscal that dismissal of the case before him would constitute double jeopardy in the criminal case filed with the CFI for the same criminal act. The fiscal insisted on his motion and the case was dismissed over the objection of defendant. The CFI, on motion of defendant, dismissed the case on the ground of double jeopardy. Hence this appeal. *Held*, dismissal of the case after arraignment in the JP court over the objection of the accused constitutes double jeopardy in the case before the CFI for the same criminal act complained of in the JP court. PEOPLE *v.* JOVELO, G.R. No. L-10328, May 17, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — TO LIFT AN ORDER OF FORFEITURE OF BAIL BOND, MERE PERSONAL APPEARANCE OF DEFENDANT IS NOT SUFFICIENT; NEITHER WHEN COUPLED WITH MERE EXPLANATION; IT IS OF PRIME IMPORTANCE THAT THE EXPLANATION BE SATISFACTORY IN THE DISCRETION OF THE COURT. — Felix was charged with abduction with consent and for his provisional liberty the Equitable Insurance posted a bail bond in the amount of ₱2,000. The court set the trial on Sept. 20, 1955. For failure of the accused to appear, it ordered his arrest and declared his bond confiscated, at the same time giving his surety 30 days within which to produce the body of accused. The surety was served with the order of confiscation on Oct. 8, 1955 and the same succeeded in surrendering accused on Oct. 10, 1955. Surety filed a motion praying for the cancellation of the order of confiscation of the bail bond. The motion was denied by the court on the ground that the explanation given by movant regarding the failure of accused to appear on the trial was not satisfactory. The only reason advanced by the surety was that accused himself was served with notice of the trial of his case personally through his sister and also by the court in open court. Surety argued that since it succeeded in producing and surrendering the body of the accused within the 30 days given by the court, the court, therefore, erred in not relieving it from liability. *Held*, the personal appearance of the defendant is not sufficient; it is still necessary that it be accompanied by a satisfactory explanation of his failure to appear. It is of prime importance that the explanation be satisfactory in order that the surety may be discharged from liability. Whether the explanation given is sufficient or not is a matter within the discretion of the court. PEOPLE *v.* FELIX, G.R. No. L-10094, May 14, 1957.

REMEDIAL LAW — EVIDENCE — IDENTITY OF DEFENDANT IS SUFFICIENTLY ESTABLISHED BY A WITNESS, WHO IS HIS TOWNMATE, WHO STOOD 5 BRAZAS FROM HIM WHEN DEFENDANT WITH OTHERS SHOT TO DEATH A PERSON, DEFENDANT AND HIS COMPANIONS HAVING FLASHED A LIGHT ON THE FACE OF THEIR VICTIM BEFORE THE FATAL SHOT AND THERE BEING LIGHT PROVIDED BY THE HOUSES NEARBY. — Upao Moro with other companions had a quarrel with Moro Lakibul, Jikiri Hashim and others. A fight was averted by the timely arrival of a policeman who brought Upao Moro and Moro Lakibul to the police headquarters for investigation. At the headquarters, Upao threw his shirt at the policeman, uttered insulting words and left. A few days later he went out looking for Moro Lakibul. Upao Moro with others, all armed, went to Lakibul's place looking for him. They found him in the store of one Putli. They stood about 5 brazas from Lakibul who were with others, among them Jikiri. The night was very dark but defendant or his companions flashed a light from a flash light on the face of Lakibul before shooting him. There were also houses nearby with kerosene lamps. The shooting killed Lakibul and another Moro boy. Defendant stood hard on the question of his identity. He maintained in the lower court, and on appeal, in the Supreme Court, that witness Jikiri could not possibly have identified him in the dark and singled him out in the dark. He presented two PC officers who testified that at that night the vicinity of the place of the crime was so dark that it was very hard to identify a man. *Held*, the identity of defendant has been sufficiently established. The witness who identified him was his townmate, who was only 5 brazas from him; the light flashed on Lakibul's face and the light from the porches of the nearby houses helped the witness in seeing defendant. PEOPLE *v.* UPAO MORO, G.R. No. L-6771, May 28, 1957.

REMEDIAL LAW — EVIDENCE — DEFENSE OF ALIBI WILL NOT STAND AGAINST THE TESTIMONY OF SEVERAL WITNESSES WHO IDENTIFIED DEFENDANT AS AMONG THOSE WHO PERPETRATED THE CRIME FOR WHICH DEFENDANT IS CHARGED. — On April 1, 1949, at about 9:30 p.m., three men, armed with guns, entered the dwelling of Pedro Rodriguez in barrio Santa Cruz of Nueva Ecija, by forcibly opening the kitchen door of his house. The robbers took articles aggregating P11.30. One of them raped the wife of Pedro Rodriguez while the two others raped the 17-year old daughter of the spouses. Shortly afterwards, de la Rosa, Pablo Posadas and Tranquilino Drylon, all members of the Constabulary force stationed in the municipality where barrio Santa Cruz was located, were accused of the crime of robbery with rape. Drylon escaped and de la Rosa pleaded guilty to the charge and only Posadas was proceeded against. After due trial, he was convicted. The only question involved in the appeal was whether the identity of Posadas as one of the authors of the crime had been sufficiently established. De la Rosa himself pointed to Posadas as one of his co-accused. Iluminada also testified that on the night of the crime, and earlier, the three accused had drunk wine in her store and she over-heard them speaking that they were going to barrio Santa Cruz where Rodriguez's house was located. Posadas was also identified by Irene Rodriguez and Elena Dayao, although Irene did not name Posadas by his name when she made statements in an investigation conducted soon after the commission of the offense. For his defense, Posadas raised an alibi, alleging that on the night of April 1, 1949 he was on post guard from 7 to 11 p.m. The record of the PC which Posadas claimed bore him out was not produced, however. *Held*, defense of alibi will not stand against the testimony of several witnesses who identified defendant as among those who perpetrated the crime for which defendant is charged. PEOPLE *v.* POSADAS, G.R. No. L-8569, May 24, 1957.

REMEDIAL LAW — EVIDENCE — IT IS SUFFICIENT THAT APPELLANTS HAD CONFESSED TO HAVE KILLED A PERSON KNOWN AS JR. PARIÑAS AND DUMPED HIS BODY INTO THE ABRA RIVER, WHICH CADAVER THE AUTHORITIES LATER FOUND

AND THIS SUFFICIENTLY PROVES THE CORPUS DELICTI OF THEIR CRIME. — On November 1, 1952, in the barrio of Bucalog, Ilocos Sur, the body of a dead person was found floating in the Abra River, wrapped in jute bags and entangled with the branches of trees. The body had bolo marks and was in the state of putrefaction. The District Health officer estimated the date of the killing to have taken place some 5 days before. Investigations brought the information that the dead body belonged to one Jaime Calosar alias Jr. Pariñas. The authors of the crime were found to be Primo Andallo and Leocadio Cardona. These two made extrajudicial confessions admitting the authorship of the murder and giving their reasons for the killing. Their confessions contained details. Convicted of the crime charge, they appealed capitalizing the fact that the identity of the victim was not established. The accused denied that the deceased was Jaime Calosar. They claimed that Jr. Pariñas was one Isabelo Pariñas whom they presented as a witness in their favor. *Held*, suffice it to say that as appellants had confessed to have killed a person known as Jr. Pariñas and dumped his body into the Abra River, which cadaver the authorities later found, the *corpus delicti* of their crime is sufficiently proved. PEOPLE *v.* ANDALLO, G.R. No. L-9173, May 29, 1957.

REMEDIAL LAW — EVIDENCE — TESTIMONY OF AN EYE WITNESS AS TO THE IDENTITY OF ACCUSED WHEN CORROBORATED BY THE EXTRAJUDICIAL CONFESSION OF A CO-ACCUSED, THOUGH SUBSEQUENTLY THE CO-ACCUSED REPUDIATED SAID CONFESSION, IS SUFFICIENT TO ESTABLISH THE IDENTITY OF SAID ACCUSED. — In the evening of April 28, 1953 in a barrio of Cotabato, a whole family with the exception of a boy 13 years old and a girl 6 years old were brutally and ruthlessly murdered at their sleeping places on the occasion of a robbery committed in their house by a band of armed men. The boy, Juan Caseria, was spared because he jumped out of the window and ran to the house of a neighbor for help. He was presented as a witness for the prosecution and he mentioned four men. One of these four, Wagia Mado, made an extrajudicial confession, which he later repudiated, to the effect that two of the four men who perpetrated the robbery with murder were Alamada Tito and Pagetudan Tito. The boy Juan Caseria pointed to the same Titos as among the four who invaded his house on the tragic night, although when Juan made his statements during the investigation of the crime he had not mentioned the two Titos by name. The two Titos appealed and their counsel raised the sufficiency of evidence against them. *Held*, Juan said in his extrajudicial statements that he knew only Wagia Mado and this denotes familiarity. This does not mean that Juan did not recognize appellants, although he did not know them by name. Juan's testimony is corroborated by the extrajudicial confession of Wagia Mado who mentioned appellants as two of the four. And this is sufficient to establish their identity. PEOPLE *v.* MADO, G R. No. L-8584, May 29, 1957.

REMEDIAL LAW — EVIDENCE — EVEN IF THE CHARGE BY DEFENDANT THAT A WITNESS FOR THE GOVERNMENT HAD ASKED MONEY FROM DEFENDANT FOR HIS, WITNESS' TESTIMONY IN HIS FAVOR WERE TO BE TAKEN AT FACE VALUE, THE SAME WOULD NOT PROVE THE FALSITY OF WITNESS' TESTIMONY ABOUT HIS HAVING MET DEFENDANT TOGETHER WITH THE VICTIM WHO WAS TIED, SPECIALLY SO WHEN THE TESTIMONY OF SAID WITNESS COINCIDED WITH THE EVIDENCE HE GAVE AT THE INVESTIGATION OF THE CRIME CHARGED AND CORROBORATED BY THREE OTHERS. — Defendant Apolinario Marcelino was charged for kidnapping with murder. The victim was one Sergio Porciuncula. Defendant was seen with Sergio, whose hands were tied, whom he led by a rope. Four people saw defendant moving away with Sergio who had never been seen again after the scene. Among the four witnesses was one Ayuste who had met defendant when defendant was on his way with Sergio. Ayuste testified that Sergio had pleaded to him to intercede in his, Sergio's, behalf. Ayuste said, he talked to Marcelino to free Sergio but that Marcelino said Sergio was pro-Japanese. Defendant sought to impeach Ayuste's testimony on the ground that the latter had wanted to extort money from him on the promise of his, Ayuste's testifying in his, defendant's, favor. *Held*, even if defendant's charge were to be taken at face value, the same would not prove the falsity of Ayuste's testimony about having met defendant and Sergio who was tied. Ayuste's testimony coincided with the evidence he gave at the investigation, and buttressed by that of Teodoro Ramos and Corpus and Duran. PEOPLE *v.* MARCELINO, G.R. No. L-9678, May 28, 1957.

REMEDIAL LAW — EVIDENCE — PAROL EVIDENCE IS ADMISSIBLE TO SHOW THAT A WRITTEN DOCUMENT THOUGH LEGAL IN FORM WAS IN FACT A DEVICE TO COVER USURY. — During the trial in a criminal case for violation of the usury law, the prosecution presented one of the vendors in a deed of sale marked as an exhibit. He was asked why the document was called deed of sale with pacto de retro if the real contract between the parties was one of loan. The defense objected upon the ground that parol evidence is not acceptable to prove the contents of a document other than the document itself. The judge sustained the objection. Thus the present petition for certiorari to set aside the order of the judge. *Held*, parol evidence is admissible to show that a written document though legal in form was in fact a device to cover usury. If from a construction of the whole transaction it becomes apparent that there exists a corrupt intent to violate the usury law, the court should and will permit no scheme however ingenious to becloud the crime of usury. PEOPLE *v.* ABBAS, G.R. No. L-10573, April 29, 1957.

REMEDIAL LAW—EVIDENCE—PERSONS WHO HAD BEEN BEATEN AND TAKEN AWAY APPARENTLY DEAD AND HAD FAILED TO RETURN ARE PRESUMED TO HAVE BEEN LIQUIDATED AND IT BEHOOVES THE DEFENDANT TO SHOW WHERE THEY ARE AND, FAILING IN THE SAME, DEFENDANT MAY BE HELD LIABLE FOR THE DEATH OF SAID PERSONS. — Appellant Guzman was pointed by eye witnesses as among the group of some 30 armed men who had beaten Concordia Ligon and her son Severo on the night of Nov. 30, 1950. After having been beaten, Concordia and her son had been dragged to a waiting carrier, silent and unmoving. The two had not returned home up to the time of the criminal prosecution for murder against appellant Guzman and his companions. Emiliano and Calixto, brothers of Severo and children of Concordia, saw the beating done by Guzman and his companions. But they did not know whether their mother and brother were dead or still alive. The trial court convicted defendants, including appellant Guzman, for murder. *Held*, it is true that there is no direct evidence that both victims had actually died. But it cannot be denied that

they were both dead already for otherwise they would have returned home. Since they never returned, the conclusion is inescapable that they had been liquidated. It is a fact clearly proven that appellant and his companions dragged the two victims to a weapons carrier and thereafter drove away. If they really are still alive, it behooves the appellant to show where they are. Failing, he will be held liable for their death. PEOPLE *v.* PONCE, G.R. No. L-8864-65, April 22, 1957.

COURT OF APPEALS

CIVIL LAW — OBLIGATIONS — APPELLEE WAS NOT DUTY BOUND TO ACCEPT AND TAKE DELIVERY OF THE SHIPMENT OF LUMBER, IT BEING ADMITTED THAT THE NARRA LOGS WERE BELOW THE SPECIFICATIONS AGREED UPON IN THE ORAL CONTRACT TO BUY AND SELL, BUT, AS THE CONSIGNEE, IT WAS APPELLEE'S DUTY TO NOTIFY THE SHIPPER THAT HE WAS NOT WILLING TO ACCEPT SAID SHIPMENT AND TO RETURN TO APPELLANTS THE BILL OF LADING AND NOT ABANDON THE SAME IN THE PIER UNTIL THEY WERE LOST. — Plaintiff Labuit entered into an oral agreement with defendant Marciana Lasam for the sale of narra logs by the latter to the former. The size, quality and quantity of the narra logs were specified. Lasam was to deliver the said logs to Manila, subject to availability of transportation. Labuit advanced money as payment for the logs to be shipped by Lasam. Three shipments of logs were made. All these logs, however, did not meet the specifications agreed, that is, they were inferior in quality and measurements. But Labuit accepted the two first shipments and sold the logs thus sent to him. The third shipment was refused acceptance by Labuit and he abandoned the logs shipped at the pier until they got lost. However, Labuit did not inform Lasam of his refusal to accept delivery of the third shipment of logs; neither did he return the bill of lading to her. Subsequently, Labuit demanded the return of the money he advanced for the third shipment and when refused brought this action. *Held*, appellee was not duty bound to accept and take delivery of the said shipment, it being admitted that the narra logs were below specifications. But as the consignee, it was appellee's duty to notify the shipper that he was not willing to accept the third shipment in question and to return to appellants Lasam the bill of lading, and not abandon the logs in the pier until they got lost. The third shipment, therefore, must be considered as delivered and the loss should be suffered by appellee. LABUIT *v.* LASAM, (CA) G.R. No. 17326-R, April 26, 1957.

CIVIL LAW — SALES — THE INABILITY OF AN HEIR TO ACCEPT AN OFFER OF SALE OF A SHARE PRO-INDIVISO OF ANOTHER CO-HEIR ON THE GROUND THAT THE OFFER APPEARED EXPENSIVE OR FOR LACK OF FUNDS DOES NOT EXTINGUISH HIS RIGHT TO REDEEM THE SAME WITHIN THE PERIOD FIXED BY LAW. — Deceased Cirilo Orimaco left a portion of land. Per agreement of his heirs, it was adjudicated *pro indiviso* to Felisa (plaintiff-appellee), Margarita (dead) and Lamberta, all surnamed Orimaco. The heirs of deceased Margarita were his children. Margarita's children sold their share in the land in question to Filomeno Orimaco (defendant-appellant) on June 30, 1951 for ₱300. This same land had been offered for sale by Margarita's heirs to Felisa. But either for lack of funds or for too high a price, Felisa refused to buy the same. Upon being informed of the sale of the land to Filomeno, Felisa actually offered the amount of ₱300 in cash to defendant as redemption price of the land but the latter refused to accept. Thereupon she deposited this amount with the clerk of court on July 6, 1951, or barely a week after the sale took place. Defendant appealed, contending that plaintiff's refusal to accept the offer of sale of the land by Margarita's heirs before the latter sold the land to him extinguished her right to redeem the same under art. 1088 of the new Civil Code. *Held*, the law does not prohibit a co-heir from selling his share of the estate to a stranger before the partition of the hereditary estate is approved by the court; but the heirs to the same hereditary estate may be subrogated to the rights of the purchaser provided they do so within a period of one month from the time they were notified of the sale by the vendor. The inability of an heir to accept an offer of sale *pro-indiviso* of another co-heir before the actual sale took place on the ground that the offer appeared expensive or for lack of funds does not extinguish his right to redeem the same within the period fixed by law. ORIMACO *v.* ORIMACO, (CA) G.R. No. 16552-R, April 16, 1957.

CIVIL LAW — SALES — A CONTRACT TO SELL IS NOT A CONTRACT OF SALES AND THEREFORE DOES NOT COME WITHIN THE PURVIEW OF THE STATUTE OF FRAUDS. — In September, 1949, plaintiff acquired the land. The plaintiff notified the occupants, defendants herein to vacate because he would need the same for his personal use. Defendants manifested his willingness to buy the land and plaintiff and defendant verbally agreed for the purchase of said land. The price was ₱3500, ₱600 to be paid in lump sum and the balance to be paid in installments of ₱120 per month. The ₱600 was supposed to be paid on May 26, 1951. On such date, plaintiff failed to appear. Hence this action for performance of the contract. Plaintiff filed this action for detainer. Plaintiff alleged that this being an agreement to sell real properties, the same is covered by the Statute of Frauds and therefore unenforceable. *Held*, this contract does not fall under the provisions of Art. 1475 of the NCC but rather under Art. 1479 referring to the promise to buy and sell a determinate thing for a price certain. This is not a perfected contract of sale but rather a perfected contract to sell. A contract to sell is not a contract of sale and therefore does not come within the purview of the Statute of Frauds. TURLA *v.* PAREDES, (CA) G.R. No. 12432-R, March 18, 1957.

CIVIL LAW — PLEDGE — A PLEDGE CERTIFICATE IS NOT A NEGOTIABLE INSTRUMENT. — Plaintiff pawned with defendant for the sum of ₱12 a 21-jewel Gruen watch valued at ₱145. On December 5 the pledge certificate was lost. Immediately plaintiff notified appellant of the loss and he was made to fill and sign a printed form captioned "Information on Lost Pledge Certificate." The time for redemption was extended to Dec. 8. On said date, plaintiff went to defendant and asked for extension up to Dec. 13 which was granted. On Dec. 11, plaintiff went to defendant to redeem said watch but was told that on Dec. 7 somebody presented the lost pledge certificate and signed plaintiff's name on its reverse side. So this action was instituted for the recovery of the value of the watch and damages. Plaintiff alleged that the pledge certificate is a negotiable instrument and when the same is presented