CASE DIGEST

SUPREME COURT

CIVIL LAW — HUMAN RELATIONS — ACQUITTAL IN A CRIMINAL ACTION BASED ON REASONABLE DOUBT DOES NOT BAR A SUIT TO ENFORCE THE CIVIL LIABILITY. — The defendant was charged at the instance of the plaintiff bank with estafa for having misappropriated, misapplied and converted the merchandise covered by a trust receipt. Having been acquitted from the charge, the plaintiff bank commenced an action to recover the value of the goods. From a decision in favor of the plaintiff, the defendant appealed contending that his acquittal in the estafa case is a bar to the civil action because the plaintiff bank did not reserve in the criminal case its right to separately enforce the civil liability of the defendant. *Held*, the contention of the defendant is untenable. His acquittal in the criminal case was predicated on the conclusion that his guilt has not been satisfactorily established, and this acquittal is equivalent to one on reasonable doubt. It does not therefore preclude a suit to enforce the civil liability for the same act or omission under art. 29 of the New Civil Code. PNB *v.* CATIPON, G.R. No. L-6662, Jan. 31, 1956.

CIVIL LAW — NATURALIZATION — AN APPLICANT FOR NATURALIZATION BECOMES A FILIPINO ONLY UPON THE TAKING OF THE OATH OF ALLEGIANCE AND NOT BEFORE. — On July 30, 1953, Tiu's petition for naturalization as a Philippine citizen was granted. On October 9, 1954, the court received evidence pursuant to the provision of Rep. Act 530 and thereafter issued an order declaring that petitioner had complied with the requirements of said Act and accordingly, authorizing him to take the oath of allegiance, which petitioner did on the same date. Ten days later, he filed a motion praying that his daughter who was a minor at the time of the rendition of the decision on July 30, 1953 but had become of age on March 15, 1953, be allowed to take her own oath of allegiance. Petitioner contended that having become a Filipino citizen after the expiration of 30 days from the promulgation of the decision on July 30, 1953, and inasmuch as his daughter was then a minor, she automatically became a Filipino citizen pursuant to § 15 of C.A. No. 473 which provides that "a foreign born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a citizen of the Philippines . . ." The Solicitor-General objected. *Held*, an applicant for naturalization becomes a citizen only upon the taking of the oath of allegiance and not before. Consequently, petitioner's daughter cannot claim the privilege conferred by C.A. No. 473 as she was already of age when petitioner acquired Philippine citizenship by virtue of the taking of the oath of allegiance. TIU PENG HONG *v.* REPUBLIC, G.R. No. L-8550, Jan. 25, 1956.

CIVIL LAW — PROPERTY RELATIONS — WHERE THE SALE OF CONJUGAL PARTNERSHIP PROPERTY BY THE HUSBAND WAS MADE WITHOUT CONSIDERATION, THE WIFE MAY BRING AN ACTION TO ANNUL SUCH SALE BEFORE THE LIQUIDATION OF THE CONJUGAL PARTNERSHIP. — The plaintiff sought to annul a fictitious sale of the conjugal property made by her deceased husband during his lifetime to the defendant as no payment was made as a consideration. The trial court dismissed the complaint on the ground that the interest of the wife in the community property is a mere expectancy which does not ripen into a legal title, until a liquidation has been had of the conjugal partnership. Plaintiff appealed. *Held*, where the husband sells conjugal property without consideration or fictitiously, the wife may bring an action to annul the sale even before the liquidation of the conjugal partnership. The case would be different if the sale was made under onerous title but which was in fraud of the wife. BORROMEO *v.* BORROMEO, G.R. No. L-7548, Feb. 27, 1956.

CIVIL LAW — ADOPTION — A NATURAL CHILD MAY BE ADOPTED BY HIS NATURAL FATHER OR MOTHER REGARDLESS OF WHETHER HE HAS BEEN ACKNOWLEDGED OR NOT. — Prasnik has been living with a woman as husband and wife without benefit of marriage. Out of this relationship four children were born. Prasnik filed a petition to adopt the four minor children, claiming they were his natural children and that he wished to adopt them for their best interests and well-being. The Solicitor-General opposed the petition on the ground that Prasnik, having acknowledged the four minors as his natural children, cannot legally adopt them since art. 338 of the New Civil Code, which allows a natural child to be adopted by his natural father, refers only to a child who has not been acknowledged as a natural child. The court nonetheless granted the petition so the Solicitor-General appealed. *Held*, art. 338 of the New Civil Code provides that a natural child may be adopted by his natural father or mother, while art. 335 denies adoption to one who has an acknowledged natural child. The Solicitor-General interprets these two provisions in the sense that a natural child may not be adopted by his natural parent if he has already been acknowledged as a natural child. This interpretation is not correct because it confuses the children of a person with the minors to be adopted. A cursory reading of said articles will reveal that the prohibition merely refers to the adoption of a minor by a person who has already an acknowledged natural child and it does not refer to the adoption of his own children, even if he has acknowledged them as his natural children. PRASNIK *v.* REPUBLIC, G.R. No. L-8639, March 23, 1956.

CIVIL LAW — LEASE — WHERE THE LESSEE HAS NOT MADE AN ABSOLUTE TRANSFER OF HIS INTEREST AS SUCH LESSEE TO ANOTHER, SUCH TRANSFER IS A SUBLEASE AND NOT AN ASSIGNMENT OF LEASE. — The property in question formerly belonged to three co-owners who had been leasing it to one Enriquez. The last lease was signed in 1931 and was to last until June 1, 1967. After the death of Enriquez, his widow subleased the property to the defendant, the sublease to commence on May 31, 1947 and last until May 31, 1967. With the co-owners of the property already dead, the plaintiff as their sole heir brought an action to recover possession of the property alleging that the sublease to the defendant was null and void on the ground that it was not really a sublease

but an assignment of lease which is void for want of consent of the lessors. From a decision in favor of the defendant, plaintiff appealed. *Held,* to determine whether a given contract constitutes an assignment of lease and not a mere sublease, the test is whether the lessee has by said contract made an absolute transfer of his interest as such lessee, thus dissociating himself from the original contract of lease so that his personality disappears, there remaining only in the juridical relation two persons, the lessor and the assignee who is converted into a lessee. With the above distinction in mind, the fact that the lessee subleased the property for a shorter period than the original lease plainly makes the contract a sublease and not an assignment of lease. MANLAPAT *v.* SALAZAR, G.R. No. L-8225, Jan. 31, 1956.

CIVIL LAW — LEASE — IN THE ABSENCE OF STIPULATION AS TO THE DURATION OF THE LEASE, IT IS UNDERSTOOD TO BE FROM MONTH TO MONTH IF THE RENT AGREED UPON IS MONTHLY ALTHOUGH THE COURT MAY EXTEND THE PERIOD OF THE LEASE. — Plaintiff brought an unlawful detainer case against the defendant for having stayed on the plaintiff's leased property after the expiration of the lease contract. Plaintiff based his action on the notice given to the defendant to vacate the premises after the expiration of one month. Defendants interposed the defense that they could not be guilty of unlawful detainer until the court at the instance of the plaintiff fixed the period of the contract and the term thus fixed has expired, they having assumed that their contract with the plaintiff was without a term. *Held,* first of all, the notice of termination of the lease contract was given before the New Civil Code took effect. There being no stipulation as to the duration of said contract and the parties having agreed to a monthly rental, the lease, under the old Civil Code, is understood to be from month to month and to have terminated therefore upon the expiration of each month without the necessity of a special notice, in the absence of an implied renewal. Moreover, according to art. 1587 of the New Civil Code, if the period of the lease contract is not fixed, it is understood to be from month to month if the rent agreed upon is monthly although the court may *in its discretion* extend the period of the lease. PRIETO *v.* SANTOS, G.R. No. L-6639, Feb. 29, 1656.

CIVIL LAW — MORTGAGES — A STIPULATION THAT UPON FAILURE OF THE MORTGAGOR TO REDEEM WITHIN A STATED PERIOD THE LAND SUBJECT OF THE MORTGAGE SHALL AUTOMATICALLY PASS TO THE MORTGAGEE CONSTITUTES A *PACTUM COMMISSORIUM* AND IS VOID. — Plaintiffs and defendants entered into a contract of mortgage one of the stipulations of which was that if the defendants could not redeem the mortgage within two years from the date of the contract then the consideration paid shall be considered as full payment of the land which is the subject of the contract without further action in court. In accordance with this stipulation, plaintiffs sought to compel the defendants to execute a deed of conveyance but defendants interposed the defense that the agreement in which plaintiffs rely is null and void as being a *pactum commissorium. Held,* defendants' contention is well-founded. The stipulation that upon failure of redemption the consideration shall be deemed as full payment without further action in court can only be interpreted as constituting a *pactum commissorium.* Plaintiffs, however, may still collect this claim as ordinary mortgage creditors. REYES *v.* NEBRIJA, G.R. No. L-8720, March 21, 1956.

COMMERCIAL LAW — CORPORATION LAW — A *SOCIEDAD ANONIMA*, EXISTING BEFORE THE ENACTMENT OF THE CORPORATION LAW, THAT CONTINUES TO DO BUSINESS AS SUCH FOR A REASONABLE TIME AFTER ITS ENACTMENT, IS DEEMED TO HAVE MADE ITS ELECTION AND CANNOT LATER CLAIM TO REFORM INTO A CORPORATION. — Petitioner corporation was organized in 1903 as a *sociedad anonima* under the Spanish Code of Commerce of 1886 for a term of 50 years. In 1953, the shareholders of said corporation adopted a resolution empowering the directors to effectuate the extension of the company's life for not less than 20 years nor more than 50 years. In pursuance of said resolution, the directors submitted on June 1953, to the Securities and Exchange Commission two documents for alternative registration: (1) Certification as to the Modification of the Articles of Association of the company, extending its life for another 50 years and (2) Articles of Incorporation, covering its reformation or organization as a corporation in accordance with § 75 of the Corporation Law. Respondent commissioner denied the registration of either document. Thus the company appealed, contending that (1) the prohibition contained in § 18 of the Corporation Law against the extension of a corporation's life beyond its original term does not apply to *sociedades anonimas* already in existence at the passage of said law, (2) that to apply said restriction to *sociedades anonimas* already functioning when the law was enacted would be unconstitutional, and (3) that, even assuming that it was applicable, the company could still exercise the option of reforming and reorganizing under § 75 of the Corporation Law, since the law is silent as to the time when this option may be availed of. *Held,* from the double fact that the duration of the company's corporate existence and juridical personality has evident connection with the petitioner's relations to the public, and that it bears none to the petitioner's organization and method of transacting business, it is concluded that the prohibition contained in § 18 of the Corporation Law, against extending the period of corporate existence by amendment of the original articles, was intended to apply, and does apply, to *sociedades anonimas* already formed and organized at the time of the effectivity of the corporation law. The statutory prohibition is valid and impairs no vested rights or constitutional inhibitions, since the prolongation of the corporate existence of the petitioner in 1906 was merely a possibility in the future, a contingency that did not fulfill the requirements of a vested right entitled to constitutional protection. The contention of the petitioner that it may still exercise the option given by § 75 of the Corporation Law is untenable because it is grounded on the assumption that it has not yet exercised that option. It had already done just that when it elected to continue to do business as a *sociedad anonima.* It can, therefore, no longer reform under § 75 of the Corporation Law. BENGUET CONSOLIDATED MINING CO. *v.* PINEDA, G.R. No. L-7231, March 28, 1956.

COMMERCIAL LAW — TRANSPORTATION — THE PRESCRIPTIVE PERIOD PROVIDED FOR IN § 3 PARAGRAPH 6 OF THE CARRIAGE OF GOODS BY SEA ACT APPLIES TO AN ACTION FOR LOSS OR DAMAGE TO THE GOODS BY REASON OF A BREACH OF THE CONTRACT OF CARRIAGE. — Plaintiff contracted with the Kent Sales Co. of New

York for the importation of 2,000 cases of fresh hen eggs to be shipped on the "S.S. Marine Leopard" of the defendant shipping company. The goods were loaded in said ship but upon its arrival in San Francisco, California, the 2,000 cases of eggs were unloaded and were transported in another ship which arrived at a later date in Manila. When plaintiff brought an action for damages for the delay in the shipment of the goods, defendant maintained that the action of plaintiff had already prescribed it having been filed more than one year after delivery of the cargo in accordance with § 3, par. 6 of the Carriage of Goods by Sea Act. Plaintiff argued that the present case does not fall within the purview of said section as the suit referred therein is one for loss or damage, either apparent or concealed and not one for a breach of the contract of carriage on the part of the carrier causing damages to the consignee. *Held*, plaintiff's contention is untenable. Actually, any and all damages suffered by the goods, while in transit and in the custody of the carrier, amounts to a breach of the contract of carriage unless due to a fortuitous event. TAN LIAO *v.* AMERICAN PRESIDENT LINES, G.R. No. L-7280, Jan. 20, 1956.

CRIMINAL LAW — COERCION — VIOLENCE IS NOT AN ESSENTIAL ELEMENT OF COERCION OR UNJUST VEXATION UNDER ART. 287 (2) OF THE REV. PENAL CODE. — Defendants were charged with having seized, thru deceit and misrepresentation, the jeepney of Agustin Blanco, for the satisfaction of a debt owed to them by the latter. The offense charge was coercion. The first paragraph of art. 287 R.P.C. provides: "Any person who, my means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt . . ." Upon motion of the defendants, the court dismissed the information because it did not allege the use of violence. The prosecution appealed, contending that the offense charged was coercion or unjust vexation under the second paragraph of said art. 287 R.P.C. which states that: "Any other coercion or unjust vexation shall be punished . . ." under which violence is not an essential element. *Held*, although the offense named in the information is coercion, it does not necessarily follow that the applicable provision is the first paragraph, since the second paragraph also speaks of "coercion." Inasmuch as the recitals in the information do not include violence, the inevitable conclusion is that the coercion contemplated is that described and penalized in the second paragraph. PEOPLE *v.* REYES, G.R. No. L-7712, March 23, 1956.

CRIMINAL LAW — THEFT — CONVICTION FOR THEFT OF A FIREARM DOES NOT NECESSARILY BAR A SUBSEQUENT CHARGE FOR ILLEGAL POSSESSION OF THE SAME FIREARM. — The accused was convicted of stealing a rifle. After sentence was passed, the Fiscal filed another information charging him with illegal possession of the same firearm. The accused set up *autrefois convict* and the CFI dismissed the second information on the theory that the illegal possession was inseparable from the theft of which the accused had already been convicted and sentenced. The Fiscal appealed. *Held*, the appeal must be sustained. While in stealing a firearm, the accused must necessarily come into possession thereof, the crime of illegal possession of firearm is not committed by mere transient possession of the weapon. There must be not only intent to own but also intent to use, which is not necessarily the case in every theft of firearm. PEOPLE *v.* REMERATA, G.R. No. L-6971, Feb. 17, 1956.

LABOR LAW — LABOR CONTRACTS — THE RELATIONSHIP BETWEEN THE OWNERS OF PASSENGER JEEPS AND THE DRIVERS WHO USE THEM UNDER THE "BOUNDARY SYSTEM" IS THAT OF EMPLOYER AND EMPLOYEE AND NOT THAT OF LESSOR AND LESSEE. — Respondent Dinglasan, the owner and operator of TPU jeepneys, was charged before the CIR with unfair labor practices by driver-complainants, represented by petitioner, who hire the jeepneys under what is popularly known as the "boundary system." An associate judge of the CIR found that an employer-employee relationship existed between respondent and the drivers. This order, however, was merely interlocutory and upon motion for reconsideration by the respondent, the CIR adopted a resolution en banc setting aside this order and holding that there was no employer-employee relationship between the parties. Its complaint having been dismissed, petitioner appealed. *Held*, respondent is the exclusive owner of the jeeps and the management of the business is completely in his hands. He exercises supervision over the drivers by seeing to it that they follow the route prescribed by the Public Service Commission and obey its rules and regulations. Although he pays them no fixed wage, their compensation is the excess of the total amount of fares earned over and above the ₱7.50 that they pay to the respondent. The relaship is that of employer and employee and not that of lessor and lessee. NATIONAL LABOR UNION *v.* DINGLASAN, G.R. No. L-7945, March 23, 1956.

LABOR LAW — REINSTATEMENT — AN EMPLOYER HAS NO RIGHT TO ABOLISH A SUSPENDED EMPLOYEE'S POSITION DURING THE PENDENCY OF THE CASE AGAINST THE LATTER AND REFUSE TO REINSTATE HIM AFTER THE EMPLOYEE HAS BEEN ACQUITTED. — Luis Mabagos was employed in the Naric as a warehouseman. Having been implicated in a case of theft, he was suspended from his services. Upon his acquittal, the respondent labor union of which he is a member demanded his reinstatement and the payment of his back wages. The petitioner paid the employee his back wages but refused to reinstate him contending that his position has been abolished. From an order of the CIR ordering the petitioner to reinstate Mabagos, petitioner appealed. *Held*, section 260 of the Revised Administrative Code which directs the payment of back salaries to a suspended employee implies that the position is not vacated by the incumbent or suppressed by reason of suspension. The petitioner had no right to abolish Mabagos' position or give it permanently to another during the pendency of the case against the latter and refuse to reinstate him after his acquittal from the case filed against him. NARIC *v.* NARIC WORKERS' UNION, G.R. No. L-7788, Feb. 29, 1956.

LABOR LAW — MINIMUM WAGE LAW — IN THE INVESTIGATION PRECEDING THE APPOINTMENT OF A WAGE BOARD, THE EMPLOYERS AFFECTED DO NOT HAVE ANY RIGHT TO NOTICE AND HEARING BECAUSE THIS IS A MERE PRELIMINARY STEP TO THE FULL INQUIRY THAT IS TO TAKE PLACE AFTERWARDS. — Petitioner, a dealer in mineral oil and allied products, brought this action for prohibition against the respondent Secretary of Labor, seeking to restrain him from enforcing his Administrative Order WB-6(a) which creates a Wage Board for the mineral oil industry for the purpose of fixing a minimum wage for such industry pursuant to § 4 (a) of the Minimum Wage Law. Petitioner claims that said order is null and void because they were not given notice and a hearing before its promulgation. *Held*, Administrative Order WB-6(a) is valid and

petitioner's objection is without merit. The investigation preceding the appointment of a wage board is not prescribed by law to be made by the Secretary himself. It may be made by the Chief of the Wage Service, as it was in this case. Nor is it intended to be final, since the law provides that the Board created, in which the employers themselves will be represented, shall conduct its own investigation to ascertain if any substantial number of employees are receiving wages which are less than sufficient to maintain them in health, efficiency and general well-being. More than this, the Secretary himself will conduct public hearings on the report of the Board. It is to these public hearings that petitioner has a right under the law. No real injury was therefore caused them by the Secretary's order creating the Wage Board. CALTEX (PHIL.) INC. *v.* QUITORIANO, G.R. No. L-7152, March 21, 1956.

LABOR LAW — WORKMEN'S COMPENSATION ACT — THE TEST OF DEPENDENCY OF THE BENEFICIARIES UNDER THE WORKMEN'S COMPENSATION ACT IS NOT WHETHER MEMBERS OF THE FAMILY CLAIMED TO BE DEPENDENT COULD SUPPORT LIFE WITHOUT CONTRIBUTION OF DECEDENT, BUT WHETHER THEY DEPENDED ON HIM FOR PART OF THEIR INCOME OR MEANS OF LIVING. — The respondents, heirs of the deceased taxi driver of the petitioner company sought to recover from the latter compensation under the Workmen's Compensation Act for the death of the deceased driver while in the performance of his duty. The only issue presented was whether the respondents were wholly or partly dependent for support upon the deceased in order to entitle them to recover under the Workmen's Compensation Act. *Held*, the test of "dependency" is not whether members of the family claimed to be dependent could support life without contribution of decedent but whether they depended on him for part of their income or means of living. Considering that the family of the deceased consisted of eighteen members out of whom only two children were of major age and the high cost of living, they should be considered at least partly dependent upon the deceased entitled to recover under the Workmen's Compensation Act. MALATE TAXICAB & GARAGE INC. *v.* DEL VILLAR, G.R. No. L-7489, Feb. 29, 1956.

LABOR LAW — EIGHT-HOUR LABOR LAW — TRUCK DRIVERS EMPLOYED IN TRANSPORTING CANE FROM THE FIELD TO RAILROAD SWITCHES ARE INDUSTRIAL WORKERS AND HENCE COME WITHIN THE PROVISION OF THE EIGHT-HOUR LABOR LAW. — Tournahauler drivers and their helpers and truck drivers employed in transporting cane from the field to the "switch" where they are loaded on railroad cars for transportation to the mill claimed the benefits of the Eight-Hour Labor Law from the petitioner company contending that they are industrial workers. From a decision of the CIR declaring these employees industrial workers and therefore entitled to the benefits of the Eight-Hour Labor Law, petitioner appealed. *Held*, considering that the petitioner company is a highly mechanized concern, with the work of planting and harvesting clearly distinguished from that of transporting the cane from the field to the "switch" and later to a mill, the rule should be that all its workers are to be considered industrial workers except those devoted to purely agricultural work. The respondents are thus within the provision of the Eight-Hour Labor Law. PASUMIL *v.* PASUMIL WORKERS' UNION, G.R. No. L-7668, Feb. 29, 1956.

POLITICAL LAW — TAXATION — A MUNICIPAL LICENSE TAX MAY BE MADE TO TAKE EFFECT AT THE BEGINNING OF ANY SUCCEEDING QUARTER. — Defendant is the owner of a dessicated coconut factory in Pagsanjan, Laguna. At the time he commenced his business, the license tax was only ₱600. On March 14, 1948, the municipal council of Pagsanjan passed Ordinance No. 2, series of 1948, increasing said tax to ₱3,000 per annum. The tax was approved by the provincial board on April 5, 1948 and by the Secretary of Finance on February 22, 1949. Computing the tax at the new rate, plaintiff demanded of the defendant the sum of ₱4,500 which the latter refused to pay contending that although the new tax ordinance was valid it became effective only in the year following the approval by the Secretary. Plaintiff filed suit and the lower court held that Ordinance No. 2 became effective on January 1, 1949, the year following its passage in 1948. Defendant appealed. *Held*, Ordinance No. 2 was enacted pursuant to Commonwealth Act 472. Previously, the law on the matter was Act No. 3422. Under both these laws, the specific approval of the Secretary is required. The ordinance in question became effective only after its approval by the Secretary on Feb. 22, 1949. It became effective and enforceable, however, on Jan. 1950, the year following its approval by the Secretary, because, although the general rule as stated by § 2230 of the Administrative Code is that an ordinance or resolution shall take effect on the tenth day after its passage, § 2309 of the same Code provides that: "A municipal license tax already in existence shall be subject to change only by ordinance enacted prior to the fourteenth of December of any year for the next succeeding year; but an entirely new tax may be created by ordinance enacted during the current year, effective at the beginning of any succeeding quarter." Ordinance No. 2 falls under the latter section. MUNICIPAL GOVERNMENT OF PAGSANJAN *v.* REYES, G.R. No. L-8195, March 23, 1956.

POLITICAL LAW — TAXATION — REAL PROPERTY OF A RESIDENT SITUATED OUTSIDE THE PHILIPPINES IS NOT INCLUDED IN THE VALUE OF THE GROSS ESTATE AND THEREFORE NOT SUBJECT TO ESTATE AND INHERITANCE TAXES. — Valentin Descals was an American citizen who died in Manila while a resident therein. During his lifetime, he and his brother Ricardo bought real property in Spain. To settle the differences that arose between them regarding said property, Valentin bought the interest of Ricardo. After Valentin's death, Ricardo filed this claim against the estate of Valentin and upon payment thereof no other property was left that could be subjected to the payment of estate and inheritance taxes. The Collector of Internal Revenue, however, assessed the estate for purposes of taxation without deducting the claim filed by Ricardo despite its approval by the probate court. The administrator paid the tax under protest and filed a complaint for its recovery. The complaint having been dismissed, he appealed. *Held*, under § 88 of the National Internal Revenue Code, real property situated outside the Philippines is not included in the value of the gross estate of a deceased resident. Not being included as part of the estate, it cannot be subject to taxation such as estate or inheritance taxes. This being so, when in the determination of the gross estate the law does not permit the inclusion of property outside the Philippines, then it is but just and reasonable that the indebtedness incurred by the decedent by reason of said property or in the acquisition thereof should also not be discounted from the gross estate for purposes of taxation. INTESTATE OF DESCALS *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-7253, March 26, 1956.

POLITICAL LAW — TAXATION — CALLING A COMPENSATING TAX AN IMPORT TAX WILL NOT MAKE IT ONE. — The International Business Machines Corporation of the Philippines is a corporation engaged in selling machine cards and leasing business machines. The Collector of Internal Revenue demanded payment of ₱1,267.75 as compensating tax on the value of the machines imported by the corporation from July 1, 1939 to March 31, 1941. The corporation paid the tax under protest and filed an action against the Collector of Internal Revenue asking for a refund of the taxes paid, claiming that the compensating tax imposed was in fact a tax on imports and therefore not collectible because it had not yet been made a valid law by the approval of the President of the United States. The Court of First Instance of Manila rendered judgment against the corporation, which appealed. *Held*, section 190 of the National Internal Revenue Code is not a tax on the importation of goods but on the use of the goods not subject to the sales tax, which is clear from the fact that goods subject to the sales tax are exempted from the compensating tax. Not being an import tax, it was validly imposed by the Commonwealth without the previous approval of the President of the United States. INTERNATIONAL BUSINESS MACHINES CORP. OF THE PHILIPPINES *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-6732, March 6, 1956.

POLITICAL LAW — TAXATION — § 121 OF THE REVISED DOCUMENTARY STAMP TAX REGULATIONS TO THE EFFECT THAT IF THE BILL OF LADING FAILS TO STATE THE VALUE OF THE GOODS SHIPPED, IT MUST BE HELD THAT A TAX IS DUE, IS LEGAL. — The respondent Collector of Internal Revenue assessed a documentary stamp tax on the freight receipts of the petitioner bus company. The receipts did not state the value of the goods transported thereunder. Pursuant however to § § 121 and 127 of the Revised Documentary Stamp Tax Regulations, the respondent collector assumed that the value of the goods covered by each of the above-mentioned freight receipts amounted to more than ₱5.00. The petitioner company assailed the validity of this regulation. *Held*, section 121 of the Revised Documentary Stamp Tax Regulations to the effect that if the bill of lading fails to state the value of the goods shipped, it must be understood that a tax is due, is legal; and it is applicable to freight tickets of bus companies because such are considered bills of lading or receipts in modern jurisprudence. The regulation is not only useful, practical and necessary for the enforcement of the law on the tax on bills of lading and receipts but is also reasonable in its provisions. INTERNATIONAL AUTOBUS CO. *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-6741, Jan. 31, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — A VICE-MAYOR, ACTING AS MAYOR, WHO FILES A CERTIFICATE OF CANDIDACY FOR THE OFFICE OF MAYOR, IS CONSIDERED RESIGNED FROM HIS OFFICE OF VICE-MAYOR. — Engracio Santos is the duly elected mayor of San Juan del Monte, Rizal and the petitioner Salaysay is the duly elected Vice-Mayor. Due to administrative charges against him, Santos was suspended from office. The petitioner, acting pursuant to § 2195 of the Revised Administrative Code, acted as Mayor. When the petitioner filed a certificate of candidacy for the same office of Mayor, the respondents interpreted said action of Salaysay as an automatic resignation from his office of Vice-Mayor under the provision of § 27 of the Revised Election Code, as a consequence of which he no longer had authority to continue acting as Mayor.

The petitioner was also advised by the respondents to turn over his office to the newly-designated Vice-Mayor. Petitioner demurred. *Held*, the intention of the Legislature in enacting § 27 of the Revised Election Code was to allow an official to continue occupying an elective provincial, municipal or city office to which he had been elected or appointed, while campaigning for his election as long as he runs for the same office and not to an official neither elected nor appointed to that office but merely acting provisionally in said office due to the temporary disability to the incumbent. In enacting § 27 of the Election Code, the Legislature could not have possibly had in mind a Vice-Mayor acting as Mayor and accord him the benefits of retiring the office of Mayor and utilizing its authority and influence in his election campaign, when his tenure in the office of Mayor is so uncertain and indefinite that there may be no opportunity for him to enjoy said benefit. SALAYSAY *v.* CASTRO, G.R. No. L-9669, Jan. 31, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — A VICE-MAYOR WHO HAD FILED A CERTIFICATE OF CANDIDACY FOR RE-ELECTION TO THE SAME POST AND WHO SUBSEQUENTLY BECAME MAYOR, DUE TO VACANCY IN THE MAYORALTY, IS NOT DEEMED TO HAVE RESIGNED FROM HIS OFFICE OF VICE-MAYOR. — Petitioner Castro was the qualified Vice-Mayor of Manapla, Negros Occidental. On September 8, 1955, he filed a certificate of candidacy for the same position of Vice-Mayor that he was holding. On September 9, 1955, the municipal Mayor Gustillo filed a certificate of candidacy for the office of provincial board member. Respondent Gatuslao issued an Executive Order in his capacity as Acting Governor, declaring that under § 27 of Rep. Act No. 180, Mayor Gustillo was considered to have resigned the mayoralty of Manapla because in September 9, he had become a candidate for another position and therefore petitioner Vice-Mayor Castro had by operation of law become automatically Mayor of Manapla; that as petitioner had filed his certificate of candidacy for Vice-Mayor, he had filed his certificate of candidacy for an office other than the one he was actually holding; that therefore petitioner had to be considered resigned as Municipal Mayor thereby creating permanent vacancies in the offices of Vice-Mayor and Mayor of Manapla; and finally asked the petitioner to surrender his position to one Cruz. Petitioner contested the legality of this order. *Held*, section 27 of Rep. Act 180 which declares that any elective provincial, municipal or city official running for an office *other than the one which he is actually holding*, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy, has no application to petitioner's case. Petitioner was actually holding the position of Vice-Mayor when on Sept. 8, 1955, he filed his certificate of candidacy for the *same* post. Clearly then, he was a candidate for a position that he was actually holding at the time he filed his certificate of candidacy. CASTRO *v.* GATUSLAO, G.R. No. L-9688, Jan. 19, 1956.

POLITICAL LAW — ELECTION LAW — § 31 OF THE REVISED ELECTION CODE FIXING THE PERIOD FOR THE FILING OF CERTIFICATES OF CANDIDACY DOES NOT APPLY TO THE WITHDRAWAL OF CERTIFICATES OF CANDIDACY. — On September 8, 1955, petitioner Montinola filed his certificate of candidacy for Mayor of Victorias, Negros Occidental and on September 9, at 5 P.M., his certificate of candidacy for board member. The last day for the filing of certificates of can-

didacy was September 9. On September 10, at 9 A.M., he sent a telegram to the respondent Commission on Elections withdrawing his certificate of candidacy for provincial board member, stating that said certificate was filed by mistake. On October 18, the respondent Commission adopted a resolution declaring petitioner ineligible for the office of Mayor, on the ground that the withdrawal of the certificate of candidacy for provincial board member was not filed on or before September 9 with the result that the petitioner became ineligible not only for the office of provincial board member but also for the office of Mayor in accordance with § 31 of the Revised Election Code. Petitioner demurred. *Held*, neither § 31 nor any other section provides that the withdrawal of a certificate of candidacy should be made on or before the last day for the filing of the same. Petitioner's withdrawal of his certificate of candidacy for provincial board member on September 10 was effective for all legal purposes and left in full force his certificate of candidacy for Mayor. MONTINOLA *v.* COMMISSION ON ELECTIONS, G.R. No. L-9860, Jan. 21, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE JURISDICTION OF A COURT IS DETERMINED BY THE TOTALITY OF THE DEMAND IN ALL THE CAUSES OF ACTION IN THE COMPLAINT. — One Reyes filed a detainer case against the petitioner in the Municipal Court of Manila. Petitioner by way of counterclaim, prayed for the recovery of the total sum of ₱6,000 under several causes of action arising out of the same transaction, none of which exceeds ₱2,000. Upon motion of Reyes, the counterclaim was dismissed as the total amount demanded exceeded the jurisdiction of the Municipal Court. Petitioner appealed. *Held*, the jurisdiction of a court depends not upon the value or demand in each single cause of action contained in the complaint but upon the totality of the demand in the all the causes of action. DESPO *v.* STA. MARIA, G.R. No. L-6903, Jan. 31, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE JURISDICTION OF A COURT DEPENDS, NOT UPON THE VALUE OF THE DEMAND IN EACH SINGLE CAUSE OF ACTION CONTAINED IN THE COMPLAINT, BUT UPON THE TOTALITY OF THE DEMAND IN ALL THE CAUSES OF ACTION CONTAINED THEREIN, REGARDLESS OF WHETHER THEY AROSE OUT OF THE SAME OR DIFFERENT TRANSACTIONS. — Plaintiff filed this action in the CFI to recover from defendants the value of two promissory notes in the amount of ₱1,125 and ₱1,075. The CFI dismissed the case for lack of jurisdiction, holding that the two notes constituted two separate causes of action each involving less than ₱2,000. Plaintiff then filed another action in the municipal court against the same defendants and for the value of the same notes. The municipal court likewise dismissed the case on the ground that the amount of the two notes which plaintiff consolidated under one cause of action was in excess of its jurisdiction. This dismissal was affirmed on appeal by the CFI. *Held*, although it has been held in the case of *Go v. Go*, G.R. No. L-7026, June 30, 1954, that in a claim composed of several accounts arising from different transactions the amount of each claim furnishes the test of jurisdiction and that in a claim composed of several accounts which arise out the same transaction the jurisdiction is determined by the total amount claimed, the sounder and better rule is that which was stated in the cases of *Gutierrez v. Ruiz*, 50 O.G. 2480, and *Soriano v. Omila*, 51 O.G. 3465, wherein it was held that the jurisdiction of the court is based on the totality of the demand in all the causes of action and not upon the value or demand in each single cause of action contained in the complaint. The practice has always been to attend to the total amount demanded in the complaint, especially in the prayer, as determinative of the jurisdiction of the court, irrespective of whether the plural causes of action constituting the total claim arose out of the same or different transactions. CAMPOS RUEDA CORP. *v.* STA. CRUZ TIMBER CO., G.R. No. L-6884, March 21, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — SERVICE OF NOTICE OF HEARING UPON ANY ONE OF THE ATTORNEYS IS SUFFICIENT WHETHER THEY ARE LAW PARTNERS OR NOT. — This action was brought by plaintiffs to recover rentals from denfendant for the use of a portion of land belonging to them. The hearing was postponed several times upon petition of both parties. The last postponement was granted by the court upon petition of plaintiffs' counsel with the warning that it will be the last which the court will entertain. When the date came, attorneys for plaintiffs asked for another postponement but upon objection of counsel for defendant, the court dismissed the case. Plaintiffs now appeal, claiming that the two attorneys of record were not given the notice of hearing as required by the rules for which reason they were unable to contact their witnesses nor prepare their evidence. *Held*, the fact that the notice intended for Atty. Alfredo Singson, counsel for plaintiffs, was sent by mistake to another attorney by the name of Serafin Singson, is cured by the fact that notice seemed to have been relayed after all to the counsel for plaintiffs and the fact that he was present in court at the time when the date of hearing was set. In fact, the postponement was granted upon his own request. Sec. 2 of Rule 47 states very clearly that notice upon one of the attorneys of record is sufficient. The failure of the court to notify the other attorney of the plaintiffs does not invalidate the court's action. Neither is the objection of counsel for plaintiffs that the above-cited rule applies only when the attorneys of record are law partners or work in the same office tenable, since the provision of the law is clear and such an interpretation would be contrary to its very letter. ORTEGA *v.* PACHO, G.R. No. L-8588, March 14, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — A DECISION RENDERED AFTER SEVERAL POSTPONEMENTS OF THE TRIAL BEYOND THE PERIODS PRESCRIBED IN § 9 OF RULE 4 IS NOT VOID, COMPLIANCE WITH SUCH SECTION BEING MERELY DIRECTORY. — Two cases were commenced in the Justice of the Peace Court of Guiuan, Samar. After repeated postponements, at times for more than 5 days and in all for more than fifteen days, the cases were heard and a decision was rendered in favor of the plaintiff. The defendants appealed to the CFI but that court, after the pleadings were in, ordered the cases dismissed for want of appellate jurisdiction to try them on the merits, on the theory that the Justice of the Peace Court was ousted of its jurisdiction by granting postponements for a longer period than authorized in § 9 of Rule 4, so that the decision rendered by it thereafter was a nullity. Reconsideration of this order having been denied, plaintiff appealed. *Held*, section 9 of Rule 4 giving inferior courts the power to adjourn the hearing of an action but limiting such adjournment to a period of five days for each adjournment and fifteen days in all, is merely directory. A violation of this provision by a Justice of the Peace may subject him to disciplinary action but does not invalidate the trial held nor the decision rendered. CASILAN *v.* TOMASSI, G.R. No. L-9320, Jan. 31, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — AFTER A JUDGMENT ON THE PLEADINGS HAS BECOME FINAL AND EXECUTORY, NO PROOF OF DAMAGES CAN BE MADE. — Plaintiff filed a complaint in the CFI of Camarines Sur for ejectment and to recover damages from the defendant for his alleged illegal possession of said lands. After the defendant answered with a mere general denial of the allegations of the complaint, the court upon motion of the plaintiff, rendered judgment on the pleadings. After the judgment on the pleadings has become final and executory, plaintiff moved that the case be set for hearing with respect to the amount of damages suffered by him. Defendant objected on the ground that judgment having become final and executory, the court has lost jurisdiction to try said claim. *Held*, assuming that plaintiff should not be considered to have renounced his claim for damages by asking for judgment on the pleadings instead of presenting evidence to prove those damages, the lower court lost control over its judgment save to order its execution, after the same became final and executory. RILI *v.* CHUNACO, G.R. No. L-6630, Feb. 29, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — A JUDGMENT OBTAINED THRU COLLUSION AND CONNIVANCE BETWEEN THE PARTIES CANNOT CONSTITUTE RES JUDICATA NOR IS IT A VALID DEFENSE TO AN ACTION TO SET ASIDE THE JUDGMENT. — The plaintiff sought to annul a mortgage executed by her deceased husband in favor of the defendant and also the proceedings for the foreclosure of the aforesaid mortgage on the ground that they have been obtained by fraud and collusion between the defendant and her husband. The records of the case showed that the aforementioned mortgage was executed by the husband to prejudice his wife who was entitled to ₱500 a month for separate maintenance. From a judgment in favor of the plaintiff, defendant appealed. *Held*, it is incontestable that the mortgage in favor of the defendant was fictitious and the foreclosure proceedings and the judgment rendered thereon were the result of collusion and connivance between the defendant and the husband of the plaintiff. Consequently, the judgment of foreclosure in said case cannot constitute res judicata nor be a valid defense to an action to set aside the judgment. VASQUEZ *v.* PORTA, G.R. No. L-6767, Feb. 28, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — IN CASES OF MONTHLY RENTS WHICH COULD BE PAID FROM A GIVEN DAY OF A MONTH UP TO A GIVEN DAY OF THE FOLLOWING MONTH, THE CALENDAR MONTH WITHIN WHICH THE RENT COULD BE DEPOSITED TO AVOID EXECUTION OF A JUDGMENT PURSUANT TO § 8 RULE 72, SHOULD BE THAT FOLLOWING THE MONTH IN WHICH THE RENT MATURED. — Plaintiff filed an ejectment case against defendant. The court rendered a decision sentencing the defendant to pay ₱120 monthly from May 26, 1953 until the return of the property. Defendant filed a notice of appeal and a supersedeas bond for the rentals corresponding to May 26, 1953 to Sept. 26, 1953. Plaintiff filed an urgent motion for execution of the judgment on the ground that the Sept. 1953 rental was not paid to the Clerk of Court on or before October 10, 1953 in accordance with the provision of § 8 of Rule 72 which provides that if the defendant fails to deposit in court within ten days of the succeeding month, the rental corresponding to previous months, the judgment should be executed. Defendant demurred. *Held*, it is to be observed that the defendant was ordered to pay ₱120 monthly from May 26, 1953 and not from May 1 to May 30, 1953. Therefore, the first rental should mature on June 25, 1953 and the succeeding

rentals on every 25th day of the succeeding month. Consequently, the September 1953 rental could be paid on or before October 25, 1953 and not on October 10, 1953 as alleged by plaintiff. In case of monthly rents which could be paid from a given day of a month up to a given day of the following month, the calendar month within which the rent could be deposited to avoid execution of a judgment pursuant to § 8 of Rule 72 should be that following the month on which the rent matured. SALVADOR *v.* CALUAG, G.R. No. 7458, Feb. 29, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — IN AN ACTION TO REVIVE A JUDGMENT, THE FACTS WHEREIN SAID JUDGMENT WAS RENDERED MAY NOT BE RE-EXAMINED AND A DECISION DIFFERENT FROM THE JUDGMENT SOUGHT TO BE REVIVED MAY NOT BE ENTERED. — A litigation arose between plaintiff and defendant regarding the ownership of certain lots. When the case reached the Supreme Court, a decision was rendered in favor of the plaintiff. Thereafter, several motions for execution of the judgment were filed by the plaintiff which were denied. In the course of the proceedings, the original case was reopened and the facts re-examined, as a result of which a decision different from that rendered by the Supreme Court was promulgated. Plaintiff appealed. *Held*, in an action to revive a judgment, the facts wherein said judgment was rendered may not be re-examined and a decision different from the judgment sought to be revived may not be entered. Consequently, the original case cannot be reopened, much less, the facts found therein modified or changed. FRANCISCO *v.* DE BORJA, G.R. No. L-7953, Feb. 27, 1956.

REMEDIAL LAW — PROVISIONAL REMEDIES — A COURT HAS THE POWER TO INSTITUTE A CHARGE FOR CONTEMPT AGAINST ITSELF WITHOUT THE INTERVENTION OF THE FISCAL OR PROSECUTING OFFICER. — Respondent Torres was the counsel in a criminal case. He was charged with contempt for various offensive acts committed against the court and was adjudged guilty. He appealed contending that the supposed acts with which he was charged are criminal in nature and that proceedings against him should have been begun by the filing of an information by the fiscal. He contended further that were the procedings allowed to be instituted by the court or judge, there would result the anomalous situation of the judge being the accuser and judge at the same time. *Held*, in the first place, the proceedings against the respondent arose in the course of a civil action and offensive conduct subject of the proceedings are being prosecuted under the Rules of Court and not under the Penal Code. Secondly, a court has the power to institute a charge for contempt against itself, without the intervention of the fiscal or the prosecuting officer to preserve its dignity and respect due it from litigants, lawyers and the public. PEOPLE *v.* VENTURANZA, G.R. No. L-7974, Jan. 20, 1956.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — THE DECISION OF A COURT CANNOT BE THE SUBJECT OF DECLARATORY RELIEF. — Plaintiff instituted an action in the CFI of Cavite for the annulment of a certain contract of sale with *pacto de retro*. The trial court rendered a decision declaring the contract valid which decision was affirmed by the Supreme Court on appeal. Plaintiff initiated an action for declaratory relief under § 1 of Rule 66 contending that the phrase, "or other written instrument" mentioned in said section includes a decision of

a court. Plaintiff asserted that the above-mentioned decision is vague and susceptible of double interpretation. *Held*, the contention of plaintiff is without merit. Evidently, a court decision cannot be interpreted as included within the purview of the words "or other written instrument," for the simple reason that the Rules of Court already provide for the ways by which an ambiguous decision may be corrected or clarified without the need of resorting to the expedient prescribed in Rule 66. TANDA *v.* ALDAYA, G.R. No. L-9322, Jan. 30, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE STATUTE OF LIMITATIONS DOES NOT APPLY TO PROBATE PROCEEDINGS. — On August 26, 1931, Victorino Guevarra executed a will distributing his properties among his widow, two children and his stepchildren. A litigation arose between the two children, Ernesto and Rosario, regarding the property of the deceased, subject of the will. The parties were ordered by the court to present the will for probate and Rosario claiming to act pursuant to the court's order, petitioned the court on October 5, 1945 or twelve years after the testator's death, for the probate of the will of the deceased. Ernesto objected to the petition contending that it was barred by the Statute of Limitations. *Held*, the Statute of Limitations has no application to probate proceedings. One of the most fundamental conception of probate law is that it is the duty of the court to effectuate, in so far as may be compatible with public interest, the devolutionary wishes of a deceased person. To refuse probate to a will which has not been presented within the statutory period would be to subvert these wishes of the testator. GUEVARRA *v.* GUEVARRA, G.R. No. L-5405, Jan. 31, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — WHERE TWO INCONSISTENT WILLS ARE PRESENTED FOR PROBATE AND THE ISSUE OF FILIATON IS RAISED IN THE PLEADINGS, THE COURT MAY PROPERLY DECIDE ON THE ISSUE OF FILIATION. — Lucia Barretto claiming to be the sole heir of Maria Gerardo Vda. de Barretto presented for probate a will executed by the deceased on March 14, 1946. Tirso Reyes, claiming to be the husband of Salud, the alleged second daughter of Maria Barretto, likewise presented for probate a will made by the deceased on April 22, 1944. After a joint trial, the lower court allowed the will of March 14, 1946. Reyes appealed contending that probate proceedings should not extend to questions on filiation and that therefore the lower court erred in admitting evidence on and making a finding as to the filiation of Salud Barretto. *Held*, the contention of the appellant is correct as a general proposition, but *not* where, as in the present case, two successive inconsistent wills were presented for probate and the issue of filiation was squarely raised in the pleadings and had to be decided in order to determine whether the testatrix really intended to revoke the first will. BARRETTO *v.* REYES, G.R. No. L-5830, Jan. 31, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A PETITION TO DECLARE A HUSBAND PRESUMPTIVELY DEAD IS NOT AUTHORIZED BY LAW. — Lourdes Lukban petitioned the court for a declaration that she is the widow of her husband who is presumed to be dead and has no legal impediment to contract a subsequent marriage. Her husband abandoned her and has been absent for more than 20 years. The Solicitor-General opposed the petition on the ground that the same is not authorized by law. *Held*, a petition for judicial declaration that

petitioner's husband is presumed to be dead cannot be entertained because it is not authorized by law, and if such declaration cannot be made in a special proceeding similar to the present, much less can the court determine the status of petitioner as a widow since this matter must of nesessity depend upon the fact of death of the husband. Though the court may declare the death of a husband upon proper evidence, it could not decree that he is merely presumed to be dead. LUKBAN *v.* REPUBLIC, G.R. No. L-8492, Feb. 29, 1956.

REMEDIAL LAW — SPECIAL PROCEEDINGS — WHERE THE MOTHER OF AN ILLEGITIMATE CHILD ABANDONS IT AND MARRIES A MAN OTHER THAN ITS FATHER, A GUARDIAN MAY BE APPOINTED FOR THE CHILD. — The appellant Lily Balatbat married one Naranjo and out of their union a child was born. Naranjo later turned out to be an already married man with a family of his own. Against the wishes of her parents who were left with the custody of the child, Lily married a second time. Lily's parents subsequently filed a petition for guardship for the minor child, which petition was opposed by Lily and her second husband who claimed custody of the child. From a decision granting the petition for guardianship, Lily appealed. *Held*, the lower court wisely granted the petition for guardianship. Art. 329 of the New Civil Code authorizes the court to appoint a guardian for an illegitimate child whose mother marries a man other than its father BALATBAT *v.* DAIROCAS, G.R. No. L-7733, Feb. 13, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN OFFENDED PARTY LOSES HIS RIGHT TO INTERVENE IN THE PROSECUTION OF THE CRIMINAL CASE IF HE HAS ALREADY INSTITUTED A CIVIL ACTION. — Petitioners Otilio and Vitaliano Gorospe filed a civil action against respondents to annul certain contracts and recover damages suffered therefrom and then brought another action for estafa through falsification of a private document against the same respondents. Respondents filed a petition praying that the counsel for petitioners be prevented from assisting the fiscal in the prosecution of the criminal case since they have lost their interest therein when they filed the civil action. The court granted this petition. Their motion for reconsideration having been denied, petitioners brought this present petition for certiorari to set aside the lower court's order and allow their counsel to intervene in the prosecution of the criminal case. *Held*, an offended party loses his right to intervene in the prosecution of the criminal case, not only when he has waived the civil action or expressly reserved his right to institute it, as provided in § 15, Rule 106, but also — *a fortiori* — when he has actually instituted the civil action. The present case falls squarely within the purview of this provision. GOROSPE *v.* GATMAITAN, G.R. No. L-9609, March 9, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — PROVOST MARSHALS IN MILITARY BASES ESTABLISHED BY AGREEMENT BETWEEN THE PHILIPPINES AND THE UNITED STATES HAVE THE POWER TO FILE COMPLAINTS FOR VIOLATIONS OF PHILIPPINE LAWS INSIDE THE BASES. — Respondent Hamill, Major, USAF, Assistant Base Provost Marshal, Clark Air Force Base in Pampanga, filed a complaint against petitioner for possessing without authority and without paying the corresponding specific tax, several cartons of imported free-of-tax American cigarettes for use only of the United States Forces in the Philippines. When the case

reached the Court of First Instance, that court held that respondent, not being a peace officer of the Philippines, was not authorized to file a complaint in accordance with § 2 of Rule 106. Respondent appealed. *Held,* under the Military Bases Agreement between the Philippines and the United States, Philippine laws continue to be in force in said bases except otherwise agreed upon in the agreement. Since no provision is made for the appointment of peace officers of the Philippines within the bases, it is understood that the enforcement of Philippine laws is left to the officers of the United States of America. Respondent therefore had the capacity to file the complaint. LIWANAG *v.* HAMILL, G.R. No. L-7881, Feb. 27, 1956

REMEDIAL LAW — CRIMINAL PROCEDURE — JUSTICES OF THE PEACE HAVE THE POWER TO ADMIT TO BAIL A PERSON ACCUSED OF A CAPITAL OFFENSE. — Petitioners were charged with murder before the Justice of the Peace Court of Batangas. Three days after the filing of the complaint, the accused moved that they be granted bail for their provisional liberty. The Justice of the Peace Court denied the application for bail on the theory that Justice of the Peace Courts cannot entertain a petition for bail for a person charged with a capital offense and thereafter hear the evidence to determine whether the same is strong or not so as to warrant the giving of bail. Accused appealed. *Held,* the general rule is that Justice of the Peace Courts have the power to admit to bail an accused person unless such power is limited by the Constitution or by statute. There being no limitation in our Constitution and because of the Judiciary Reorganization Act of 1948 which seems to expressly confer the power upon them, it is clear that Justice of the Peace Courts have the power to admit to bail a person accused of a capital offense. MANIGBAS *v.* LUNA, G.R. No. L-8455, Feb. 27, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN ACCUSED IS NOT ENTITLED AS OF RIGHT TO CROSS-EXAMINE THE WITNESSES PRESENTED AGAINST HIM IN A PRELIMINARY INVESTIGATION. — Defendant was charged with grave oral slander by the City Attorney of Roxas City upon previous investigation of the merits of the case at the instance of the offended party. When the case reached the CFI, the accused filed an urgent motion for reinvestigation of the case. Accordingly, the case was sent back to the Municipal Court for further investigation. On the date of the reinvestigation, the accused asked that the witnesses for the prosecution be first called for cross-examination and refused to submit to the reinvestigation unless he could cross-examine them. The City Attorney did not yield to the petition, closed the reinvestigation and asked the CFI to give due course to the trial. From a decision dismissing the case, the City Attorney appealed. *Held,* the CFI should have given due course to the trial as the accused has been given all the opportunity to present her side of the case with the assistance of counsel not only in the preliminary investigation but also in the reinvestigation. It can be seen from a reading of § 11 of Rule 108 that in a preliminary investigation, an accused is not entitled as of right to cross-examine the witnesses presented against him. Hence, the demand of the accused to cross-examine the witnesses presented against him had no basis on any provision of law. PEOPLE *v.* RAMILO, G.R. No. L-7380, Feb. 29, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PRELIMINARY INVESTIGATION CONDUCTED BY A FISCAL DOES NOT EXCUSE A JUDGE FROM HIS DUTY TO DETERMINE WHETHER PROBABLE CAUSE EXISTS BEFORE ISSUING A WARRANT OF ARREST. —Petitioner, Provincial Fiscal of Sulu, filed in the CFI an information for murder at the foot of which he certified under oath that "he has conducted the necessary preliminary investigation pursuant to the provisions of R.A. No. 732." The information was supported by only one affidavit and respondent judge dismissed the case for lack of evidence sufficient to make out a prima facie case. Petitioner brought this petition for certiorari and mandamus claiming that, since he had already conducted a preliminary investigation, it became the duty of respondent judge to issue the corresponding warrant of arrest upon the filing of the information. *Held,* the preliminary investigation conducted by petitioner under R.A. No. 732 does not dispense with respondent's duty to exercise his judicial power of determining before issuing the corresponding warrant of arrest, whether or not probable cause exists therefor. The Constitution vests such power in the respondent judge who, however, may rely on the facts stated in the information filed after preliminary investigation by the prosecuting attorney. Although the failure or refusal of the petitioner to present further evidence is good as a ground for refusing to issue a warrant of arrest, it is not a legal cause for dismissal. AMARGA *v.* ABBAS, G.R. No. L-8666, March 18, 1956.

REMEDIAL LAW — EVIDENCE — THE SILENCE OF AN ACCUSED AND HIS VOLUNTARY PARTICIPATION IN THE REENACTMENT OF A CRIME IS ADMISSIBLE AS EVIDENCE AGAINST HIM ALTHOUGH HE WAS UNDER ARREST AT THE TIME. — Tia Fong with three others was convicted of homicide for the killing of Lian Kaw, on the strength of his participation in the reenactment of the crime. The reenactment was ordered and photographed by the Constabulary investigators. Ah Sam was the only one who appealed claiming that the trial court erred in considering his participation as evidence against him because he was under arrest at the time and was merely obeying directions for fear of further maltreatment. *Held,* there is no evidence that the appellant was forced against his will to participate in the reenactment of the crime. On the contrary, he seemed to have done so willingly as on one instance, he even corrected his co-accused on the position he was to take in reenacting one phase of the crime. Although there are conflicting opinions regarding the admissibility of an incriminating statement made before an accused while under arrest and not denied by him, the better rule is to allow some flexibility according to the circumstances of each case and decide the admissibility of the silence accordingly. Under this principle, the facts and circumstances of the present case show that the lower court committed no error in taking into account appellant's participation in the reenactment of the crime as voluntary and in considering it as evidence against him. PEOPLE *v.* TIA FONG, G.R. No. L-7615, March 14, 1956.

COURT OF APPEALS

CIVIL LAW — PROPERTY — A MERE LESSEE CANNOT DEMAND AN EASEMENT OF RIGHT OF WAY SINCE ART. 649 N.C.C. IS LIMITED TO OWNERS. — Defendants acquired by purchase a residential lot from the Philippine Trust Co. After the