SUPREME COURT CASE DIGEST

CIVIL LAW — GUARANTY — MERE DELAY OF THE CREDITOR IN PROCEEDING AGAINST THE PRINCIPAL DEBTOR DOES NOT RELEASE THE GUARANTOR. —Petitioner signed himself as guarantor for the payment of a certain debt. Upon the maturity of the obligation and within the period stipulated, the creditor failed to demand payment. When action to collect on the debt against the principal debtor and petitioner-guarantor was brought, on the former's non-compliance when demand for payment was finally made, petitioner interposed release from his guaranty liability by the creditor's failure to demand payment upon maturity of the obligation. **Held,** mere delay of the creditor in proceeding against the principal debtor does not release the guarantor. **Lavides v. Eleazar,** G. R. No. L-11007, November 28, 1959.

CIVIL LAW — PERSONS — WHERE FACTS EXIST FROM WHICH INFERENCE OF IMMEDIATE DEATH MAY BE DRAWN, THE RULE ON PREPONDERANCE OF EVIDENCE, AND NOT THE RULE ON PRESUMPTION OF DEATH, APPLIES TO ESTABLISH THE FACT OF DEATH. — One Icong was an employee of petitioner shipping firm. While sleeping on board the latter's vessel, said vessel caught fire, was destroyed and washed ashore. Awakened by the fire, Icong jumped overboard and since then he has not been heard of. Whereupon, his heirs filed claim for death compensation which was granted. Petitioner, on review, contends that the Workmen's Compensation Commission erred in not applying the rule on presumption of death under the Civil Code in determining whether Icong should be considered dead. **Held,** the rule on presumption of death of persons aboard a vessel lost during a sea voyage applies to cases wherein the vessel cannot be located nor accounted for, or when its fate is unknown or there is no trace of its whereabouts. In the instant case, none of the foregoing conditions appear to exist. The fate of petitioner's vessel is not unknown. As a matter of fact, it had been definitely destroyed by fire and washed ashore. And in view of the further fact that when the vessel caught fire, Icong jumped overboard and since then had not been heard from, the aforementioned rule on presumption of death does not apply, but the rule on preponderance of evidence, to establish the fact of death. **Victory Shipping Lines Inc. v. Workmen's Compensation Commission,** G. R. No. L-9268, November 28, 1959. (Reiterating Madrigal Shipping Co. v. del Rosario, G. R. No. L-13130, October 31, 1959.)

CIVIL LAW — PROPERTY — THE OPTION OF THE LANDOWNER, UNDER ARTICLE 448 OF THE CIVIL CODE, TO COMPEL THE BUILDER IN GOOD FAITH TO PAY THE VALUE OF THE LAND, DOES NOT AUTOMATICALLY VEST IN THE FORMER OWNERSHIP OF THE IM-

PROVEMENT BY THE LATTER'S FAILURE TO PAY THE VALUE DEMANDED. — Two cases here were consolidated on appeal to the Court of Appeals with the respective rights of the litigants adjudicated as follows: (1) Filipinas Colleges, Inc., as having acquired the rights of the spouses Timbang in and to a certain lot involved in the litigations, with the obligation to pay within a certain period a certain sum to the latter in consideration thereof; (2) Maria Blas, as being a builder in good faith of a school building constructed on the lot in question, with a right to a certain sum for the same, Filipinas Colleges as obligor being the purchaser of the building; (3) the spouses Timbang, as becoming owners of the land in question upon failure of Filipinas Colleges to deposit with the court, within the period specified, the value thereof, in which eventuality the former would then make known to the court their option under Article 448 of the Civil Code, whether they would appropriate the building or compel Filipinas Colleges to acquire the land. Filipinas Colleges failing to deposit the value of the land as stipulated in the judgment, the spouses Timbang informed the court of their option to compel the former to acquire the land upon payment of the value thereof, in consequence of which they prayed for and were granted a writ of execution against Filipinas Colleges. Blas also filed a motion for execution of her judgment which was granted, and a writ of execution issued. A levy having been validly made on the school building in virtue of the foregoing writs, the same was sold at public auction with the spouses Timbang as the highest bidders. Blas then filed a motion for the delivery of the proceeds of the sale to her to satisfy the lien which she had on the unpaid balance of the purchase price. The Timbangs opposed, contending that by the failure of the builder in good faith (Filipinas Colleges as purchaser of the building) to pay the value of the land, it lost its right of retention, and by operation of Article 445 of the Civil Code, as landowners they automatically became owners of the building. Hence, being owners **ipso facto,** the execution sale in their favor was superfluous, and consequently, were not bound to make good their bid as that would be to compel them to pay for their own property. **Held,** the argument cannot be sustained. There is nothing in the language of Articles 448 and 546 of the Civil Code, on improvements introduced in the land of another, that would justify appellant's conclusion. **Filipinas Colleges, Inc. v. Timbang,** G. R. No. L-12812, September 29, 1959.

CIVIL LAW — PROPERTY — WHERE THE LANDOWNER ELECTS THE SECOND OPTION UNDER ARTICLE 448 OF THE CIVIL CODE, AND THE BUILDER FAILS TO PAY THE VALUE OF THE LAND, THE PARTIES MAY EITHER (1) LEAVE THINGS AS THEY ARE AND ASSUME THE RELATION OF LESSOR AND LESSEE; (2) REMOVE THE IMPROVEMENT; OR (3) SELL THE LAND AND THE IMPROVEMENT AT PUBLIC AUCTION, APPLYING THE PROCEEDS FIRST TO THE VALUE OF THE LAND, AND THE EXCESS, IF ANY, DELIVERED TO THE BUILDER. — Appellants, owners of a parcel of land, on which a building was constructed by another in good faith, elected the second option granted them under Article 448 of the Civil Code, namely, to compel the builder to acquire the land paying the value thereof. The latter being unable to pay, the former executed on the building. **Held,** holding the remedy availed of by the landowners improper, the Supreme Court pro-

ceeded to enumerate the remedies indicated in the syllabus of this digest. **Filipinas Colleges, Inc. v. Timbang,** G. R. No. L-12812, September 29, 1959.

CIVIL LAW — SALES — A JUDGMENT DEBTOR IN POSSESSION OF THE PROPERTY SOLD IS ENTITLED TO REMAIN IN POSSESSION AND TO COLLECT RENTS AND PROFITS OF THE SAME DURING THE PERIOD OF REDEMPTION. — Plaintiffs-appellees owed defendant-appellant in the sum of ₱18,020.00, secured by a real estate mortgage. Plaintiffs failed to pay the debt upon maturity, and so the mortgage was foreclosed and the property extrajudicially sold at public auction. Proceeds: ₱22,978.98, with defendant-appellant-mortgagee as highest bidder. Plaintiffs then commenced action to recover the excess of the proceeds over their debt. Incidentally, plaintiffs remained in possession of the mortgaged premises during the one-year statutory period of redemption, collecting for the duration thereof rents on the property mortgaged. Defendant set up said rents against plaintiffs' claim. **Held,** the rents in question are not deductible from the recoverable sum that may be due to plaintiffs. The governing rule is found in Sections 29 and 30, Rule 39 of the Rules of Court. Construing said sections in a number of cases, this Court has held that where the judgment debtor is in possession of the property sold, he is entitled to remain in possession and to collect rents and profits of the same during the period of redemption. (Riosa v. Verzosa, 26 Phil. 86; Velasco v. Rosenberg's, Inc., 32 Phil. 72; Powell v. PNB, 54 Phil. 54). **Gorospe v. Gochangco,** G. R No. L-12735, October 30 1959.

CIVIL LAW — SALES — AN UNREGISTERED PURCHASER CANNOT MAINTAIN A DIRECT ACTION FOR RECOVERY AGAINST A SUBSEQUENT REGISTERED PURCHASER OF THE SAME REALTY, WITHOUT FIRST ANNULLING THE LATTER'S TITLE, WHERE HE ALLEGES FRAUD IN THE SECOND SALE. — Double sale. Plaintiff, first purchaser; defendants, second. Plaintiff failed to register his deed of sale: defendants had theirs, and a new certificate of title issued in their name. Plaintiff commenced action to have said certificate annulled and ownership declared in his name on the ground of fraud alleged to have attended the second sale. His action thrown overboard by the Statute of Limitations, 9 years having elapsed between the discovery of the fraud and the filing of the action, plaintiff next urged that the action was for recovery, not for annulment, hence, the prescriptive period, ten, not four, years. **Held,** plaintiff cannot possibly recover the land in dispute without a previous declaration of nullity of the second sale by reason of the fraud allegedly attendant to said transaction, and without an order of cancellation of the transfer certificate of title issued in defendants' name. In fine, the recovery of said property would merely be a consequence of plaintiff's ability to secure a relief against the aforementioned fraud. It may be that the recovery of title and possession of the lot was the ultimate objective of plaintiff, but to attain that goal, he needs first travel over the road of relief on the ground of fraud. (Rone v. Claro, G. R. No. L-4472, May 8, 1952). **Mauricio v. Villanueva,** G. R. No. L-11072, September 24, 1959.

CIVIL LAW — SALES — "FINAL JUDGMENT" AS USED IN ARTICLE 1606 OF THE CIVIL CODE REFERS TO FINAL AND EXECUTORY, NOT FINAL AND APPEALABLE, JUDGMENTS. — Plaintiffs and defendant entered into a contract of sale with right to repurchase, the former as vendors, the latter, vendee. Plaintiffs falling to repurchase, defendant took steps to consolidate his ownership. Plaintiffs opposed contending that the contract was in reality a mortgage. In the ensuing litigation, the trial court sustained plaintiffs, only to be reversed, however, by the Court of Appeals but without prejudice to plaintiffs' right to repurchase under Article 1606 of the Civil Code, which grants a 30-day period for the purpose, counted from finality of judgment. Issue: final in what sense, final and executory or final and appealable? **Held,** "final judgment" in Article 1606 refers to final and executory, and not to final and appealable, judgments. **Perez v. Zulueta,** G. R. No. L-10374, September 30, 1959.

CIVIL LAW — SALES — TAX SALE OF REAL PROPERTY COVERED BY A TORRENS TITLE TO AFFECT SAID PROPERTY INSOFAR AS THIRD PERSONS ARE CONCERNED MUST BE REGISTERED.—Appellee here purchased the property in question from the Rehabilitation Finance Corporation (now Development Bank of the Philippines) which acquired the same in mortgage foreclosure proceedings. He was issued a transfer certificate of title free from any lien or encumbrance. It turned out, however, that the same property, allegedly owned by another person other than the mortgagor, had been previously sold for tax delinquency in favor of appellants. But said tax sale was registered only after the issuance of appellee's transfer certificate of title. Who is preferred, appellee whose purchase was later, or appellants who acquired the property in a tax sale earlier? **Held,** it is true the taxes for which the property was sold are of a nature that create a statutory lien which need not be registered to be binding upon third persons, but it is equally true that appellants did not register their deed of sale until months after the issuance of appellee's transfer certificate of title. Distinguish between statutory lien and the right of the purchaser of property sold to satisfy the lien insofar as effect and validity on a subsequent purchaser are concerned, for while the former need not be registered, the sale of registered land to foreclose a tax lien need be registered to be preferred. Upon these facts, we hold the appellee preferred. **Francisco College, Inc. v. Panganiban,** G. R. No. L-12758, November 28, 1959.

COMMERCIAL LAW — CENTRAL BANK — THE CENTRAL BANK OF THE PHILIPPINES HAS POWER TO REGULATE NO-DOLLAR IMPORTS. — Respondent imported cartons of confectionery on a no-dollar remittance basis. For lack of a release certificate as required by Central Bank Circulars Nos. 44 and 45, the Collector of Customs declared them forfeited in favor of the Government. The question is whether or not the Central Bank has the power to issue Circulars Nos. 44 and 45 insofar as they regulate imports which do not involve the remittance of dollars or foreign exchange. Drawing from the wisdom of an earlier ruling, the Supreme Court **Held,** the circulars in question are within the power of the Central Bank to issue.

The reason is even importations that do not require an immediate sale of foreign exchange ultimately require the sale of such exchange, for the currency of one country is not legal tender in another. **Commissioner v. Pascual,** G. R. No. L-9836, November 18, 1959. (Reiterating Commissioner v. Leuterio, G. R. No. L-9142, October 17, 1959 and Pascual v. Commissioner, G.R. No. L-10979, June 30, 1959.)

COMMERCIAL LAW — TRANSPORTATION — DATE OF SHIPMENT IS THE DATE WHEN THE GOODS FOR DISPATCH ARE LOADED ON BOARD THE VESSEL, AND NOT NECESSARILY WHEN THE SHIP PUTS TO SEA. — Suit for mandatory injunction to compel defendant Collector of Customs to release and deliver to plaintiff shipments of bales of overissue newspapers purchased abroad. Defendant refused to deliver said items on the ground that while the bills of lading covering the shipments were dated one day before the expiration of plaintiff's import license, the vessels carrying them left port after the expiration of said license, and, hence, pursuant to Central Bank and Monetary Board regulations, required a CB certificate of release which plaintiff failed to present. **Held,** defendant's refusal to release the imported items was unjustified. We are of the opinion that said items were shipped before the expiration of plaintiff's import license, for as we have clearly implied in our ruling in the case of U.S. Tobacco Corporation v. Luna, G.R. No. L-3875, July 6, 1950, the date of shipment is the date when the goods for dispatch are loaded on board the vessel, and not necessarily when the ship puts to sea. **Cebu United Enterprises v. Gallofin,** G.R. No. L-12859, November 18, 1959.

COMMERCIAL LAW — TRANSPORTATION — THAT A WRITTEN CONTRACT OF CARRIAGE EXISTS MAY BE IMPLIED FROM THE ISSUANCE OF A TICKET BY THE CARRIER. — Action to recover damages resulting from the death of a passenger of defendant shipping firm's vessel, capsized thru the reckless and imprudent steering of her crew. The action was filed more than seven years after the incident. On defendant's motion, the lower court dismissed the action on the ground of prescription holding the action one for recovery of damages not based on contract and, hence, should have been brought within six years. The ruling was based purely on the allegations of the complaint. **Held,** order appealed from set aside. The action prescribes in ten years. A cursory reading of the complaint shows that the cause of action was predicated upon the failure of appellee to comply with its contract of carriage. It is true the complaint did not in so many words state that the transportation was undertaken by virtue of a written contract of carriage, but this can be implied from the complaint because it is a matter of common knowledge that whenever a passenger boards a ship for transportation he is issued a ticket by its shipper wherein the terms of the contract are specified. **Guerrero v. Madrigal Shipping Co.,** G.R. No. L-12951, November 17, 1959.

CRIMINAL LAW — AGGRAVATING CIRCUMSTANCES — DISREGARD OF THE RESPECT DUE THE OFFENDED PARTY ON ACCOUNT OF HIS

RANK MAY BE TAKEN INTO ACCOUNT, ALTHOUGH NOT ALLEGED IN THE INFORMATION SO LONG AS IT IS PROVED IN THE TRIAL.—Defendant was prosecuted for and convicted of murder for the fatal shooting of an acting consul. In the information, no allegation was made of the aggravating circumstance of disregard of the respect due the offended party. The same, however, was proved during the trial. May said circumstances be taken against defendant? **Held,** the deceased was the acting consul of the Spanish Consulate at the time of the incident, while appellant was a mere chancellor, a subordinate of the deceased. The aggravating circumstance of disregard of the respect due the offended party attended the commission of the crime. Although not alleged in the information, it was proved at the trial. It may be taken into account. **People v. Godinez,** G.R. No. L-12268, November 28, 1959.

CRIMINAL LAW — AGGRAVATING CIRCUMSTANCES —THERE IS NO TREACHERY WHERE THE ATTACK IS MADE FACE TO FACE WITH NO CLEAR INDICATION OF UNEXPECTED SUDDENNESS. — Defendant here, for the killing of his wife, was prosecuted for and convicted of parricide. It appeared that following a family spat, defendant hit the deceased on the head with the butt of a gun and continued pounding her until she died. The attack was frontal and there was no showing on whether it was executed with unexpected suddenness. Question: whether treachery attended the commission of the crime. **Held,** no, the attack having been made face to face, with no clear indication of unexpected suddenness. **People v. Molina,** G.R. No. L-12625, November 2, 1959.

CRIMINAL LAW—CIVIL LIABILITY—THE CIVIL LIABILITY OF AN EMPLOYEE ARISING FROM CRIME **IPSO FACTO** ATTACHES TO THE EMPLOYER UPON THE FORMER'S INSOLVENCY.—Appellees employed one Mogat as a driver. The latter, while driving, ran over appellant's daughter killing her as a result. Prosecuted for homicide thru reckless imprudence, he was convicted and sentenced, among others, to pay appellants a certain sum representing indemnity and actual damages. Upon execution, Mogat was found insolvent. Meantime, appellees sold all their property. Against these facts, appellants thereupon commenced action against appellees to recover on latter's liability and to rescind the sale as being fraudulent. Appellees' defense: the sale cannot be fraudulent because there was no judgment rendered or attachment issued against them at the time of the sale. **Held,** it cannot be disputed that appellees acted fraudulently when they disposed of all their properties knowing full well that their driver has already been ordered to pay indemnity for which legally they are subsidiarily liable. It is true that strictly speaking they are not considered parties in the criminal case where the award was made, but virtually they are. As this court strongly pronounced in Martinez v. Barredo, 45 O.G., No. 11, p. 4922: the employer becomes **ipso facto** subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency. **Orsal v. Alisbo,** G.R. No. L-13310, November 28, 1959.

CRIMINAL LAW — MITIGATING CIRCUMSTANCES — LACK OF EDUCATION AND INSTRUCTION IS NOT MITIGATING IN MURDER;

NEITHER IS SURRENDER WHERE ACCUSED GOES INTO HIDING AFTER THE COMMISSION OF THE CRIME, REFUSING TO SURRENDER WITHOUT FIRST CONFERRING WITH THE AUTHORITIES; NOR IS THERE LACK OF INTENTION TO KILL WHERE ACCUSED FIRES THREE SHOTS INTO THE VITAL PARTS OF THE BODY OF HIS VICTIM. — Accused was convicted of the crimes of murder and frustrated murder for the killing of one of the victims and the shooting of the other qualified by treachery. Accused urges consideration in his favor of the mitigating circumstances of lack of education and instruction, voluntary surrender, and lack of intention to kill. **Held,** the mitigating circumstances which appellant seeks cannot be extended in his favor. Lack of education and instruction cannot mitigate because killing is forbidden by natural law which every rational being is endowed to know and feel. There could be no voluntary surrender because appellant went into hiding after committing the crimes, refusing to surrender without first conferring with the authorities. Neither is lack of intention to kill present being negated by the merciless firing of three shots into the vital parts of the body of the deceased. **People v, Mutya,** G.R. No. L,1-1255, September 30, 1959.

CRIMINAL LAW — QUALIFYING CIRCUMSTANCES — TREACHERY IS NOT PRECLUDED BY THE FACT THAT THE ATTACK IS MADE FACE TO FACE. — Appellant was convicted by the trial court of the crimes of murder and frustrated murder qualified by treachery. It appeared that appellant forced his entrance into the house of the deceased by opening a hole in the floor of the kitchen, and that once inside concealed himself, and then suddenly emerging from his hiding and without warning fired at the victims who were taken unaware. On appeal, he assails the propriety of taking the qualifying circumstance of treachery against him on the ground that the attack was made face to face. **Held,** the lower court correctly found him guilty of the crimes charged. The manner of the attack, notwithstanding that it was frontal, put into operation treachery as a qualifying circumstance. **People v. Mutya,** G.R. No. L-11255, September 30, 1959.

CRIMINAL LAW — SUBSIDIARY IMPRISONMENT — SUBSIDIARY IMPRISONMENT IN CASE OF INSOLVENCY MAY BE IMPOSED NOTWITHSTANDING THE SILENCE THEREON OF THE SPECIAL LAW VIOLATED. — Appellant was convicted of illegal fishing with explosives penalized under Act No. 4003, as amended by Com. Act No. 471 and further amended by Rep. Act No. 462. He was sentenced to serve subsidiary imprisonment in case of non-payment of the fine imposed against him. From this he appealed contending that he could not be ordered to serve subsidiary imprisonment, Act No. 4003 not having provided therefor, and being a special law, it is not subject to the provisions of the Revised Penal Code. **Held,** the decision appealed from is affirmed. Suppletory effect is given the Revised Penal Code by Article 10 thereof in the absence of a contrary provision in the special law involved. In the case of People v. Dizon, G. R. No. L-8002, November 23, 1955, this Court has held that Article 39 of the Revised Penal Code, providing for subsidiary imprisonment in case of insolvency, is applicable to offenses under special laws, citing the

cases of People v. Moreno, 60 Phil. 178 and Copiaco v. Luzon Brokerage, 66 Phil. 184. — **People v. Cubelo,** G. R. No. L-13678, November 20, 1959:

LABOR LAW — COURT OF AGRARIAN RELATIONS — A PETITION FOR REINSTATEMENT AS TENANT AND FOR LIQUIDATION OF CROP COMES UNDER THE EXCLUSIVE JURISDICTION OF THE COURT OF AGRARIAN RELATIONS. — Respondent, ejected tenant, filed a petition before the Court of Agrarian Relations for his reinstatement and for liquidation of crop harvested during his tenancy. Granted. It appeared, however, that while respondent was cultivating the land, a litigation arose respecting the ownership thereof, with respondent's landlord as one of the litigants. Respondent did not intervene therein. Upon this ground, petitioner-receiver, who ejected respondent, filed the present petition for review contending that respondent, by his failure to intervene, was estopped to file his action before the agrarian court. **Held,** such failure cannot be considered as an estoppel on respondent's part to file the action before the Court of Agrarian Relations because his claim for reinstatement and liquidation of crop comes under the exclusive jurisdiction of said court. — **Cahilo v. Hon Judge De Guzman,** G. R. No. L-13431, November 24, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — A DECISION OF A JUDGE OF THE COURT OF INDUSTRIAL RELATIONS IS NOT APPEALABLE DIRECTLY TO THE SUPREME COURT, WITHOUT PREVIOUS PRESENTATION OF A MOTION FOR RECONSIDERATION OF THE DECISION BEFORE SAID COURT **IN BANC.** — For having interfered with, restrained or coerced their laborers, affiliated to or members of respondent union, petitioners were charged with, and found guilty by respondent judge of the industrial court, of unfair labor practice for anti-union activity. Against this decision, a petition for certiorari was filed directly with the Supreme Court. The question is whether or not the petition will lie, no previous presentation of a motion for reconsideration of the decision before the industrial court **in banc** having been made. **Held,** petition dismissed. Only decisions of the industrial court **in banc** are directly appealable by certiorari. Not decisions rendered by any judge thereof. Aside from the fact that this procedural requirement is expressly provided for by law (Section 1, CA 103), it is also in accord with the principle of exhaustion of administrative remedies and based on administrative efficiency. **Broce v. CIR,** G. R. No. L-12367, October 28, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — FOR PURPOSES OF SECTION 17, COM. ACT NO. 103, A DECISION OF THE COURT OF INDUSTRIAL RELATIONS GRANTING THE EMPLOYER DISCRETION TO DISMISS ITS EMPLOYEES, CONDITIONED UPON SUBMISSION TO THE COURT OF A REPORT AS TO THE ACTION TAKEN THEREABOUT IS CONSIDERED OPEN. — In a labor dispute concerning the legality of strike called by petitioner's employees, judgement was rendered by the industrial court declaring the strike illegal and granting petitioner discretion to dismiss the striking employees, conditioned upon submission to

said court of a report as to the action taken thereabout. This judgment was affirmed by the Supreme Court. Upon the return of the records of the case to the industrial court, respondents, who were dismissed, filed a petition with said court for reinstatement alleging abuse of discretion on the part of the management, which the court entertained. Hence, this petition for certiorari and prohibition based on lack of jurisdiction, petitioner contending that the issue has already been settled in the decision earlier stated. **Held,** the contention is untenable. The industrial court has jurisdiction to entertain respondent laborers' petition for reinstatement. The condition requiring the submission of a report, as to the action taken by the petitioner anent the discretion to dismiss its employees granted by the industrial court, suggests that said court contemplated to take some action thereon. It indicates an intent to reserve to itself the final authority to approve or disapprove such measure as petitioner may take. **Insular Sugar Refining Corp. v. CIR,** G. R. No. L-1210 , September 29, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS HAS JURISDICTION OVER CASES WRESTED FROM ITS JURISDICTION BY REPUBLIC ACT NO. 875, IF PENDING AT THE TIME OF THE PASSAGE OF SAID ACT. — Judgment was rendered in a labor case in 1948, before the passage of Republic Act 875 curtailing some of the powers of the Court of Industrial Relations under Com. Act No. 103. Said case, however, was not terminated in view of various incidents that occurred after the rendition of the judgment, one of which is the order subject of this original petition for certiorari with preliminary injunction. Said order was issued out of a petition (the seventh) filed in 1956, after the passage of Rep. Act No. 875, seeking payment for overtime compensation, which was granted, the industrial court holding the petition being merely incidental to the main case. Present petitioner contends that the industrial court had no power in granting the petition in question on the ground that with the passage of RA 875, and conformably to the rulings in the cases of Reyes v. Tan, 52 O. G. No. 14, p. 6187 and Paflu v. Tan, 52 O.G. No. 13, p. 5836, the power of the industrial court is now circumscribed only within the following areas: (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court (Sec. 10, RA 875); (2) when the controversy refers to minimum wage under the Minimum Wage Law (RA 602); (3) when it involves hours of employment under the Eight-Hour Labor Law (CA No. 444); and (4) when it involves an unfair labor practice (Sec. 5(a), RA 875). (Reiterated in Philippine Sugar Institute v. CIR, G. R. No. L-13098, October 19, 1959). Petitioner also maintains that the petition, out of which the order in question issued, involving a controversy foreign to those litigated in the main case cannot be said to be an incident of the latter, said principal case having been decided as far back as 1948 and, therefore, no longer pending upon the passage of RA 875. **Held,** unlike ordinary courts that once the decision acquires finality the case is said to be terminated, the Court of Industrial Relations is granted ample powers, during the effectiveness of the award, to alter, modify in whole or in part, or even set aside the award or decision, or reopen the case (Sec. 17, CA No. 103). When Rep. Act 875 was enacted in June 1953, curtailing some of the powers of the industrial court granted by CA 103, it did not deprive said court from taking cognizance of cases wrested from its jurisdiction pending at the time of its passage. On the contrary, its transitory provision empowered said court to take cognizance thereof. **National Development Co. v. CIR,** G. R. No. L-13209, September 30, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS HAS NO JURISDICTION OVER CLAIMS FOR GRATUITY AND SEPARATION PAY ARISING FROM A COLLECTIVE BARGAINING AGREEMENT, AS WELL AS FOR CLAIMS FOR ONE MONTH SEPARATION PAY UNDER THE PROVISIONS OF REPUBLIC ACT NO. 1052. — Respondents-claimants, heirs of a deceased employee of petitioner company, filed in 1957 a petition in the Court of Industrial Relations praying for the grant of a certain sum, representing gratuity and separation pay pursuant to a collective bargaining agreement entered into by and between petitioner and its employees, and another sum, representing one month separation pay under the Termination Pay Law (RA 1052), for the services of their deceased father while in the employ of petitioner. The question is whether or not the foregoing claims fall within the jurisdiction of the industrial court. **Held,** without its jurisdiction. This Court has held in numerous cases that upon the enactment of Republic Act No. 875, which took effect on June 17, 1953, the jurisdiction of the Court of Industrial Relations was confined to the following: (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court; (2) when the controversy refers to the minimum wage under the Minimum Wage Law; (3) when it involves hours of employment under the Eight-Hour Labor Law; and (4) when it involves an unfair labor practice. The subject matter of claimants' petition is not any of those enumerated. **Philippine Sugar Institute v. Court of Industrial Relations,** G. R. No. L-13098, October 29, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT VESTED WITH JURISDICTION TO TAKE COGNIZANCE OF ACTIONS INVOLVING ANOMALIES AND IRREGULARITIES IN VIOLATION OF INTERNAL LABOR ORGANIZATION PROCEDURES, AS ENUMERATED IN SECTION 17 OF THE INDUSTRIAL PEACE ACT, IS THE COURT OF INDUSTRIAL RELATIONS. — Appellant Paflu, a labor organization, commenced in the Court of First Instance an action designated as "accounting and recovery of money x x x" against appellees, officers of the Namawu, a labor union and local member of the Paflu. The action also complained of the affiliation of the Namawu with the Ptuc, another labor organization, without having first disaffiliated from the Paflu, in violation of its constitution and by-laws. On motion of defendants, the trial court dismissed the action for lack of jurisdiction. **Held,** dismissal affirmed. The anomalies and irregularities allegedly committed by defendants are violations of internal labor organization procedures expressly outlined in Section 17 of the Industrial Peace Act, and the remedies sought are for

the correction of said violations. Under Section 2 of the Act, the court vested with jurisdiction to take cognizance thereof is the Court of Industrial Relations. **Paflu v. Padilla,** G. R. No. L-11722, November 28, 1959.

LABOR LAW — INDUSTRIAL PEACE ACT — LABORERS VOLUNTARILY REFUSING TO RETURN ON BEING OFFERED TO RESUME WORK ARE NOT ENTITLED TO BACKPAY UPON REINSTATEMENT BY THE INDUSTRIAL COURT. — Petitioner, a jeepney operator, believing his drivers, members of respondent union, were intending to declare a strike and might abandon his jeepneys in the streets, temporarily suspended their operation. Next morning, however, he announced to the drivers that they could take out the jeepneys. A few returned but the majority remained on strike and even admonished the former to join them. Passing upon the act of the operator in suspending the operation of his jeepneys, the Court of Industrial Relations held it not in consonance with the Industrial Peace Act (RA 875). It thereby ordered the operator to reinstate the striking drivers and to pay them back wages. **Held,** the strike was not a direct consequence of petitioner's lockout nor the result of any unfair labor practice on his part, but the result of the drivers' voluntary and deliberate refusal to return to work. We find no justification for their receiving back wages for the period that they themselves refused to return to work. **Dinglasan v. National Labor Union,** G. R. No. L-14183, November 28, 1959.

LABOR LAW — TENANCY LAW — THE TENANT OF A LESSEE RETAINS THE RIGHT TO WORK ON THE LANDHOLDING DESPITE THE TERMINATION OF THE LEASE. — Petitioner Florentino Joya is the owner of a parcel of land under lease to one Bondad. For the duration of the lease, the land was tenanted and worked on for the lessee by respondent Pareja. Upon the termination of the lease, the land was returned to the landowner who leased it to another. Respondent refusing to surrender the land to the new lessee, petitioner had him ejected. Whereupon, respondent filed with the Court of Agrarian Relations a complaint against petitioner and the new lessee for violation of Republic Act 1199. Defense: no tenancy relationship existed between the parties. **Held,** it is our considered judgment, since the return by the lessee of the leased property to the lessor upon the expiration of the contract involves also a transfer of legal possession, and taking into account the legislative intent, namely to provide the tenant with security of tenure in all cases of transfer of legal possession, that the instant case falls within and is governed by the provisions of Section 9 of Republic Act 1199, as amended by Republic Act 2263. The termination of the lease, therefore, did not divest the tenant of the right to remain and continue on his cultivation of the land. **Joya v. Pareja,** G. R. No. L-13258, November 28, 1959.

LABOR LAW — TENANCY LAW — TO CONSTITUTE A GROUND FOR DISPOSSESSION, THE TENANT'S FAILURE TO DELIVER THE LANDHOLDER'S SHARE CONTEMPLATED IN SECTION 50 OF REPUBLIC

ACT NO. 1199 MUST BE DELIBERATE AND NOT A MERE FAILURE TO DO SO. — The tenants in the case at bar, for a number of years since their occupation of the hacienda, have not given any share to the owners. Such failure, however, was due to an agreement with the overseer of the hacienda that for clearing the land of forest growths, they would be entitled to half the portion cleared and that they would be bound to give the owners' share in the harvest only after the lands cleared by them shall have been divided, which agreement one of the petitioners reiterated to them. It appeared also that when judicially advised that they had no justification in withholding the owners' share, they willingly delivered to the latter their share. However, for their previous failure, action was brought to eject them. **Held,** the tenants will remain in their landholdings. The rule embodied in Section 50(c) of Republic Act 1199 applies only to deliberate failure, not to a mere failure to deliver to the landholders their rightful share of the crop harvest. **Paz v. Santos,** G. R. No. L-18047, September 30, 1959.

LABOR LAW—WORKMEN'S COMPENSATION ACT—AN APPRENTICE WITHOUT WAGES IS AN EMPLOYEE ENTITLED TO COMPENSATION UNDER THE WORKMEN'S COMPENSATION LAW. — Respondent Commissioner of the Workmen's Compensation Commission awarded against petitioner shipping firm a certain sum, representing death compensation, in favor of her co-respondent, widow of one Tolentino who perished while working as an apprentice engineer in petitioner's vessel which sank during a storm. Deceased was not paid any salary. Petitioner contends on appeal that inasmuch as the deceased was on board the vessel as apprentice engineer without salary, no employer-employee relationship existed between them, and, hence, not liable for the compensation amount awarded against it. **Held,** the contention is untenable. That deceased was not paid a fixed salary does not negative the existence of the relationship of employer-employee, citing Madrigal Shipping Co. v. Tupas, G. R. No. L-10551, May 30, 1956 and Asia Steel Corporation v. Workmen's Compensation Commission, G. R. No. L-7636, June 27, 1955. **Madrigal Shipping Co. v. del Rosario,** G. R. No. L-13130, October 31, 1959.

LABOR LAW — WORKMEN'S COMPENSATION ACT — DEATH OF A LABORER DUE TO HEART FAILURE CAUSED BY OVER-EXERTION IN THE WORK DONE IS COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT. — Deceased was a laborer of petitioner brokerage company. He died of heart failure after performing a company's work of moving household effects consisting of heavy furnitures. The question is whether the death is compensable under the Workmen's Compensation Act. **Held,** compensable. The cause of the heart failure was the deceased's excessive exertion and undue fatigue in performing the company's work of hauling and moving the heavy pieces of household effects. Upon these facts, there is little room for doubt that his death arose out of and in the course of his employment. — **Luzon Brokerage Co. v. Dayao,** G. R. No. L-10362, November 27, 1959.

LABOR LAW — WORKMEN'S COMPENSATION ACT — "GUARDIAN" AS USED IN SECTION 28 OF ACT NO. 3428 REFERS TO ONE AUTHORIZED TO MAINTAIN AN ACTION FOR AND IN THE NAME OF ANOTHER WHO IS **NON SUI JURIS.** — Petitioner had in its employ the deceased. He died in the course of his employment. Claim for death compensation was filed by the widow on her behalf and on behalf of her minor children beyond the period allowed by the Workmen's Compensation Act. Defense put up therefore: prescription. Section 28 of the Act provides: None of the time limits provided for in this Act shall apply to x x x x a defendant minor so long as he has no guardian or next friend. Question: whether or not the defense of prescription also extends to the deceased's minor children included in the claim of their mother. Petitioner opines the affirmative contending that "guardian" in the cited provision refers either to a natural guardian or a legal guardian since no qualifying word is used, and that as the minor children have a natural guardian in the person of their mother the time limit for filing compensation claim should apply to them. **Held,** petitioner's contention cannot be sustained. "Guardian" as used in Section 28 of the Act refers to one authorized to maintain an action for and in the name of another who is **non sui juris.** Under the law prior to the new Civil Code, the father, or in his absence, the mother, was the natural guardian of his or her minor children but not their legal representative before the court unless appointed legal guardian. The mother in the instant case, as mere natural guardian of her minor children, therefore, cannot be considered the "guardian" of the minors within the meaning of the Workmen's Compensation Act. **Luzon Stevedoring Co. v. Hon. Judge de Leon,** G. R. No. L-9521, November 28, 1959.

LABOR LAW — WORKMEN'S COMPENSATION ACT — PAYMENT OF INCOME TAX AND INSURING ITS LIABILITY AS EMPLOYER IN THE CONSTRUCTION OF ITS SCHOOL BUILDING DO NOT MAKE AN EDUCATIONAL INSTITUTION NOT ESTABLISHED FOR PROFIT A PROJECT OF GAIN. — Respondent Habitan was employed as carpenter by the Espiritu Santo Parochial School administered by petitioner. He suffered an accident injury in the course of employment and he filed claim for compensation, It was not disputed that employer school depends for its maintenance more on religious and charitable sources than on school fees. The Workmen's Compensation Commission, however, finding in addition that the school is paying income tax and that its liability as employer in the construction of its school house has been insured, concluded it an educational project operating for gain and, therefore, an employer within the purview of the Workmen's Compensation Law. Hence, liable for the compensation claimed. **Held,** we do not think the findings of the Commissioner sufficient to support his conclusion. The tax paid is a requirement upon all private schools, and petitioner, in paying such tax, is just performing a legal duty. As to the fact that its liability as employer was insured, we fail to see how this could make employer-school an institution organized for profit subject to the jurisdiction of the Compensation Commission. If at all, the insurance policy may be considered as a protection against its possible liability as an employer during the construction of the school building under the new Civil Code or other laws, but not under the Workmen's Compensation Act. **Espiritu Santo Parish v. Habitan,** G. R. No. L-12753, November 28, 1959.

LABOR LAW — WORKMEN'S COMPENSATION COMMISSION — THE POWER OF THE WORKMEN'S COMPENSATION COMMISSION TO GRANT EXTENSION FOR THE FILING OF PETITION FOR REVIEW UNDER SECTION 3, RULE 10 OF ITS RULES IS NOT LIMITED TO ONE EXTENSION WHICH MUST BE ASKED FOR AND GRANTED WITHIN THE ORIGINAL FIFTEEN (15) DAYS PROVIDED THEREIN. — A petition for review of a referee's decision was filed with the Workmen's Compensation Commission after several extensions of the time to file the same computed as follows: The referee's decision was received 16 February 1954, Under Sec. 3, Rule 10 of the Rules of the WCC, the claimant has fifteen (15) days within which to seek a review. Therefore, until March 3, 1954. On claimant's motion this was extended to March 17, which was twice more extended before the petition for review was finally filed. Seeking to dismiss the petition, petitioner-employer contends that since the petition was not filed on or before March 17, it was filed out of time for the reason that under its Rules, the WCC may grant only one extension which must be asked for and granted within the original 15-day period provided. The rule in question reads: "All petitions for review must be filed within fifteen (15) days from the receipt of notice of any referee's order or award of the Commissioner unless further time is granted by the referee or the Commissioner within said fifteen days." **Held,** petitioner's contention is an erroneous interpretation of the rule involved. Any additional period of time allowed or granted forms part of the whole period within which a petition for extension of time or for review may be filed. — **Luzon Brokerage Co. v. Dayao,** G. R. No. L-10362, November 27, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — A COURT OF FIRST INSTANCE HAS NO JURISDICTION TO DECREE AGAIN THE REGISTRATION OF LAND ALREADY DECREED IN AN EARLIER LAND REGISTRATION CASE. — Respondent City of Tagaytay applied with the Court of First Instance of Cavite, sitting as land registration court, for registration in its name of six parcels of land among which was the lot in question. As nobody appeared to oppose the application, an order of general default was entered and the applicant allowed to adduce its evidence with the result that the court decreed registration and the issuance of the corresponding title in its name. Subsequently. petitioner filed a petition to set aside the decision of the court, to the extent that the lot in question was affected, on the ground that said lot had already been decreed in a previous land registration case and covered by an original certificate of title. **Held,** petitioner's contention is correct. This Court has held in a quite impressive line of decisions that a Court of First Instance has no jurisdiction to decree again the registration of land already decreed in an earlier land registration case. — **Rojas v. Tagaytay,** G. R. No. L-13333, November 24, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — A PERSON DEALING WITH TORRENS TITLED PROPERTY IS NOT REQUIRED TO GO BEHIND WHAT APPEARS ON THE FACE OF THE TITLE. — The lot in question was owned by a certain subdivision. Plaintiffs' father bought the same on installment basis. When he died, his widow continued paying the installments until the price was paid in full, consequent upon which a deed of definite sale was executed in her favor and a transfer certificate of title issued in her name. Thereafter, the widow sold the lot to defendant under a **pacto de retro** sale. She failed to repurchase the same, so defendant consolidated his ownership after which she executed in his favor an absolute deed of sale. Claiming the property to be conjugal, their father having initiated the payments until his death when the widow took over, plaintiffs brought the instant action to recover half of the lot. Defendant set up the defense that he acquired said property without knowledge of any defect in the title and that he acquired title thereto unaffected by any lien or encumbrance not noted thereon. The lower court dismissed plaintiffs' action. **Held,** affirmed. Plaintiffs' claim is not entirely devoid of merit, but neither can we consider the action taken by the trial court to be erroneous bearing in mind that the lot in question is covered by a torrens title and the same appears exclusively in the name of the widow. As we have held in the case of Anderson v. Garcia, 64 Phil. 506, a person dealing with registered land is not required to go behind the register to determine the condition of the property. **Paraiso v. Camon,** G. R. No. L-13919, September 18, 1959. (Reiterated in Tiburcio v. PHHC, G. R. No. L-13479, October 31, 1959.)

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — REGISTRATION OF THE DEED OF SALE CONSTITUTES CONSTRUCTIVE NOTICE OF THE SALE TO THE PREJUDICE OF ALL. — Plaintiff-appellant here purchased a parcel of land from one Candida Agustin. Plaintiff failed to file the deed of sale with the Office of the Register of Deeds. Later, Candida, who remained in possession of the land, resold it to defendants. The latter registered the deed of conveyance in their favor, had the certificate of title covering the land cancelled, and a new one issued in their name. Nine years hence elapsed before plaintiff's action, seeking relief on the ground of fraud in that defendants were cognizant of the execution of the deed of sale in his favor, was brought. Ignoring plaintiff's pretense that he acquired knowledge of defendants' fraud only six years back, and giving credence to defendants' evidence that the former was informed of the subsequent sale, the lower court dismissed the action on the ground of prescription. **Held,** affirmed. The record before us does not warrant interference with the finding of the trial judge. Besides, the registration of the deed of sale in favor of defendants was a notice to the whole world, including plaintiff. Regardless, therefore, of the date on which plaintiff had actual notice of said conveyance, his cause of action, if any, for the annulment thereof expired four years from said registration. **Mauricio v. Villanueva,** G. R. No. L-11072, September 24 ,1959.

LAND TITLES AND DEEDS — PUBLIC LAND ACT — FACTUAL DETERMINATIONS OF THE DIRECTOR OF LANDS INVOLVING LANDS

OF THE PUBLIC DOMAIN ARE FINAL AND CONCLUSIVE WHEN APPROVED BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES. — Denopol and Junto had a dispute over possession and cultivation of a 29-hectare public land before the Bureau of Lands. After proper investigation, the director of the bureau alloted 24 hectares to Junto by homestead, and the balance to Denopol by sales application. The latter appealed to the Secretary of Agriculture and Natural Resources, who in due course confirmed the Director's award. Denopol next resorted to court by petition for certiorari. However, realizing that the award rested on the finding of Junto's prior possession and cultivation of the land apportioned to him, and that such factual finding was final under the law, the judge declined to interfere, denied the petition. **Held,** courts administer justice in accordance with the provisions of the statute applicable to the case, and Section 4 of Com. Act No. 141 expressly provides that decisions of the Director of Lands as to questions of fact involving lands of the public domain are final and conclusive when approved by the Secretary of Agriculture and Natural Resources. **Denopol v. Director,** G. R. No. L-13829, November 28, 1959,

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LEGAL AND JUDICIAL ETHICS — ATTORNEY'S FEES — STIPULATED ATTORNEY'S FEES WILL NOT BE ENFORCED IF INJURIOUS OR OPPRESSIVE, BUT WILL BE REDUCED ON A QUANTUM MERUIT BASIS. — Plaintiffs-appellees obtained from defendant-appellant a loan which, upon liquidation, stood at ₱18,020.00, including interests earned. The debt was secured by a real estate mortgage. In the mortgage contract, it was stipulated, among others, that "in case the mortgagee should secure the services of a lawyer, to secure his right under this contract, the mortgagors shall pay the attorney's fees of the same x x x and the attorney's fees are fixed in an amount equivalent to 20% of the amount claimed by the mortgagee but in no case shall it be less than ₱200, Philippine Currency; x x x." The situation contemplated took place and among the issues raised was the amount of attorney's fees. The question is whether or not the aforequoted stipulation may be enforced. **Held,** no, a stipulation fixing attorney's fees does not necessarily imply that it must be literally enforced no matter how injurious or oppressive it may be. From Bachrach v. Golingo, 39 Phil. 138 (rendered in 1918) to Sison v. Suntay, G. R. No. L-10000, December 28, 1957, this Court has repeatedly fixed counsel fees on a quantum meruit basis whenever the fees stipulated appear excessive, unconscionable, or unreasonable. **Gorospe v. Gochangco,** G. R. No. L-12735, October 30, 1959.

LEGAL AND JUDICIAL ETHICS — DISBARMENT — MEMBERSHIP IN THE BAR DEMANDS THE MAINTENANCE OF THE HIGHEST DEGREE OF MORALITY AND INTEGRITY A BREACH OF WHICH SUFFICES TO DISBAR. — Complainant herein, after the filing of their application for a marriage license, was told by her respondent fiance that they were already married. On the pretext of visiting an uncle, respondent brought complainant to a place she later learned to be a hotel and there, on the insistence of the respondent and on his assurance that they were

already married, had sexual intercourse together which they repeated once a month for three consecutive months in the same place. Why despite their "marriage" they did not live as husband and wife, respondent explained to complainant he was just waiting for the results of the bar. He passed the bar and arrangements were made for a religious marriage ceremony which, however, respondent breached by withdrawing therefrom. Then on the family way, complainant showed her father some documents she had in her possession supposedly evident of civil marriage between her and respondent, and it was found that no such marriage ever took place. For refusing to consummate the marriage, this complaint for immorality. **Held,** respondent has not maintained the highest degree of morality and integrity expected at all times of, and must be possessed by members of the bar. He is, therefore, disbarred from the practice of law and his name in the roll of attorneys stricken out. **Cabrera v. Agustin,** Adm. Case No. 225, September 30, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — AN ELECTIVE MUNICIPAL OFFICIAL MAY NOT BE REMOVED FROM OFFICE BECAUSE OF MISCONDUCT DURING A PRIOR TERM. — Petitioner was elected Municipal Mayor in 1951. In 1955, he ran for the same office and was re-elected. In 1956, the Provincial Governor filed with the Provincial Board administrative charges for maladministration, abuse of authority, and usurpation of judicial functions committed during his first term. The question is whether or not petitioner may be removed from office for the acts complained of. **Held.** no. To do otherwise would be to deprive the people of their right to elect their officials. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. **Pascual v. Provincial Board,** G. R. No. L-11959, October 31, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — AUTHORIZING THE TAMPERING OF PAYROLLS BY LABORERS UNDER HIS SUPERVISION CONSTITUTES SUFFICIENT GROUND FOR THE SUSPENSION OF A MUNICIPAL MAYOR. — Petitioner, a municipal mayor, was charged before the Provincial Board with having authorized the laborers employed in the construction of a road, a municipal project, under his supervision, to sign payrolls covering wages for 14 days when in fact said laborers actually worked only for 3 days, pocketing the difference. He was suspended by the Provincial Governor. He assails the propriety of the suspension on the ground that the offense charged has no direct relation to his functions as a public officer, **Held,** the contention cannot be entertained. The construction of the road was a municipal project under appellant's supervision. The alleged irregularity was committed in the performance of official duty. **Panti v. Alberto,** G. R. No. L-13772, September 18, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — IN COMPUTING THE PREVENTIVE SUSPENSION OF A MUNICIPAL OFFICER, DELAY OCCASIONED BY HIM IN THE DECISION OF THE CASE AGAINST HIM IS NOT COUNTABLE. — Appellant municipal mayor, on formal complaint filed with the Provincial Board for irregularities committed by him in the performance of official function, was suspended by the Provincial Governor. The suspension was effective September 5, 1957. The first hearing was held September 12, but on appellant's request was postponed to September 25. Because of his absence, the hearing had to be postponed again to September 30. Appellant did not appear as usual, so the hearing was reset on October 11, 1957. But on October 7, he commenced action in court disputing the legality of his suspension and praying for reinstatement. Dismissed. On October 11, at the hearing of the administrative charges, he appeared but refused to recognize the jurisdiction of the Board, so the hearing was held ex **parte.** On October 21, 1957, the Board rendered its decision finding him guilty. On appeal, he insists on the illegality of his suspension on the ground that it was beyond the 30-day period authorized by Section 2189 of the Revised Administrative Code. **Held,** the hearing was repeatedly interrupted due to appellant's requests for postponement, or absence. If we were to deduct from the whole period that transpired from the 1st day of hearing to the date of decision, the period consumed by the several interruptions caused by appellant, only 17 days elapsed of the 30-day period fixed by law. Hence, when appellant filed his action in court, his suspension was still within the limit of the law. **Panti v. Alberto,** G. R. No. L-13772, September 18, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — THE DECISION OF A DEPARTMENT SECRETARY NEED NOT BE APPEALED TO THE PRESIDENT BEFORE JUDICIAL RECOURSE MAY BE HAD, THE SECRETARY BEING MERELY AN ALTER-EGO OF THE PRESIDENT, — Exhaustion of administrative remedies. Petitioner herein commenced action concerning the lease of certain lots for fishpond purposes which he desired to be granted him. Dismissed. Before action was brought, the Director of Fish and Games Administration granted the lease to petitioner. This was however reversed by the Secretary of Agriculture and Natural Resources in favor of, and on appeal by, the other applicant. From this reversal, petitioner did not appeal to the President, and it was on this account that the lower court dismissed his action for failure to exhaust all available administrative remedies. The Court of Appeals affirmed the dismissal. Hence, this petition for review. **Held,** true, petitioner did not appeal from the decision of the Secretary of Agriculture and Natural Resources to the President of the Philippines, but such failure cannot preclude him from taking court action in view of the theory that the Secretary of a department is merely an alter-ego of the President. The presumption is the action of a Department Secretary bears the implied sanction of the President, unless the same is disapproved by the latter (Villena v. Roque, 67 Phil. 451). **Dimaisip v. Court of Appeals,** G. R. No. L-13000, September 25, 1959.

POLITICAL LAW — ALIEN REGISTRATION LAW — VIOLATION OF SECTION 7 OF THE ALIEN REGISTRATION LAW AS AMENDED MAY

NOT BE MADE THE SUBJECT OF IMMEDIATE CRIMINAL PROSECUTION, UNTIL AND UNLESS THE COMMISSIONER OF IMMIGRATION ELECTS AND DECIDES UPON SAID PROSECUTION IN LIEU OF AN ADMINISTRATIVE CHARGE. — Petitioner-appellee, an alien, for failure to exhibit his alien certificate of registration on being accosted in one of the streets of Manila for acting suspiciously, was indicted for violation of Section 7 of the Alien Registration Law (Rep. Act No. 562, as amended) before the Municipal Court of the same city. Petitioner moved to quash the information on the ground of lack of jurisdiction and for lack of authority of the fiscal to file the information. Denied, respondent judge and the fiscal taking the position that under Section 38(b) of Republic Act No. 409, as amended by Republic Act No. 1201, the latter is charged with the prosecution of all crimes and violations of city ordinances in the CFI and MC of Manila; that he is equally charged with the investigation of all crimes and violations of ordinances committed within said city and that this includes offenses and violations of the law by aliens. **Held,** the quashal should have been granted. Under Section 7 of the Alien Registration Law, as amended by Section 3 of Republic Act No. 751, the prosecuting official may not initiate prosecution until and unless the Commissioner of Immigration has elected and decided upon said prosecution in lieu of an administrative charge and fine. **Yao Lit v. Hon. Judge Geraldez,** G. R. No. L-13428, November 27, 1959.

POLITICAL LAW — DEPORTATION — VOLUNTARY DEPARTURE OF AN ALIEN ORDERED TO BE DEPORTED DOES NOT CHANGE HIS STATUS AS DEPORTEE. — Petition for admission as temporary visitor. Before the filing of the petition, for having slipped into the country surreptitiously in violation of the Immigration Act, petitioner was ordered arrested and deported. Before any action by the authorities could be done, however, she voluntarily left the country at her own expense. Years later, her husband, a resident alien, asked the Department of Foreign Affairs, thru the Bureau of Immigration, for the issuance of a temporary visitor's visa in petitioner's favor. Over the objection of the Immigration Commissioner, grounded on petitioner's aforestated previous violation of the Immigration Law, the visa was granted. The Board of Special Inquiry, which conducted an investigation after her arrival, also recommended her entry stating that as she had not been deported for her previous violation, she was not a deportee, and, therefore, not among those excluded from entry under Section 29(a) of the Immigration Act, **Held,** the conclusion that the voluntary departure of an alien, ordered by a final decision of the Commissioner of Immigration to be deported, is not deportation if deportee leaves the country voluntarily and at her expense is error. The mere fact that petitioner herein voluntarily left the country did not have the effect of revoking the final order of deportation, nor of erasing the fact that she had slipped into the country surreptitiously. Petitioner is ordered excluded from entry into the country. **Ko Wai Me v. Galang,** G. R. No. L-13661, November 28, 1959.

POLITICAL LAW — NATURALIZATION — FAILURE OF APPLICANT FOR NATURALIZATION TO REGISTER HIS WIFE AND MINOR CHILDREN AS ALIENS IS NOT OF ITSELF SUFFICIENT TO DISQUALIFY HIM. — Appellee commenced proceedings for his naturalization. After hearing, the trial court entered a decree granting his petition for naturalization. Upon the ground of appellee's failure to register his wife and minor children as aliens, the Government appealed. Reiterating its holding in Chay Guan Tan v. Republic, 53 O. G. 6107, the Supreme Court **Held,** the failure of the appellee to register his wife and minor children as aliens is not alone sufficient to disqualify him. **Boon Bing Ng Lim v. Republic,** G. R. No. L-11642, November 28, 1959.

POLITICAL LAW — NATURALIZATION — USE OF ALIASES IS A MINOR TRANSGRESSION INVOLVING NO MORAL TURPITUDE OR WILFUL CRIMINALITY NOT TAINTING CHARACTER OF APPLICANT FOR NATURALIZATION. — Appellant here applied for naturalization. Finding him possessed of all the qualifications prescribed by law and none of the disqualifications, the trial court granted the petition. Upon the expiration of the two-year probational period, appellant filed a petition with the court, this time presided by another judge, for his oath-taking and the issuance of his certificate of naturalization. The petition was denied on the ground that appellant had been using aliases without judicial sanction in violation of the Anti-Alias Law (Com. Act No. 142). **Held,** in granting the petition for naturalization, the trial court did not consider the alleged unauthorized use of aliases by appellant as serious enough to adversely affect his application. Apparently, the court regarded — and we think, correctly — such use of names merely as a minor transgression which, involving no moral turpitude or wilful criminality, could not by itself obstruct the grant of his application for naturalization. At any rate, the alleged unauthorized use of aliases did not occur during the probational period but long before the filing of the petition. — **Hao Bin Chiong v. Republic,** G. R. No. L-13526, November 24, 1959.

POLITICAL LAW — PUBLIC CORPORATIONS — INCLUSION IN AN APPROPRIATION ORDINANCE OF ALL STATUTORY AND CONTRACTUAL OBLIGATIONS OF THE MUNICIPALITY IS MANDATORY. — Respondent Municipal Council enacted the general appropriation ordinance in question appropriating, among others, a certain sum for the operation of the entire municipal police force, including six additional positions for patrolman to one of which petitioner, a civil service eligible, was appointed by the mayor pending approval of the ordinance by the Secretary of Finance. The ordinance did not contain any statement of the statutory and contractual obligations of the municipality. In passing upon petitioner's petition for reinstatement after his position was abolished and new positions were created, the question raised was whether the ordinance was valid and, hence, whether his position existed. **Held,** the inclusion in an appropriation ordinance of all statutory and contractual obligations of the municipality is mandatory. The ordinance in question having failed to do so, it did not take effect. Consequently, the positions, including petitioner's, it created never existed. There being no office to which he may be reinstated, therefore, petitioner is not entitled to reinstatement. **Torres v. Municipal Council,** G. R. No. L-13225, November 28, 1959.

POLITICAL LAW — RETIREMENT — A MEMBER OF THE JUDICIARY SATISFYING ALL THE OTHER REQUIREMENTS OF THE RETIREMENT LAW, EXCEPT SEPARATION FROM SERVICE AT THE AGE OF 70 DUE TO THE SUSPENSION OF THE CONSTITUTION, IS ENTITLED TO THE BENEFITS OF SAID LAW. — Plaintiffs filed claim against the Government Service Insurance System for gratuity of a deceased justice of the peace who died at the age of 71 during the years of the occupation after 36 years of continuous service in the government. The Constitution of the Philippines having a political complexion, it was. obviously, suspended of effect at the time. Defendant denied the claim on the ground that the separation was not due to deceased's reaching retirement age but caused by death. **Held,** the trial court interpreted the law too strictly. It is a fact that had the Constitution been enforced when deceased reached the age of 70, he would have been separated from service pursuant to the peremptory provision of Section 9, Article VIII thereof. That the Constitution was not enforced then is a contingency which could not be blamed on the deceased to the extent of depriving him of the benefits under the Retirement Law. **Gillego v. GSIS,** G. R. No. L-13211, October 16, 1959.

POLITICAL LAW — TAXATION — ASSESSIBILITY OF REAL ESTATE DEALERS TAX IS NOT LIMITED TO ENTITIES ENGAGED IN THE BUSINESS OF REAL ESTATE ONLY, THE PHRASE 'REAL ESTATE DEALER' UNDER THE LAW COMPREHENDING OWNERS OF RENTAL PROPERTIES RENTED OR OFFERED TO RENT FOR AN AGGREGATE AMOUNT OF ₱3000 OR MORE A YEAR. — Petitioner is a domestic corporation operating jai alai games with betting in accordance with Com. Acts Nos. 485 and 601. It is not engaged in real estate business. It leased certain portions of its building, where the games are carried on, for ₱2500 a month. The rented portions, however, are not directly nor indirectly connected with the games. Respondent assessed against petitioner real estate dealer's tax. Petitioner contends that it could not be held liable therefor not being engaged in the business of real estate. The pertinent portion of the law involved provides: "x x x 'real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year." (Section 194(s), Com. Act No. 466, as amended by Rep. Act No. 588, effective Sept. 22, 1950). **Held,** the tax was properly imposed. Although petitioner is not engaged in the business of real estate, it falls under the last provision of the law it being an owner of rental property and such property not being connected with the premises used for the jai alai games. **Jai Alai v. CTA,** G. R. No. L-11175, October 20, 1959.

POLITICAL LAW — TAXATION — BONUSES ARE DEDUCTIBLE UNDER SECTION 30 (a)(1), NATIONAL INTERNAL REVENUE CODE, PROVIDED THE FOLLOWING CONDITIONS ARE PRESENT: (1) PAYMENT OF BONUSES IS IN FACT COMPENSATION; (2) FOR PERSONAL SERVICES ACTUALLY RENDERED; and (3) THE BONUSES, WHEN ADDED TO THE SALARIES ARE REASONABLE WHEN MEASURED BY THE AMOUNT AND QUALITY OF THE SERVICES PERFORMED WITH RELATION TO THE BUSINESS OF THE PARTICULAR TAXPAYER. — Petitioner, a domestic corporation, in its income tax returns for 1950, 1951 and 1952, deducted from its gross income bonuses of its officers and employees. Disallowing the deductions, respondent Collector of Internal Revenue assessed and demanded payment of deficiency income taxes for the deductions thus made. The question is whether or not the bonuses in question are deductible under Section 30(a)(1) of the National Internal Revenue Code, which allows deductions for all the ordinary and necessary expenses paid or incurred in carrying on any trade or business, including a reasonable allowance for salaries or compensation for personal services actually rendered. **Held,** answering in the affirmative, the Supreme Court, however, laid down the conditions stated at the beginning of this digest. **Kuenzle & Streiff Inc. v. Collector,** G. R. No. L-12113, October 20, 1959.

POLITICAL LAW — TAXATION — FAILURE TO FILE RETURN AND LATE POSTING OF RECEIPTS DO NOT NECESSARILY GIVE RISE TO A FALSE OR FRAUDULENT RETURN. — Petitioner is a registered partnership engaged in building and road construction. Respondent Collector of Internal Revenue assessed against petitioner a 50% surcharge for alleged fraudulent return, based on the fact that no return was made for petitioner's gross receipts and the further fact that said gross receipts were entered on the partnership books, not upon actual receipt, but on the month following that in which receipt was actually made. **Held,** petitioner is not liable for the surcharge. Failure to file return and late posting of receipts are not sufficient to prove the existence of fraud. Fraud is never presumed; good faith is. The two circumstances by themselves cannot be said to constitute fraud; they both amount to an error, but not fraud as to give rise to a false or fraudulent return. **Collector** v. **Ilagan,** G.R. No. L-1113, September 30, 1959.

POLITICAL LAW — TAXATION — TAXABLE GROSS RECEIPTS ARE NOT ONLY THOSE ACTUALLY RECEIVED, BUT INCLUDE THOSE WHICH THE TAXPAYER IS ENTITLED TO RECEIVE. — Petitioner is a building and road contractor. Respondent Collector of Internal Revenue assessed a percentage tax against petitioner on a deduction made by the latter from payments due it on its contracts. Said deduction represents an amount due petitioner's services but not actually received having been retained under its contracts for damages. Petitioner contends that said amount, not being actually received, is not taxable, and, hence, the percentage tax assessed thereon, improperly imposed. **Held,** petitioner's contention is untenable. True, petitioner did not actually receive the amount, but it was part of the price agreed to be paid for its services and to which it was entitled and would have received had it fulfilled its contract. Such amount is legal receipt and subject to tax as such. **Collector** v. **Ilagan,** G. R. No. L-11113, September 30, 1959.

POLITICAL LAW — TAXATION — THE GOVERNMENT CANNOT BE REQUIRED TO PAY INTEREST ON TAX REFUNDS. — Respondents, owners of motor boats operated by them for deep-sea fishing, were granted by the Court of Tax Appeals, reversing the ruling of the Commissioner of Customs, tax refund, pursuant to the provisions of the Philippine Tariff Act of 1909, for drawbacks of the diesel and bunker fuel oil consumed in the propulsion of the vessels. In addition, the tax court imposed the legal rate of interest on the tax refund. The question is whether or not the imposition of the interest on the tax refund by the tax court was proper. **Held,** the rule is settled that the Government cannot be required to pay interest on tax refunds. **Commissioner v. Borres,** G. R. No. L-12867, November 28, 1959.

POLITICAL LAW — TAXATION — UNPAID SALARIES AND BONUSES DO NOT COME WITHIN THE CONTEMPLATION OF "INDEBTEDNESS" AS USED IN SECTION 30(b)(1) OF THE NATIONAL INTERNAL REVENUE CODE AS TO ENTITLE DEDUCTION OF INTERESTS THEREON FOR INCOME TAX RETURNS PURPOSES. — Petitioner corporation, in filing its income tax returns, deducted from the gross income interests on earned but unpaid salaries and bonuses of its officers and employees, relying on the provisions of Section 30(b)(1) of the Tax Code. Respondent Collector of Internal Revenue disallowed the deductions and assessed the corresponding deficiency tax. The provisions of the law involved allows deductions for the amount of interest paid on "indebtedness". The question is whether or not the unpaid salaries and bonuses on which the interests-deductions in question were levied come within the meaning of the term "indebtedness". **Held,** no. It is well-settled that the term "indebtedness" is restricted to its usual import which is the amount which one has contracted to pay for the use of borrowed money. **Kuenzle & Streiff, Inc. v. Collector,** G. R. No. L-12113, October 20, 1959.

POLITICAL LAW — TAXATION — VESSELS ENGAGED IN DEEP-SEA FISHING AND WHICH CARRY THEIR CATCH TO A PORT FOR SALE ARE ENGAGED IN COASTWISE TRADE. — Respondents are owners of eight motor boats propelled by diesel and bunker fuel oil and operated by them for deep-sea fishing in Philippine waters. They requested the Commissioner of Customs for the refund of a certain sum representing the drawbacks of the diesel and bunker fuel oil consumed in the propulsion of the vessels, pursuant to the provisions of Section 21 of the Philippine Tariff Act of 1909. The Commissioner denied the request on the ground that deep-sea fishing does not constitute coastwise trade. On appeal to the Court of Tax Appeals, the Commissioner's ruling was reversed, hence, this petition for review. **Held,** the Court of Tax Appeals, in holding that the vessels in question are engaged in coastwise trade was correct. We do not believe that the term "coastwise trade" is confined to the carriage for hire of passengers and/or merchandise on vessels between ports and places in the Philippines, because while fishing is an industry, if the catch is brought to a port for sale, it is the same as a trade. Refund granted. **Commissioner v. Borres,** G. R. No. L-12867, November 28, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — MISUNDERSTANDING AMONG COUNSELS DOES NOT CONSTITUTE EXCUSABLE NEGLIGENCE TO JUSTIFY THE GRANTING OF RELIEF UNDER RULE 38 OF THE RULES OF COURT. — Petitioner was defendant in an action to recover on a money claim. Because of misunderstanding between counsels, neither defendant nor counsel appeared at the hearing with the result that plaintiff was allowed to present his evidence, and judgment accordingly rendered against defendant. It appeared that defendant wanted to substitute original counsel, but some misunderstanding arose between the latter and the substitute, relative to making appearance at the hearing pending the substitution, with the effect that on the date set for trial the non-appearance aforementioned took place and so with the judgment adverted to. The question is whether relief may be granted under Rule 38 of the Rules of Court on the ground of the aforecited misunderstanding between defendant's counsels. **Held,** the lack of coordination or understanding between the two law offices in the instant case cannot be considered as a legal excuse or falling within the ambit of excusable negligence to justify the granting of relief from the order declaring the client in default or, as here, from a decision entered after presentation of evidence in his absence. — **Wack Wack Golf & Country Club, Inc. v. Court of Appeals,** G. R. No. L-11724, November 23, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — THE CERTIFICATE OF THE REGISTER OF DEEDS THAT NO REAL PROPERTY IS REGISTERED IN THE NAME OF THE APPELLANT, AFFIDAVITS OF THE MUNICIPAL TREASURER, OF THE MUNICIPAL MAYOR, AND OF THE APPELLANT HIMSELF, ALL RECITING THAT THE LATTER IS A PAUPER SUFFICE TO ENTITLE HIM TO APPEAL IN **FORMA PAUPERIS.** — Petition for certiorari and mandamus. Petitioners filed a motion with respondent judge for permission to appeal as paupers from a decision rendered by the latter. Attached to their motion were a certificate of the Register of Deeds that they had no real property in their name and affidavits of the Municipal Treasurer, of the Municipal Mayor, and of themselves, all reciting that they are paupers and unable to pay the expenses for prosecuting their appeal. Denied. Hence, the petition. **Held,** in the absence of a showing to the contrary, the evidence submitted by the petitioners in support of their right to appeal as paupers should have been given weight. The constitutional provision that "free access to the courts shall not be denied to any person by reason of poverty" requires a spirit of liberality in the matter of petitions to sue in **forma pauperis.** Respondent is directed to allow petitioners to appeal as paupers. **Oliveros v. Oliveros,** G. R. No. L-12466, October 20, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — THE FORMAL AND SUBSTANTIAL REQUISITES OF A PLEADING ARE GOVERNED BY THE LAW PREVAILING AT THE TIME OF FILING. — The pleading in question was filed in 1936. The trial court, of the opinion that though styled as a complaint was in reality a petition for mandamus, dismissed it being unverified, as required by Section 3, Rule 67 of the Rules of Court. **Held,**

even granting that the action is in the nature of mandamus, the case was filed 1936 and at that time the procedural law enforced was Act 190 the present Rules of Court taking effect only on July 1, 1940, and it is well-settled that the formal as well as the substantial requisites of a pleading are governed by the law prevailing at the time of its filing. **Dimaisip v. CTA,** G. R. No. L-13000, September 25, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — TRIAL COURTS SHOULD PERMIT TO BE ATTACHED TO THE RECORDS OF THE CASE DOCUMENTS OFFERED BUT REJECTED AS EVIDENCE, SO THAT IN CASE OF APPEAL THE APPELLATE COURT MAY BE ABLE TO EXAMINE THE SAME AND DETERMINE THE PROPRIETY OF THEIR REJECTION. — Desiring to appeal from a judgment in a civil case rendered by respondent, petitioners moved for permission to attach to the records of the case certain documents which were offered but rejected as evidence. Respondent judge denied the motion. **Held,** it has become elementary that trial courts should permit all exhibits presented by parties litigants to be attached to the records, not admitted, so that in case of appeal, the appellate court may be able to examine the same and determine the propriety of their rejection. **Oliveros v. Oliveros,** G.R. No. L-12466, October 20, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE APPELLANT IN GOOD FAITH DEPOSITS LESS THAN THE CORRECT AMOUNT FOR THE DOCKET FEE, BECAUSE THAT IS THE AMOUNT REQUIRED OF HIM BY THE JUSTICE OF THE PEACE, AND HE IS WILLING TO PAY THE BALANCE, HIS APPEAL MUST NOT BE DISMISSED, BUT HE MUST BE ALLOWED TO COMPLETE THE AMOUNT. — In a civil case commenced in the Justice of the Peace Court of Batangas, for the recovery of a certain sum, judgment was rendered in favor of plaintiff. His motion for reconsideration having been denied, defendant took steps to perfect an appeal filing with the inferior court a notice of appeal, an appeal bond and an official receipt issued by the Municipal Treasurer evidencing the deposit of the appellate court docket fee in the sum of ₱12.00, paid upon advice of the JP, which is less by ₱4.00 than the requirement of Section 5 of Rule 130 of the Rules of Court. Meanwhile, the period for appeal lapsed. Whereupon, plaintiff moved to dismiss the appeal on the ground of non-perfection thereof, defendant not having paid the full amount of the docketing fee within the reglementary period. No objection having been entered, the lower court dismissed the appeal. Next day, counsel for defendant learning of the shortage while appearing before the lower court in connection with another case, paid the balance and thereafter filed a motion for reinstatement of the appeal which was granted. **Held,** the rule is settled that in case of appeals from inferior courts to the Courts of First Instance, the amount of the appellate court's docket fee should be deposited in full within the period of fifteen days. If half only of the amount is deposited and the other half is tendered after the expiration of such period, no appeal is deemed perfected. However, where appellant in good faith deposits less than the correct amount for the docket fee because that is the amount required of him by the Clerk of the Justice of the Peace Court, and he is willing to pay the balance, his appeal must not be dismissed, but he must be allowed to complete the amount by him paid. **Gambol v. Barcelona,** G.R. L-14339, September 30, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN INFORMATION FOR ATTEMPTED RAPE WITH PHYSICAL INJURIES, BASED ON A COMPLAINT SIGNED BY THE OFFENDED PARTY, NEED NOT CARRY THE SIGNATURE OF SUCH PARTY TO CONFER JURISDICTION OVER THE OFFENSE. — Defendant-appellant was convicted of the crime of attempted rape with physical injuries on an information filed by the fiscal. Upon the ground that said information did not bear the signature of the "offended party, or her parents, grandparents, or guardian," as required for crimes against chastity (par. 3 Article 344, RPC), defendant-appellant questioned the jurisdiction of the trial court over the offense. It appeared, however, that the information allegedly defective was based on a complaint signed by the offended party and filed with the justice of the peace. **Held,** since Article 344 of the Revised Penal Code requires the filing by the "offended party, or her parents, etc." of the complaint, and not of the information, it is apparent that appellant's sole ground for attacking the jurisdiction of the trial court, that is, the absence of the signature on the information of either of the aforementioned persons, does not purport to be a true and valid ground. **People v. Cerena,** G.R. No. L-9648, November 28, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — BY HIS PLEA OF GUILTY, ACCUSED ADMITS ALL MATERIAL ALLEGATIONS IN THE INFORMATION. — Malversation. Upon arraignment, accused pleaded not guilty, later changed to guilty, and thereupon sentenced accordingly, attending circumstances all considered. Alleging as error the trial court's failure to recommend executive clemency on the ground allegedly of lack of malice in the commission of the offense, accused appealed. **Held, appeal** without merit. When the appellant pleaded guilty, he thereby admitted not only his guilt, but also all the material facts alleged in the information (People v. Llagas, G.R. No. L-5015, May 31, 1957; People v. Lambino, G.R. No. L-10875, April 28, 1958), namely, that he did "wilfully, unlawfully, feloniously, and with grave abuse of confidence, misappropriate, misapply, embezzle, and convert to his personal use and benefit" the missing funds, as alleged therein, thus clearly indicating malice or evilness of intent on his part. In penal statutes, "wilfully" means with evil intent, or with legal malice, or with a bad purpose (Bouvier's Law Dict., 3rd rev. 3454-3455). Appellant's plea of guilty carried with it the admission that the wilful acts charged were done with malice. **People v. Salazar,** G.R. No. L-13371, September 24, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — DISMISSAL OF A CRIMINAL CASE ON THE GROUND OF VARIANCE BETWEEN THE ALLEGATIONS IN THE INFORMATION AND THE EVIDENCE AMOUNTS TO AN ACQUITTAL. — Defendant-appellee here was originally charged

with oral defamation in the Justice of the Peace Court. Subsequently, the complaint was amended to serious oral defamation, and the inferior court forwarded the case to the Court of First Instance. After the prosecution had rested its case, defendant demurred on the ground of insufficiency of evidence. The trial court finding that the evidence adduced by the prosecution failed to prove the crime charged but established the crime of intriguing against honor, which is within the exclusive jurisdiction of the Justice of the Peace Court, granted the demurrer and dismissed the case. The fiscal appealed. **Held,** appeal denied. The dismissal of a criminal case on the ground of variance between the allegations in the information and the evidence amounts to an acquittal. — **People v. Bao,** G.R. No. L-12102, September 29, 1959.

REMEDIAL LAW—CRIMINAL PROCEDURE—DISMISSAL OF A CRIMINAL CASE, GROUNDED ON FAILURE OF THE FACTS ALLEGED TO CONSTITUTE THE CRIME CHARGED AND INSUFFICIENCY OF EVIDENCE, CONSTITUTES ACQUITTAL BARRING ANOTHER PROSECUTION, NOT ONLY FOR THE OFFENSE CHARGED, BUT ALSO ANY OFFENSE WHICH NECESSARILY INCLUDES IT OR IS NECESSARILY INCLUDED THEREIN.—Same facts as in the foregoing digest. **Held,** while the contention appears meritorious that the crime of intriguing against honor is necessarily included in the crime of serious oral defamation charged in the information and, therefore, the accused could be validly convicted of that crime under the same information, the case was dismissed after the prosecution had rested its case on the ground that the facts alleged in the information did not constitute the crime charged and that the evidence was insufficient to convict. This dismissal likewise amounts to an acquittal from which the prosecution cannot appeal without doing violence to the constitutional provision on double jeopardy. It goes without saying that such dismissal constitutes a bar to another prosecution not only for the offense charged but also for any offense which necessarily includes or is necessarily included therein. **People v. Bao,** G. R. No. L-12102, September 29, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — MERE FAILURE TO ALLEGE INTENTION TO FISH WITH EXPLOSIVES IN AN INFORMATION FOR ILLEGAL FISHING WITH EXPLOSIVES IS NOT FATAL AS TO PRECLUDE CONVICTION. — Appellant was prosecuted for violation of Act No. 4003, as amended by Com. Act No. 471 and further amended by Rep. Act No. 462, in that he exploded one stick of dynamite without permit, killing a large fish. On his spontaneous plea of guilty, he was accordingly sentenced. Inspite of his plea, however, he appealed contending that he may not be convicted of illegal fishing witn dynamite, intention to fish with explosives not being alleged in the information. **Held,** the contention is untenable. That he exploded the dynamite in order to fish, there can be nc doubt. To assume that he exploded the dynamite in the water just for fun, and that said supposedly innocent pastime unexpectedly resulted in the killing of a large fish, would involve an unreasonable presumption, as well as an extraordinary coincidence. — **People v. Cubelo,** G. R. No. L-13678, November 20, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — ULTIMATE PRODUCTION OF THE ACCUSED AFTER THE ORDER OF CONFISCATION AND FORFEITURE OF THE BOND DOES NOT NULLIFY SAID ORDER, BUT MERELY MITIGATES THE LIABILITY OF THE BONDSMAN. — Bail. For non-appearance of the accused on the date set for the reading of his sentence, the court ordered confiscation of his bond posted by appellant surety company. After several extensions granted for the production of the accused, during which time accused was never produced having gone into hiding, the order of forfeiture became final. Thereafter the bondsman finally apprehended the accused and delivered him to the police, advising the court thereof. Upon this ground he now claims relief from liability on the bond. **Held,** Complete discharge of liability upon the bond cannot be granted. The accused was finally produced and surrendered to the court, but that was after the order of confiscation and forfeiture of the bond had become final. Courts are without authority to discharge sureties entirely after the lapse of the period provided in the Rules of Court (Sec. 15, Rule 115) within which to produce the body of the accused and without him being produced. They could only mitigate their liability (People v. Calabon, 53 Phil. 945; People v. Alamada, G. R. No. L-2155, May 23, 1951). **People v. Bustamante,** G. R. No. L-13665, September 24, 1959.

REMEDIAL LAW — EVIDENCE — EVIDENCE ADDUCED IN ONE CASE MAY BE CONSIDERED BY THE COURT IN ANOTHER CASE BEFORE IT, WITHOUT SAID EVIDENCE BEING PRESENTED AT THE HEARING OF THE LATTER, WHERE REFERENCE TO THE DECISION OF THE COURT IN THE PREVIOUS CASE IS MADE BY THE PARTIES. — In deciding a tenancy case, respondent judge considered the evidence adduced in another case, without said evidence being presented at the hearing of the present case before him nor even disclosed to the parties. Both parties, however, in their pleadings and testimony, made reference to the decision of the court in the previous case; petitioner's counsel, before closing his evidence, even requested the lower court to take judicial notice of said decision. Petitioner assails the legality of respondent's act. **Held,** both parties made reference to the decision of the court **a quo** in the previous case; petitioner's counsel even requested the lower court to take judicial notice of said decision. It was proper on the part of the lower court, therefore, to have considered the evidence in question. **Paz v. Santos,** G. R. No. L-12047, September 30, 1959.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — ATTORNEY'S FEES ARE OUTSIDE THE CONTEMPLATION OF THE DAMAGES REFERRED TO IN SECTION 8, RULE 72 OF THE RULES OF COURT. — In an action for ejectment, defendants were ordered to vacate the property and to pay the rentals in arrears together with attorney's fees. Defendants appealed to the Court of First Instance. Besides putting up the required appeal bond, defendants deposited with the Clerk of Court the aggregate amount of the back rentals covered by the judgment in place of a supersedeas bond. Alleging that the amount deposited could not have taken the place of a supersedeas bond, since it did not include the attorney's

fees adjudged, plaintiff moved for immediate execution of the judgment. Granted. **Held,** a supersedeas bond is unnecessary when defendant deposits in court the amount of all back rentals adjudged. The question now is for what items does a supersedeas bond stand under Section 8 of Rule 72? Apparently, for (a) rents, (b) damages and (c) costs. What damages? Those that refer to the reasonable compensation for the use and occupation of the property to which plaintiff is entitled which, generally, is measured by the fair rental value of the property. It cannot refer to other kinds of damages foreign to the enjoyment or material possession of the property. Consequently, the attorney's fees in quesion cannot be considered as damages. The trial court erred in ordering immediate execution of judgment. **Castueras v. Hon. Judge Bayona,** G. R. No. L-13657, October 16, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — DISMISSAL OF A PETITION FOR PROBATE AT THE INSTANCE OF THE PROPONENT DOES NOT BAR A SUBSEQUENT PETITION BY HIM, NOTWITHSTANDING AN ORDER OF THE PROBATE COURT TERMINATING, CLOSING AND ARCHIVING THE PROCEEDINGS. — Petitioner-appellant instituted special proceedings for the probate of the will of her deceased spouse. Subsequently, after the publication of the notice of hearing and service of copies thereof to all concerned, petitioner filed a motion stating that the instituted heirs had agreed to partition the estate in accordance with the provisions of the will, and praying that an order be issued terminating and closing the proceedings. Upon submission of a copy of the deed of extrajudicial partition to the court, the motion was granted and the proceedings were "terminated, closed and archived" by order of the court. Later, petitioner filed another petition for the probate of the same will. Oppositors-appellees moved for dismissal on the ground that the petition amounted to reopening the proceedings already terminated, closed and archived. Applying Section 1, Rule 30 in relation to Section 2, Rule 73 of the Rules of Court, the Supreme Court **Held,** the order of dismissal issued in the initial proceedings was without prejudice, the contrary not having been stated in the order nor in the motion that prompted its issuance. **Ventura v. Ventura,** G. R. No. L-11609, September 24, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — WHERE DECEDENT LEAVES A WILL, THERE CAN BE NO EXTRAJUDICIAL PARTITION OF HIS ESTATE WITHOUT THE WILL BEING FIRST PROBATED. — Appellant herein filed a petition for the probate of the will of her deceased husband. Subsequently, she moved to dismiss the petition on the ground that the instituted heirs had agreed to partition the estate among themselves in accordance with the dispositions of the will. Granted. Thereafter, petitioner filed another petition for the probate of the same will. Oppositors moved for dismissal on the ground that the will had already been carried out in the extrajudicial partition. Citing the earlier case of Guevara v. Guevara, 74 Phil. 479, the high court **Held,** if the decedent left a will and no debts and the heirs and legatees desire to make an extrajudicial partition of the estate, they must first present that will to the court for probate. The law enjoins the probate of the will and public policy requires it because unless the will is probated the right of a person to dispose of his property by will may be rendered nugatory. **Ventura v. Ventura,** G. R No. L-11609, September 24, 1959.

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COMMERCIAL LAW — CORPORATION LAW — A CORPORATION FORMED BY AND CONSISTING OF THE MEMBERS OF A PARTNERSHIP WHICH TAKES A CONVEYANCE OR ASSIGNMENT OF ALL THE ASSETS OF THE PARTNERSHIP FOR THE PURPOSE OF CONTINUING ITS BUSINESS IS DEEMED TO HAVE ASSUMED THE OBLIGATIONS OF THE PARTNERSHIP. — Plaintiff commenced action to recover certain sums from the partnership Guanzon Mine Development Company, Ltd. and its individual partners. During the trial the complaint was amended so as to have the partnership aforestated substituted by Guanzon Mine Development Company, Inc., formed and organized by the members of the partnership and which took over all the assets thereof. Mining equipments previously used by the partners were also transferred to the corporation. It was likewise shown that after the assignment of all its assets to the corporation the partnership virtually ceased to exist and, in the words of the managing partner himself, "we are operating under a corporation", that is, the Guanzon Lime Development Company, Inc. However, the defense was put up that the corporation was entirely new, distinct and separate from the partnership and that since the deed of assignment of the latter's assets did not in any way provide for the corporation assuming the liability of the partnership, defendant corporation could not be held liable on the recovery. **Held,** upon the above facts we are of the opinion and so hold that the corporation must be deemed to have assumed the obligations of the partnership. **Valdeavella v. Guanzon,** CA-GR No. 18932-R, July 2, 1958.

CRIMINAL LAW — LIBEL — REPUBLICATION OF LIBELOUS MATTER, ALTHOUGH MERELY REPETITIOUS WITHOUT ANY INTENTION TO EXTEND OR ENLARGE UPON THE CIRCULATION OF THE DEFAMATION, IS PUNISHABLE, THE PRINCIPLE BEING THAT A PERSON WHO REPEATS SLANDER IS PRESUMED TO INDORSE IT. — Defendants Bernie Salumbides, editor and publisher of a tabloid weekly, and Lilia Rianzares, staff member thereof, were charged with libel for a story published in the tabloid entitled "Celia Flor Figures in U.S.A. Scandal." The story was substantially based upon another previously published in an American magazine concerning a Hollywood party where Celia Flor, the complainant, was said to have posed with multi-millionaire Winthrop Rockefeller "in a candid unprinted pose". Spicy parts of the local edition read: "Winnie, according to the magazine, threw up the shindig because he is one multimillionaire who has a special weakness for the female flesh spots. He is said to be keeping a special collection of pornographic pictures of beautiful women with whom he has posed. And, in all likelihood, the picture of Celia Flor is one of them. x x x The scandal magazine said 'Bobo' (former wife of Winthrop) knew of Winnie's affairs with women all over the country, including movie stars, society belles, international beauties, etc. He has so become well-known (we mean his good-time adventures) that the magazine said that whenever he was with a woman, he was sure to give her the usual Winthrop treatment. Sex maniacs know what that means. So, now, we ask: did Celia Flor fall prey to this Winthrop treatment?" Defendants put up in defense the fact that the story was mainly based on another already published. Held, that the defamatory article was a republication cannot exculpate defendants. One is liable for the