Code, as amended by Republic Acts Nos. 673 and 1282, with respect their allowance for disability and hospitalization; and Republic Act No. 1880 as implemented by Executive Order No. 251, series of 1957, with respect their hours of work. These privileges, no doubt, should be extended to the regular officials and employees of Social Welfare Administration.

(SGD.) JESUS G. BARRERA
Secretary of Justice

CASE DIGEST

SUPREME COURT

CIVIL LAW — COMMON CARRIERS — THE CARRIER ALTHOUGH NOT AN INSURER OF THE SAFETY OF PASSENGERS, IS NEVERTHELESS ANSWERABLE FOR THE FLAWS OR DEFECTS IN THE EQUIPMENT HE IS USING SO LONG AS SUCH DEFECTS ARE, WITH THE EXERCISE OF EXTRAORDINARY DILIGENCE, DISCOVERABLE.—Severina Garces was drowned and her son Precillano Necesito was injured as a result of the fall into a river of truck No. 199 of the Philippine Rabbit, in which they were riding. It was found out that the cause of the accident was a defective steering knuckle of the truck, which steering knuckle was subjected to a regular 30-day visual inspection by the bus company. The heirs of Severina Garces and Precillano Necesito brought these actions **ex contractu** against the Philippine Rabbit. The lower court dismissed both actions on the ground that the accident was exclusively due to fortuitous event. The first question presented was whether or not the carrier was liable for the manufacturing defect of the steering knuckle. **Held,** the carrier, while not an insurer of the safety of his passengers, should nevertheless be held to answer for the flaws of his equipment, if such flaws were at all discoverable. NECESITO *v.* PARAS, G.R. No. L-10605-6, June 30, 1958.

CIVIL LAW — COMMON CARRIERS — IF THE INJURY TO THE PASSENGER HAS BEEN PROXIMATELY CAUSED BY HIS OWN NEGLIGENCE, THE CARRIER CANNOT BE HELD LIABLE FOR DAMAGES. — For a period of 6-days, upon instruction of his chief, the deceased, an inspector of the Bureau of Forestry in Davao, was on defendant's lumber concession in Cotabato, classifying the logs which were ready to be exported and loaded on ship. But, he contracted malaria and for that reason he desired to return immediately to Davao. Since there was no bus available for Davao, he requested defendant if the latter could take him in his pick-up. Defendant agreed; others tagged along. No fee was charged for the service. It was their understanding that at barrio Samoay, they would alight and transfer to a bus that regularly makes the trip to Davao, but unfortunately none was available. And so with the exception of one, the same passengers including the deceased, again requested defendant to drive them to Davao. Defendant accommodated them and upon reaching Km. 96, barrio Catidtuan, deceased accidentally fell, suffering fatal injuries. So this action for damages was brought against the defendant. The lower court found for the plaintiffs. Hence, the appeal. **Held,** the accident was due to lack of care of the deceased considering that the pick-up was open and he was then in a crouching position. Article 1761 of the New Civil Code provides that "a passenger must observe the diligence of a good father of a family to avoid injury to himself" which means that if the injury to the passenger has been proximately caused by his own neg-

ligence, the carrier cannot be held liable. LARA *v.* VALENCIA, G.R. No. L-9907, June 30, 1958.

CIVIL LAW — CONTRACTS — NOVATION IS EFFECTED WHEN ANOTHER PERSON IS SUBSTITUTED IN PLACE OF THE DEBTOR OR IS SUBROGATED IN THE RIGHTS OF THE CREDITOR OR WHEN THERE IS A CHANGE IN THE OBJECT OF THE OBLIGATION OR AN ALTERATION OR MODIFICATION OF ITS PRINCIPAL CONDITIONS. — On June 1, 1951, defendant Mallari obtained a loan from the plaintiff bank in the sum of P2,000 for which he executed 2 promissory notes, one dated June 1, 1951 for P1,200 and another dated June 26, 1951 for P800 payable on or before April 30, 1952. A chattel mortgage on standing crops was constituted by the defendant to secure the obligation and the filing of a bond of P2,000 was further required, subscribed by the First National Surety & Assurance Co., Inc. When the defendant failed to settle his obligation upon the maturity of the notes, plaintiff herein filed a complaint before the Justice of the Peace of Tarlac for the payment of the debt together with accrued interest of 6% per anum. A writ of attachment was issued on several sacks of palay belonging to the defendant. The defendant filed an answer denying the material averments of the complaint. On July 19, 1954, upon motion of the plaintiff, the writ of attachment was dissolved and on June 4, 1955, the Justice of the Peace Court, having found out that the Plaintiff accepted an offer of a certain Conrado Guanzon, allegedly the employer of the defendant, to pay the obligation of the latter on certain definite dates stipulated in the offer, held that such agreement constituted a novation of the original contract and dismissed the complaint against the herein defendant. The decision of the Justice of the Peace was affirmed by the CFI of Tarlac on appeal. **Held,** novation is effected when another person is substituted in place of the debtor or is subrogated in the rights of the creditor or when there is a change in the object of the obligation or an alteration or modification of its principal conditions. The acceptance by the bank of the offer of Guanzon resulted not only in the substitution of debtors but also an alteration or modification of the terms and conditions of the original contract. PHIL. NATIONAL BANK *v.* HERMOGENES, G.R. No. L-11862, Aug. 29, 1958.

CIVIL LAW — DAMAGES — WHERE THERE IS PARTIAL OR IRREGULAR PERFORMANCE IN A CONTRACT PROVIDING FOR LIQUIDATED DAMAGES, THE COURT MAY MITIGATE THE SUM STIPULATED THEREIN SINCE IT IS TO BE PRESUMED THAT THE PARTIES ONLY CONTEMPLATED A TOTAL BREACH OF THE CONTRACT. — On May 23, 1953, the plaintiff and the defendant entered into a "dealership agreement" whereby the latter was to sell and deliver to the former 500 TV sets in two shipments. The plaintiff agreed to deposit one-third of the total price of the first shipment, minus a discount of 30%, upon signing the contract; one-third of the total price of the second shipment, minus 30%, immediately after its receipt of the first shipment; and the balance of the total price of each shipment (minus the discounts) immediately after making the performance test of each set in each shipment. The defendant agreed to put up a surety bond in an amount sufficient to cover the advance payment to be made by the plaintiff, and also that, should the defendant fail to comply with the terms of the agreement within the period specified, it would return to the plaintiff whatever amount had been deposited by the latter, with interest at the rate of 6% per annum, plus damages equivalent to 20% of the total cost of 250 TV sets. The first shipment of 250 TV sets was totally delivered and totally paid for. No delivery was made on the second shipment, although an advance payment had been made. The plaintiff filed suit against the defendant on January 30, 1954. Before the trial, the defendant entered into an agreement with the plaintiff whereby the former would deliver 66 TV sets to satisfy his indebtedness. Only 13 TV sets were delivered. In view of such failure an amended and supplemental complaint was filed by the plaintiff on April 2, 1955. The trial court rendered judgment in favor of the plaintiff. The defendant appealed, contending among other things, that the liquidated damages should be reduced in view of a partial performance having been made. **Held,** where there is partial or irregular performance in a contract providing for liquidated damages, the court may mitigate the sum stipulated therein since it is presumed that the parties only contemplated a total breach of the contract. It is immaterial whether the sum stipulated is considered as liquidated damages or penalty. JOE'S RADIO & ELECTRICAL SUPPLY *v.* ALTO ELECTRONICS CORPORATION, G.R. No. L-12376, August 22, 1958.

CIVIL LAW — DAMAGES — THE DOCTRINE OF LAST CLEAR CHANCE DOES NOT APPLY WHERE THE PARTY CHARGED IS REQUIRED TO ACT INSTANTANEOUSLY, AND IF THE INJURY CANNOT BE AVOIDED BY THE APPLICATION OF ALL MEANS AT HAND AFTER THE PERIL IS OR SHOULD HAVE BEEN DISCOVERED. — The plaintiffs' son, a boy scout, went swimming with his two brothers at the Balara Filters. Informing his brothers that he would get a bottle of soft drink, the two brothers left him at one of the pools. Later, a bather informed one of the lifeguards that somebody was swimming under water for quite a long time. The lifeguard immediately jumped into the pool and retrived the apparently lifeless body of the plaintiffs' son. Immediately he applied manual artificial respiration. A male nurse was called to assist. The boy's body was brought to the clinic. On the way, artificial respiration was continually applied. At the clinic two resuscitators were used. Then two oxygen tanks were exhausted in trying to save the life of the boy. The efforts were in vain. The boy died. The parents sued the defendant for damages alleging negligence on the latter's part. Negligence was not established during the trial. The case was dismissed. The plaintiffs appealed, contending that although there was no negligence on the part of the defendant, still the latter could be held liable under the doctrine of last clear chance for the reason that, having the last opportunity to save the victim, it failed to do so. **Held,** the doctrine of last clear chance does not apply where the party charged is required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered. ONG *v.* METROPOLITAN WATER DISTRICT, G.R. No. L-7664, August 29, 1958.

CIVIL LAW — DAMAGES — WHERE A BROKER, WHO HAD ACTUALLY PARTICIPATED IN THE NEGOTIATION OF A SALE OF LAND, BROUGHT AN ACTION FOR COLLECTION OF HIS BROKERAGE COMMISSION, BELIEVING HIMSELF IN GOOD FAITH TO BE ENTITLED THERETO, WHICH ACTION WAS DISMISSED AS HE WAS NOT THE EFFICIENT AND PROCURING CAUSE OF THE SALE, SUCH ACTION IS, HOWEVER, NOT

TOTALLY MALICIOUS AND UNFOUNDED, AND NO DAMAGES, BY WAY OF COUNTERCLAIM, FOR MALICIOUS SUIT COULD BE GRANTED THEREON. — Defendant Worcester, desiring to have his real estate sold, placed the sale of the same in the hands of several brokers on a "free for all basis", by which it was meant that the broker who could close the deal and sell the property would receive the whole commission of 5% of the price. Jalbuena and Lorenzana were among the brokers. Lorenzana was able to interest the Roman Catholic Archbishop of Manila to study the offer and inspect the property and notice thereof was duly given to the owner of the land. However, Jalbuena was the broker who was able to get a definite offer from His Grace, resulting in the sale of the property. Jalbuena got the 5% commission. Lorenzana demanded from Worcester his brokerage commission, claiming credit for having negotiated and brought forth the sale. The demand having been refused, the present action was instituted. Worcester contested the suit, characterizing it as malicious and unjustified, and set up a counterclaim for actual and moral damages. CFI rendered judgment for Worcester. On appeal, the Court of Appeals upheld the dismissal but revoked the award of damages. Worcester appealed to the Supreme Court. **Held,** the demand by the plaintiff, being done in good faith, is neither malicious nor unjustified. Hence, no damages may be awarded for malicious prosecution. LORENZANA *v.* WORCESTER, G.R. No. L-9435, July 31, 1958.

CIVIL LAW — OBLIGATIONS — PAYMENT MADE IN CHECK OR DRAFT HAS THE EFFECT OF PAYMENT ONLY WHEN ACTUALLY CASHED, OR WHEN THROUGH THE FAULT OF THE CREDITOR, IT IS IMPAIRED. — On Aug. 31, 1943, plaintiffs entered into a contract with defendant whereby the former acknowledged having received a loan of ₱101,000 from the latter, payable under the terms stipulated therein. And to guarantee the payment of said loan, plaintiffs constituted a mortgage on 4 parcels of land belonging to them, which lands were covered by certificates of title. Plaintiff Eduardo Hidalgo on Dec. 6, 1944 sent a letter to Jose Tuason, president of defendant corporation, enclosing a check for ₱101,673.50 which was refused on the ground that the mode of payment was contrary to their agreement. On Dec. 29, 1944, plaintiff Felipe Hidalgo in turn sent a letter to Jose Tuason, enclosing a check for the same amount which letter was received by Nicasio Tuason, brother of Jose. From this date on, apparently no further action was taken and when liberation came, plaintiffs instituted the presented action praying that defendant be ordered to execute a document releasing them from their obligation and cancelling the mortgage executed by them to secure its payment. The point at issue was whether the tender of payment by plaintiffs had the effect of payment in contemplation of law so that they would be released from their obligation. **Held,** with regard to the draft tendered on Dec. 9, 1944, which was rejected by Jose Tuason, president of defendant corporation, the same did not ripen into payment because of such rejection. The remedy of plaintiff was to make a consignment thereof as required by law and give notice thereof to defendant. Such was not done and so the tender of payment became ineffective. With regard to the draft tendered on Dec. 29, 1944, such tender cannot also have the effect of payment for under the law payment made in check or draft has the effect of payment **only when actually cashed.** There is no showing that the draft has been cashed. Nor is there showing that it was impaired thru the fault of defendant. HIDALGO *v.* HEIRS OF D. TUASON, INC., G.R. No. L-10871, June 27, 1958.

CIVIL LAW — PRESCRIPTION — THE 4-YEAR PRESCRIPTIVE PERIOD FOR A QUASI-DELICT SHALL BE COMPUTED FROM THE DAY DAMAGE IS DONE. — On July 25, 1951, a truck owned and operated by Sarabia and driven by Celeste, fell into a creek after colliding with another truck of the Mary Lim Line. As a result, Basco, one of the passengers of Sarabia's truck, died. And so, on April 19, 1955, a complaint was filed against Sarabia and Celeste by the deceased's widow and heirs for compensation and damages. On July 11, 1955, defendants filed a third-party complaint against the driver of the Mary Lim truck and one Quintin Lim as owner and operator. However, this was amended on Dec. 20, 1955, stating that the owner was Mary Lim. On Jan. 24, 1956, Mary Lim filed a motion to dismiss on the ground that the action, being a quasi-delict, has already prescribed, which motion was sustained. Hence, this appeal. **Held,** there being no provision with respect to an action based on a quasi-delict as to when the four-year period shall commence to run, the provision of Art. 1150 shall apply and so the period of 4 years is to be computed from the day the damage is caused. In this case more than 4 years has elapsed. PAULAN *v.* SARABIA, G.R. No. L-10542, July 31, 1958.

CIVIL LAW — PROPERTY — POSSESSION OF CHATTELS IN GOOD FAITH IS EQUIVALENT TO TITLE. — Soto purchased from Youngstown Hardware, owned by Ong Shu, 700 corrugated galvanized iron sheets and 249 pieces of round iron bars for ₱6,137.70, for which he issued a check which was dishonored by the bank against which it was drawn. Of the 700 iron sheets, 100 were sold to petitioner Chua Hai. When the case for estafa was filed against Soto, Ong Shu, as owner of Youngstown Hardware, moved for the return of the 700 iron sheets deposited with the MPD. Petitioner herein opposed the motion with respect to his 100 sheets on the ground, among others, that the return constitutes deprivation of his property without due process of law. Notwithstanding the opposition, the court ordered the return. After the denial of a motion for reconsideration, Chua Hai brought the present petition for certiorari. **Held,** petition is meritorious since petitioner's good faith is not questioned. To deprive the possessor in good faith, even temporarily and provisionally, of the chattels possessed, violates the rule of Art. 559 of the Civil Code, which declares that the possession of chattels in good faith is **equivalent to title.** CHUA HAI *v.* KAPUNAN, G.R. No. L-11108, June 30, 1958.

CIVIL LAW — SUCCESSION — THE EXECUTION AND THE CONTENTS OF A LOST OR DESTROYED HOLOGRAPHIC WILL MAY NOT BE PROVED BY THE BARE TESTIMONY OF WITNESSES WHO HAVE SEEN AND/OR READ SUCH WILL. — On November 20, 1951, Felicidad Esguerra Alto Yap died of heart failure in the University of Santo Tomas Hospital, leaving properties in Pulilan, Bulacan and in the City of Manila. On March 17, 1952, Fausto E. Gan filed before the CFI of Manila a petition for the probate of a holographic will allegedly executed by the deceased. The surviving husband of the deceased opposed the herein petition and asserted that the deceased had not left any will, nor executed any testament during her lifetime. The will itself was not presented by the petitioner who instead tried to establish its contents by statements of witnesses alleged to have seen and read the holographic will. The trial court, after hearing and considering the evidences presented by the

parties, refused to probate the alleged holographic will. A motion for reconsideration was filed by the herein petitioner but was denied. Hence this appeal. **Held,** the trial court committed no error in its refusal to probate the will since the contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen and/or read it, the only guarantee of authenticity being the handwriting itself. It may be proved perhaps by a photographic or photostatic copy, or even a mimeographed or carbon copy, or by any other similar means, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court. GAN *v.* YAP, G.R. No. L-12190, Aug. 30, 1958.

COMMERCIAL LAW — CORPORATIONS — "IN PARI DELICTO" APPLIES ONLY WHEN THERE IS A VIOLATION OF THE PROVISION OF LAW, BUT NOT WHEN THERE IS A BREACH MERELY OF A STIPULATION IN A DEED OF TRUST. — Because of the prohibition agreed in the deed of trust executed by the appellee, De la Rama Steamship Co., and the National Development Co., to the effect that no dividends could be declared by the appellee during the period from Feb. 26, 1940 to Sept. 23, 1949, advances made to stockholders would constitute a violation of sec. 12 of the deed of trust. So as to circumvent this prohibition, it was made to appear that such advances were made to the Hijos de I. de la Rama and Co., Inc. and the same debited against the latter in the books of the appellee, and in the books of the Hijos de I. de la Rama and Co., the said advances were debited against the individual stockholders, the stockholders of both corporations being the same. The question now is whether the **in pari delicto** principle can be applied to the instant case or not. **Held,** the **"in pari delicto"** principle is no applicable in the instant case because the appellee corporation and the Hijos de I. de la Rama, Inc., have not committed any violation of a provision of law; but the appellee corporation violated a provision in a deed of trust, and such violation gives to the National Development Co., a cause of action against the former. VDA. DE PIROVANO *v.* THE DE LA RAMA STEAMSHIP CO., INC., G.R. No. L-6817, July 31, 1958.

COMMERCIAL LAW — INSURANCE — WHERE A GOVERNMENT EMPLOYEE INSURED IN THE GOVERNMENT SERVICE INSURANCE SYSTEM HAS FULFILLED HIS PART OF THE INSURANCE CONTRACT BY REGULARLY AND FULLY PAYING HIS SHARE OF THE PREMIUM, UPON HIS DEATH, HIS HEIRS AND BENEFICIARIES SHOULD BE PAID THE FULL AMOUNT OF THE POLICY, REGARDLESS OF ANY DEFAULT ON THE PART OF ANY GOVERNMENT OFFICE OR CORPORATION TO PAY ITS SHARE OF THE PREMIUM TO THE SYSTEM. — On July 1, 1951, Dalmacio Maralag was insured with the Government Service Insurance System for the sum of P4,275.00, with the plaintiffs as the beneficiaries. The insured had paid all the premium due under the insurance contract and the latter was in force when he died on January 27, 1953. On October 2, 1953, the GSIS paid to the plaintiffs only P2,137.50. Despite formal demand for the unpaid balance, the defendant refused to pay. Thus an action was brought to recover the unpaid balance. The defendant answered praying for the dismissal of the action on the ground that the Manila Railroad Company, the employer of the deceased, had not paid its share of the insurance premium, and that under R.A. No. 728, a readjustment should be made as to the proceeds of

the insurance. The lower court rendered judgment in favor of the plaintiff. Hence this appeal. **Held,** in the operation of the Government Service Insurance System, where a government employee insured in said System has fulfilled his part of the insurance contract by regularly and fully paying his share of the premium, upon his death, his heirs and beneficiaries should be paid the full amount of the policy, regardless of any default or failure of any government office, entity or corporation to pay its share of the premium to the System, on behalf of the insured employee, as provided by law. MARALAG *v.* GOVERNMENT SERVICE INSURANCE SYSTEM, G.R. No. L-10791, August 18, 1958.

COMMERCIAL LAW — INSURANCE ACT — SECTION 184 (b) PROVIDES THAT AS REGARDS RE-INSTATED LIFE INSURANCE CONTRACTS, THE TWO-YEAR PERIOD REQUIRED FOR THE OPERATION OF THE "INCONTESTABILITY CLAUSE" SHALL, WITH RESPECT TO THE NEW REQUIREMENTS, BE COUNTED FROM DATE OF RE-INSTATEMENT. — On July 12, 1947, the U.S. Life Insurance Co., issued a 20-year endowment policy in the amount of P3,000.00 on the joint lives of the spouses Soliman, each of said parties being therein named the beneficiary of the other and the insured agreed to pay the semi-annual premium of P180.20. On March 24, 1949 said spouses were notified by the Insurance Company that the premium due on January 12, 1949 was still unpaid notwithstanding the fact that the 31-day grace period for the payment thereof had already expired and they were furnished at the same time with long form certificates in duplicate for the reinstatement of their insurance upon satisfactory proof of insurability together with the remittance of the amount due with interest. On April 12, 1949, the insured spouses submitted the long form health certificates and at the same time paid the amount of P186.02, the premium due up to said date, including interest. On Jan. 7, 1950, the wife died of acute dilation of the heart and so the petitioner demanded payment on the policy. The Insurance Company refused to pay and instead filed a complaint for rescission of the reinstated policy on the ground that after due investigation it has discovered that in the application for the reinstatement of the policy, the wife failed to disclose, as was her obligation, that she had been suffering from bronchial asthma for at least three years before the signing of the application. The petitioner contended however, that the reinstated policy could not be rescinded considering the fact that the same was originally issued more than two years before the death of petitioner's wife and therefore, under section 184 (b) of the Insurance Act, the policy is incontestable. **Held,** the rule as to reinstatement is that with regard to the new requirements, the two-year period required for incontestability will run from the date of reinstatement, upon the theory that the insurance company should be given reasonable time to investigate and determine the truth of the new facts that may arise after the lapse of the policy. SOLIMAN *v.* U.S. LIFE INSURANCE CO., G.R. No. L-11975, June 27, 1958.

COMMERCIAL LAW—NEGOTIABLE INSTRUMENTS—THE STIPULATION THAT THE LIABILITY OF THE SURETY CO. WOULD EXPIRE AT A CERTAIN DATE, WHICH DATE COINCIDES WITH THE DATE OF MATURITY OF THE PRINCIPAL OBLIGATION, CANNOT BE GIVEN ANY EFFECT BECAUSE IT BECOMES UNFAIR AND UNREASONABLE FOR THE REASON THAT IT PRACTICALLY NULLIFIES THE NATURE OF THE UNDERTAKING AS-

SUMED. — On Nov. 10, 1951, de Leon executed in favor of Augusto Ongsiako a promissory note for P1,200 payable 90 days after date with 1% interest per month. On the same date, a surety bond was executed by de Leon as principal and the World Wide Insurance and Surety Co., Inc., as surety whereby they bound themselves to pay said amount jointly and severally to Ongsiako. One of the conditions of the bond was that the liability of the World Wide Insurance Co., would expire on Feb. 10, 1952, the same date the obligation of de Leon matures. As the obligation was not paid on its maturity either by de Leon or by the surety, nothwithstanding the demands made on them, Ongsiako brought this action on March 6, 1952 in the Municipal Court to recover the same from both the principal and the surety. Judgment having been rendered for the plaintiff, both appealed to the CFI which declared de Leon in default for failure to answer. After hearing, CFI found also for the plaintiff. The surety appealed from the judgment putting up the additional defense that its liability under the bond had already expired because of the condition that its liability shall expire on Feb. 10, 1952. **Held,** this stipulation that liability expires on Feb. 10, 1952, the same date when the obligation of de Leon matures, is unfair and unreasonable, for it practically nullifies the nature of the undertaking assumed by the appellant. The terms of the bond should be given a reasonable interpretation. But notice must be given to the surety within reasonable time to enable it to take steps to protect its interest. This is what was done by the appellee in the present case. Judgment affirmed. ONGSIAKO *v.* WORLD WIDE INSURANCE AND SURETY, G.R. No. L-12077. June 27, 1958.

COMMERCIAL LAW — PRIVATE CORPORATIONS — UNDER A CERTIFICATE OF A NON-STOCK CORPORATION WHICH PROVIDES THAT NO ASSIGNMENT SHALL BE EFFECTIVE WITH RESPECT TO THE CORPORATION UNTIL IT IS REGISTERED IN THE CORPORATE BOOKS, THE ASSIGNEE'S RIGHT OF ACTION TO COMPEL ISSUANCE OF A NEW CERTIFICATE DOES NOT ACCRUE FROM THE DATE OF THE ASSIGNMENT BUT FROM THE MOMENT THE CORPORATION REFUSED TO REGISTER THE TRANSFER AND TO ISSUE A NEW CERTIFICATE. — On December 2, 1942, the defendant, a stock corporation, issued to Iwao Teruyama a membership certificate which was subsequently assigned to M. T. Reyes on April 22, 1944. On the same year, the same membership certificate was further assigned to the herein plaintiff. Shortly after the rehabilitation of the defendant corporation after the war, the plaintiff asked for the registration of the assignment in the books of the corporation and for the issuance of a new certificate in his favor. Having been refused by the defendant, the plaintiff filed an action on April 26, 1955 praying that he be declared owner of a certificate of membership in the corporation and for the issuance of a new certificate. The defendant, raising prescription as a defense, filed a motion to dismiss and contended that from 1944, when the right of action accrued, to April 26, 1955, when the complaint was filed, eleven years have already elapsed. The certificate in question, however, contained a condition to the effect that no assignment thereof shall be effective with regard to the corporation until such assignment is registered in the books of the corporation, as provided in the by-laws. The Court of First Instance of Manila dismissed the complaint. Hence this appeal. **Held,** the plaintiff's right of action has not yet prescribed. Under a certificate of a non-stock corporation which provides that no assignment shall be effective with respect to the corporation until it is registered in the corporate books, the assignee's right of action to compel the issuance of a new certificate does not accrue from the date of assignment but from the moment the corporation refused to register the transfer and to issue a new certificate. LEE WON *v.* WACK WACK GOLF & COUNTRY CLUB, G.R. No. L-10122, August 30, 1958.

COMMERCIAL LAW — PUBLIC SERVICE COMMISSION — AS LONG AS THE CONDITIONS LAID DOWN BY SECTION 20 (g) OF THE PUBLIC SERVICE ACT ARE SATISFIED, THE PUBLIC SERVICE COMMISSION HAS THE POWER TO MAKE PROVISIONAL APPROVAL OF A TRANSFER OF A CERTIFICATE OF PUBLIC CONVENIENCE. — Because of the decision of the Supreme Court declaring that the certificate of public convenience in question should not have been sold but merely attached, the Public Service Commission dismissed the case filed by the Estate of Buan, wherein the approval of the Sale by De Castro to the Estate of the Certificate of Public Convenience was sought. However, when the decision in the case of De Castro vs. Formoso, et al. became final and executory, the Sheriff levied again, on the Certificate of Public Convenience and advertised the sale thereof for July 30, 1956. A 3rd party claim was presented by Atty. Dagdag on the day of the sale, however, thus causing the same to be postponed to August 8, 1956. The 3rd party claim was based on the fact that in another damage case filed by a certain Quirit against the Sambranos, the latter, by way of compromise settlement, conveyed to the former, subject to the approval by the Public Service Commission, the same certificate of Public Convenience involved in Civil Case No. 1734 between Corazon de Castro and the Sambranos. Quirit, however, conveyed her interest to Atty. Dagdag. The Ilocos Sur CFI dismissed the claim by Dagdag, and by virtue of such dismissal, the Ilocos Norte CFI issued a writ of execution in Civil Case No. 1734, in furtherance of which the certificate in question was sold by the Sheriff to the Estate of Buan, which was the highest bidder. The Estate applied for approval of said sale and prayed for provisional authority to operate the service, pending action on the application. Both petitions were granted by the Commission, after due and proper hearing. Dagdag appealed, contending among other things that the Commission had no authority to grant the provisional approval of the sale to Buan. **Held,** under section 20 of the Public Service Act, the Commission has power to approve a sale or transfer of a Certificate of Public Convenience if there are just and reasonable grounds for the transfer, and if the sale is not detrimental to the public interest. Hence, when all these conditions are present, the transfer is valid, even though the title over the franchise is pending determination in the court. DAGDAG *v.* PUBLIC COMMISSION, G.R. No. L-11940, July 25, 1958.

COMMERCIAL LAW — TRANSPORTATIONS — THE OPERATION OF STEAMBOATS, MOTOR BOATS, AND MOTOR VESSEL: USED IN FERRY OR COASTWISE TRADE FALLS WITHIN THE JURISDICTION, NOT OF THE PUBLIC SERVICE COMMISSION BUT OF THE BUREAU OF CUSTOMS. — The plaintiff was an operator of a motor-launch ferry service crossing Panguil Bay, from Ozamis city to Buroy, Lanao since 1947. In 1954, the herein defendant obtained from the Bureau of Customs a license to engage in the same business and along the same route where the ferry service of the plaintiff was operating. On Feb. 17, 1956, the plaintiff was issued by the Public Service Commission a certificate of public convenience to operate ferry service in the above-mentioned areas. The de-

fendant, however, did not and made no move to obtain a similar certificate of public convenience. The herein plaintiff then filed an action on April 4, 1956 before the CFI of Misamis Oriental charging that the defendant's operation was unauthorized and prayed that it be declared illegal and the latter enjoined from continuing said operation. After his motion to dismiss for lack of cause of action was denied, the defendant filed on Jan. 8, 1957 a motion for reconsideration contending that the Public Service Commission had no authority to require operators of steamboats, motor boats, and motor vessels used in ferry or coastwise trade, to secure a certificate of public convenience and prescribe their definite route or line. The lower court, acting upon the motion of the defendant, dismissed the complaint. Hence this appeal. **Held,** the Bureau of Customs, under paragraph b, section 1139 of the Revised Administrative Code, and not the Public Service Commission, has jurisdiction over the operation of steamboats, motor boats, and motor vessels used in ferry or coastwies trade and is vested with the general supervision, control, and regulation of the coastwise trade and the carrying or towing of passengers and freight in the bays and rivers of the Philippines. BROWN *v.* SUEZO, G.R. No. L-12544, Aug. 25, 1958.

COMMERCIAL LAW — WAREHOUSE RECEIPTS LAW — ISSUANCE OF ORDINARY RECEIPTS, NOT THE WAREHOUSE RECEIPTS CONTEMPLATED BY THE WAREHOUSE RECEIPTS LAW, DOES NOT CONVERT THE COMMODITIES DELIVERED FOR STORAGE INTO ORDINARY DEPOSITS. — On February 4, 1953, Go Tiong obtained a license to engage in the business of a bonded warehousemen. The necessary bond was executed by the Luzon Surety Co. Prior to the issuance of the license, Go Tiong has on several occasions received palay for deposit from Gonzales. After Go Tiong obtained the license, he again received palay from Gonzales for deposit. Ordinary receipts were issued. On March 15, 1953, Gonzales demanded the value of his deposits. Before Gonzales could be paid, the warehouse was burned, containing more than the number of sacks authorized by the license. Gonzales filed an action against the defendant, Go Tiong, and the Luzon Surety Co. The lower court rendered judgment in favor of the plaintiff. The defendants appealed contending among other things that the deposit was governed by the Civil Code, because ordinary receipts were issued. **Held,** issuance of ordinary receipts, not the warehouse receipts contemplated by the Warehouse Receipts Law, does not convert the commodities delivered for storage into ordinary deposits. GONZALES *v.* LUZON SURETY CO., G.R. No. L-11776, August 30, 1958.

CRIMINAL LAW — ROBBERY WITH HOMICIDE — WHERE THE ACCUSED, AFTER ROBBING A STORE AND WHILE ATTEMPTING TO FLEE FROM THE SCENE OF THE ROBBERY, KILLED AND WOUNDED PERSONS WHO HAD RESPONDED TO THE GENERAL ALARM RAISED IN THE COMMUNITY, THEIR ACTS SHOULD BE CONSIDERED AS CONSTITUTING THE SPECIAL OFFENSE OF ROBBERY WITH HOMICIDE AND PHYSICAL INJURIES DEFINED IN THE LAW. — After plotting the robbery herein involved on the morning of October 15, 1955 the defendants herein, armed with a Japanese rifle, a pistol, dagger, hand grenade and a jungle knife, left for barrio Cawayan, Irosin, Sorsogon and from there proceeded to Talaonga of the municipality of Sta. Magdalena, Sorsogon, where they arrived at 4:00 o'clock in the afternoon. When night came they entered the store

of chinaman Coso Gotia and perpetrated their plan of robbery. While the robbery was going on, the bell of the local chapel began to ring giving alarm to the barrio folks who then surrounded the store. Finding a chance to escape, Altis and Rodrigo, two of the herein defendants, ran towards the beach. Gardon, while escaping, wounded in the abdomen one Emilio Fuentes causing the latter's instantaneous death. Astillero on the other hand, stabbed one Rosalio Galicio, whom he met, causing serious physical injuries. On Nov. 4, 1955, the defendants were arrested and taken to the barracks for investigation. They were accused of robbery in band with homicide and serious physical injuries before the CFI of Sorsogon. Upon motion of the fiscal, the information with regards to Rodrigo was dismissed and the latter was utilized as a state witness. Upon arraignment, the defendants pleaded not guilty. One of the contentions raised by the defense was that the robbery was committed independently of the crimes of homicide and serious physical injuries for the reason that the plan pre-conceived by the defendants was merely for the commission of robbery and did not include homicide and physical injuries. The trial court found the defendants guilty as charged. Hence this appeal. **Held,** where the accused, after robbing the store and while attempting to flee from the scene of the robbery, killed and wounded persons who had responded to the general alarm raised in the community, their acts should be considered as constituting the special offense of robbery with homicide and physical injuries defined in the law. The killing of Fuentes and the wounding of Galicio took place particularly in the course, if not as a necessary consequence, of the commission of the robbery. PEOPLE *v.* GARDON, G.R. No. L-11004, Aug. 25, 1958.

POLITICAL LAW — ADMINISTRATIVE LAW — THE PRESIDENT CANNOT DIRECTLY SUSPEND MUNICIPAL OFFICIALS. — Petitioner Hebron and respondent Reyes were Mayor and Vice-mayor, respectively, of Carmona, Cavite. On or about May 22, 1954, Hebron received a communication from the Office of the President, informing him of his immediate suspension in view of the filing of administrative charges against him for oppression, grave abuse of authority and serious misconduct in office. The Provincial Fiscal investigated the charges and submitted his report to the President. On May 13, 1955, in view of the fact that no decision on his case appeared to be forthcoming and his term of office was about to expire, Hebron instituted **quo warranto** proceedings against Reyes, who in the meantime had assumed the Mayorship. Reyes claimed that he was acting as Mayor pursuant to a valid and legal order from the President. **Held,** the President has only supervisory powers over local, municipal officials. The Revised Administrative Code vests in the Governor and Provincial Board the power to suspend directly erring municipal officials. HEBRON *v.* REYES, G.R. No. L-9124, July 28, 1958.

POLITICAL LAW — ELECTION LAW — UNDER SECTION 175 OF THE REVISED ELECTION CODE, THE COURT MAY, IN THE INTEREST OF JUSTICE, MOTU PROPIO EXAMINE THE BALLOTS AND REJECT THE STRAY ONES, EVEN THOUGH THERE BE NO FORMAL PRESENTATION THEREOF. — Leon Reforma and Macario de Luna were the only candidates for the mayorship of Catanauan, Quezon, in the 1955 elections. Reforma was proclaimed winner by 27 votes. De Luna,

however, contested said election so that the Quezon CFI appointed 3 commissioners to recount the ballots. During the recounting, 33 ballots were found to bear the name of De Luna which unfortunately, however, were improperly placed in the ballots so that the votes could not be counted in favor of De Luna. Later on, the court rendered a decision declaring Reforma as Mayor-elect with a plurality of 30 votes. De Luna appealed to the Court of Appeals, claiming that the trial court should have counted in his favor the 33 ballots, in which he was not properly voted for Mayor on the theory that since Reforma failed to present them as evidence, they should be counted in his favor as ballots awarded to him in the report of the commissioners. The Court of Appeals sustained De Luna's contention and declared him as Mayor-elect with a plurality of 12 votes. Reforma appealed. **Held,** under section 175 of the Revised Election Code, the court may, in the interest of justice, **motu propio** examine the ballots even though not formally presented as evidence, and consequently may reject the stray votes. Reforma adjudged winner by 21 votes. REFORMA *v.* DE LUNA, G.R. No. L-13242, July 31, 1958.

POLITICAL LAW — ELECTION LAW — THE COMMISSION ON ELECTIONS, ACTING AS AN ADMINISTRATIVE BODY, CANNOT PUNISH A PERSON FOR CONTEMPT, SINCE THAT POWER IS INHERENTLY JUDICIAL IN NATURE. — In May, 1957, the Commission on Elections awarded contracts to manufacture 34,000 ballot boxes to NASSCO, Acme Steel Co. and Asiatic Steel Corp. NASSCO and Asiatic signed their respective contracts, but Acme failed to do so on time, for which reason the Commission cancelled the award in favor of Acme and instead gave the contract to the other two awardees. Petitions for reconsideration, filed by the Acme, were all rejected. However, the third petition being serious, an investigation was ordered and the NASSCO and the Asiatic were required to file answers. During the period of investigation, Guevara published an article in the Sunday Times regarding the matter under investigation. The Commission denied the 3rd petition for reconsideration, and then required Guevara to show cause why he should not be punished for contempt for interfering with the investigation and for degrading and disreputing the Commission. Guevara filed a motion to quash, which motion was denied. Hence, he brought the case to the Supreme Court, contesting the jurisdiction of the Commission. **Held,** the Commission on Elections, performing a duty in its administrative capacity, cannot punish a person for contempt since that power is inherently judicial in nature. GUEVARA *v.* COMMISSION ON ELECTIONS, G.R. No. L-12596, July 31, 1958.

POLITICAL LAW — ELECTION LAW — A NAME CAN BE COUNTED FOR ANY OFFICE ONLY WHEN THE NAME IS WRITTEN WITHIN THE SPACE INDICATED UPON THE BALLOT FOR THE VOTE FOR SUCH OFFICE. — In the general elections of November 8, 1955, Amurao and Calangi were candidates for the office of Mayor of Mabini, Batangas. After a canvas of the votes, the municipal board of canvassers proclaimed Calangi mayor-elect by a majority of five votes. Amurao filed a protest in the Court of First Instance. The lower court rendered judgment declaring Amurao mayor-elect with a majority of six votes. Calangi appealed to the Court of Appeals, which declared him the duly elected mayor by a plurality of 74 votes. Hence this petition for review, raising as the only issue the erroneous appreciation of certain ballots by the Court of Appeals. Fifty-six ballots were counted by the Court of Appeals in favor of Calangi even though the name of Calangi was not written on the proper space for mayor. **Held,** a name can be counted for any office only when the name is written within the space indicated upon the ballot for the vote for such office. Amurao is declared mayor-elect with a majority of twenty-five votes. AMURAO *v.* CALANGI, G.R. No. L-12631, August 22, 1958.

POLITICAL LAW — CIVIL SERVICE — UNDER COMMONWEALTH ACT 598, SECTION 1, ANY SUBORDINATE OFFICER OR EMPLOYEE MAY BE REMOVED FROM OFFICE "IN THE INTEREST OF PUBLIC SERVICE OR FOR VIOLATION OF REASONABLE REGULATIONS." — In Jan. 1951 and years before, Mrs. Aurora S. Negado was chief of a section in the Bureau of Posts. Charged with connivance with persons illegally trafficking in money orders in the post office premises, she was administratively investigated. The Civil Service, although finding the evidence inconclusive, nevertheless recommended her transfer. She appealed to the Civil Service Board of Appeals, which in due decreed exoneration. The Director of Posts took the matter to the President. The Executive Secretary for the President reversed the decision of the Civil Service Board and held that although the evidence was not conclusive of her guilt, her conduct however was not above suspicion; and as her continued stay in the service would not be for the public interest, she was considered resigned from her position. Hence, she instituted certiorari proceedings in the court to secure her reinstatement, alleging that the Executive Secretary committed grave abuse of discretion in ordering her separation despite the express finding that evidence was not conclusive of her guilt. **Held,** although the evidence was not "conclusive" or her guilt, nevertheless Mrs. Negado's conduct was "to say the least, not above suspicion." Under Com. Act. 598, amending section 595 of the Adm. Code, any subordinate officer or employee may be removed from office "in the interest of the public service or for neglect of duty or for violation of reasonable office regulations." Under the circumstances, no abuse of discretion, much less grave abuse thereof, was committed by the Executive Secretary in ordering her separation in the interest of public service. NEGADO *v.* CASTRO, G.R. No. L-11089, June 30, 1958.

POLITICAL LAW — CONSTITUTIONAL LAW — UNDER SECTION 4, ARTICLE XII OF THE CONSTITUTION, CONVEYANCE AT COST TO INDIVIDUALS OF SMALL LOTS MEANS THAT THE GOVERNMENT SHOULD BREAK ABOUT EVEN, NOT MAKE ANY PROFIT BUT NEITHER SUFFER ANY LOSS. — Plaintiff Javillonar was one of the tenants and occupants of a large parcel of land. Such land was subsequently bought by the Rural Progress Administration through expropriation. On April 5, 1955, pursuant to Lands Administrative Order No. R-3 of the Bureau of Lands, the plaintiff bought from the defendant a lot with an area of 162.6 square meters at P25.00 per square meter. Besides the cost of the lot, the plaintiff was charged additional amount consisting of rental, notarial fee, deed of sale fee, registration fee and documentary stamps. The plaintiff brought an action to recover the additional amounts alleged to have been illegally collected in excess of the price of piece of land bought by

him from the defendant at P25.00 per square meter. The action was dismissed by the lower court. The plaintiff appealed and alleged for the first time the unconstitutionality of Lands Administrative Order No. R-3, arguing that the additional fees charged were in excess of the cost prescribed by the Constitution. **Held,** under Section 4, Article XIII of the Constitution, conveyance at cost to individuals of small lots means that the Government should break about even, not make any profit but neither suffer any loss. The cost therein mentioned is not only the purchase price which the Government pays to owners of landed estates, but also the cost of administration and of its eventual sale to tenants and occupants, not more but not less. JAVILLONAR *v.* LAND TENURE ADMINISTRATION, G.R. No. L-10303, August 22, 1958.

POLITICAL LAW — CONSTITUTIONAL LAW — WHILE THE COURT ENCOURAGES THE INSTITUTION OF THE CORRESPONDING ACTION FOR THE REDRESS OF A WRONG OR UNLAWFUL ACT COMMITTED EITHER BY A PRIVATE PERSON OR PUBLIC OFFICIAL, SUCH RELIEF MUST BE HOWEVER, SOUGHT FOR WITHIN A REASONABLE PERIOD, WHICH IN THE INSTANT CASE IS ONE YEAR; OTHERWISE, ANY REMEDY TO WHICH HE MAY BE ENTITLED WOULD BE DENIED HIM FOR THE APPARENT LOSS OF INTEREST, OR WAIVER, OR EVEN ACQUIESCENCE ON HIS PART. — Sometime in June, 1945, Elpidio Pinullan was employed as **temporary** laborer in the Philippine Senate. On October 8, 1947 he was given a permanent appointment to the same position. However, on June 24, 1952, he received a letter from the President of the Senate informing him of his temporary relief from the service, effective July 1, 1952, on the ground that the "rotation system" of employment would be introduced in that office, with the understanding that he would be re-appointed after the lapse of a certain period of time. Accordingly, he was extended an appointment as a temporary laborer and he actually entered such employ on two occasions Unable to secure any further appointment, he filed on Jan. 9, 1956, a petition for mandamus against the President of the Senate praying for his reinstatement. The respondent answered that the petitioner merely held office at the pleasure of the Senate, and that granting that he belonged to the unclassified civil service and therefore enjoyed security of tenure, yet the same may be lost upon the abolition of his office, consented transfer, estoppel or laches. **Held,** when the herein petitioner consented to, and actually entered into, a temporary employment, although he was at that time already employed in a permanent capacity, such act changed the character of his employment from permanent to temporary. Hence, the employment being merely a temporary one, and the herein petitioner not having any civil service eligibility, such employment became terminable at the mere pleasure of the appointing power. Furthermore, failure to petition for the proper relief within a reasonable period of time, which in this instant case is one year, would result in the denial of any remedy, otherwise available, on the ground of apparent loss of interest, or waiver, or even acquiescence on his part. PINULLAR *v.* PRES. OF THE SENATE, G.R. No. L-11667, June 30, 1958.

POLITICAL LAW — PUBLIC CORPORATIONS — A MUNICIPAL CORPORATION, UNLIKE A SOVEREIGN STATE, IS CLOTHED WITH NO INHERENT POWER OF THE CORPORATION CANNOT ASSUME IT; AND THE POWER WHEN GRANTED IS TO BE CONSTRUED "STRICTISSIMI JURIS". — On May 25, 1946, the defendant City of Iloilo promulgated Ordinance No. 28 which was intended to regulate the exit of food supply and labor animals therefrom, and which imposed permit fees therefor. Under said ordinance, Saldaña, the plaintiff, paid under protest the so-called fees, totalling P1,359.80, imposed on the fish which were sent by him to Manila, during the period from Sept. 1946, to Dec., 1946. On Sept. 17, 1951, plaintiff filed an action for reimbursement of said amount on the ground that the ordinance was illegal, null and void, it having been enacted beyond the powers of the municipal corporation. **Held,** a charge of a fixed sum which bears no relation to the cost of inspection and which is payable into the general revenue of the State, is a tax and not a fee arising from the exercise of the police power. Being a tax, sec. 2287 of the Revised Administrative Code applies for it provides that "it shall not be in the power of the municipal council to impose a tax in any form whatever upon goods and merchandise carried into the municipality or out of the same, and any attempt to impose an import or export tax upon such goods in the guise of an unreasonable charge for wharfage. use of bridges, or otherwise. shall be void." SALDAÑA *v.* CITY OF ILOILO, G.R. No. L-10470, June 26, 1958.

POLITICAL LAW — PUBLIC CORPORATIONS — AN UNDEFINED AND UNLIMITED DELEGATION OF POWER TO ALLOW OR PREVENT AN ACTIVITY, PER SE LAWFUL, IS INVALID. — The Municipal Council of Baao, Camarines Sur, passed an ordinance requiring a written permit from the municipal mayor before the construction or repair of a building could be carried on. The defendant sought to obtain a permit for the construction of his house. Upon repeated refusal by the mayor to grant the permit, the defendant constructed his house without the necessary permit. The defendant was prosecuted for violation of said ordinance in the Justice of the Peace Court. The defendant was convicted. The Court of First Instance affirmed the judgment of conviction. The defendant appealed contesting the constitutionality of said ordinance. **Held,** an undefined and unlimited delegation of power to allow or prevent an activity, **per** se lawful, is invalid. The ordinance fails to state any policy, or to set up any standard to guide or limit the mayor's action. The mayor has absolute discretion to issue or deny a permit. PEOPLE *v.* FAJARDO, G.R. No. L-12172, August 29, 1958.

POLITICAL LAW — TAXATION — THE RIGHT TO COLLECT DELINQUENT INCOME TAXES BY DISTRAINT AND LEVY PRESCRIBES AFTER 3 YEARS FROM THE FILING OF THE INCOME TAX RETURNS. — Respondent Solano filed income tax returns for the years 1948 to 1952, for which he received the corresponding assessment notices and requests for payment thereof. However, he failed to pay the same, and on Aug. 6, 1953, a warrant of distraint and levy was issued by the Collector of Internal Revenue, who also referred the matter to the City Fiscal of Manila for criminal prosecution. Solano, however, paid his income taxes for 1949, 1950 and 1952, but refused to pay the income tax for 1948 on the ground that the right to collect the same had prescribed already. Nevertheless, the Collector of Internal Revenue, upon being informed that Solano had no property upon which his 1948 income tax liability

could be enforced, issued a warrant of garnishment, garnishing so much of Solano's salary as would satisfy the said liability. Solano contested the legality of the warrant of garnishment in the Court of Appeals, which decided in his favor, stating that the right to collect the said income tax had already prescribed. The Collector of Internal Revenue appealed, contending that section 352 (e) which provides for a 5-year prescription period, should be applied. **Held,** the right to collect income taxes by the summary method of distraint and levy prescribes after three years from the time the return is made or from the date the return is due, if no return is made. COLLECTOR OF INTERNAL REVENUE *v.* SOLANO, G.R. No. L-11475, July 31, 1958.

POLITICAL LAW — TAXATION — WHEN A CENTRAL REMOVES MOLASSES AND SUGAR FROM ITS OWN WAREHOUSE, IT IS LIABLE FOR THE 2% TAX UNDER SEC. 189 OF THE REVISED INTERNAL REVENUE CODE, EVEN THOUGH THE COMMODITIES ARE NOT SOLD BUT ARE ONLY TRANSFERRED TO THE CENTRAL'S DISTILLERY FOR USE THEREIN. — In May, 1955, respondent Collector of Internal Revenue required herein petitioner, Central Azucarera de Tarlac, to pay a 2% tax on the gross value of the molasses and sugar allegedly withdrawn from its sugar mill from 1947 to 1954. The basis of the tax collection was section 189 of the Revised Internal Revenue Code which imposes the 2% tax on sugar centrals on "the gross value in money of all sugar x x x x x manufactured or milled by them x x x x x such tax based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse x x x x x". Petitioner protested the assessment, but the protest was denied. On appeal to the Court of Tax Appeals the judgment of denial of the protest was sustained. Hence, the present appeal. **Held,** petitioner is liable because sec. 189 of the Revised Internal Revenue Code applies to the case at bar. And under that section, actual sale of the product is not essential to the accrual of the tax since the tax is based on the actual selling price or market value of the articles at the time they leave the factory, without taking into account the reason for such withdrawal. CENTRAL AZUCARERA DE TARLAC *v.* COURT OF TAX APPEALS, G.R. No. L-11761, July 31, 1958.

POLITICAL LAW — TAXATION — THE AMUSEMENT TAX, UNDER SECTION 260 OF THE INTERNAL REVENUE CODE, IS IMPOSED ON THE LESSEE OR OPERATOR OF NIGHT CLUBS, AND NOT ON ANY PERSON TO WHOM THE GROSS RECEIPTS ARE DESTINED AND EVENTUALLY PAID. — Between January, 1952 and December 31, 1953, Wong and Lee operated under a lease contract the Riviera. At the beginning of 1953, Ted Lewin promoted the coming of the Xavier Cugat Orchestra for a series of performances at the International Fair Auditorium in Manila. Lewin entered into a contract with Wong and Lee, whereby the Cugat Orchestra was to play and hold floor shows at the Riviera. Under the contract, Lewin was to get all the cover charges collected from the patrons of the night club as his compensation, while Wong and Lee were to get the proceeds derived from food and drinks. Wong and Lee declared in their amusement tax return on cover charges the sum of ₱23,102.50, for which they paid the corresponding amusement tax of 10% or ₱2,310.25. However, the Bureau of Internal Revenue agents discovered that the real amount of the cover charges totalled ₱41,217.00, as a result of which the Collector of

Internal Revenue assessed against Wong and Lee the additional sum of ₱3,170.03. Wong and Lee appealed the assessment to the Court of Tax Appeals. Pending appeal, they made a claim for refund of the amount of ₱2,310.25 previously paid by them on the ground that they were not liable for the payment of any amusement tax. The Court of Tax Appeal denied their claim. Hence this appeal. **Held,** the amusement tax, under Section 260 of the Internal Revenue Code, is imposed on the lessee or operator of night clubs, and not on any person to whom the gross receipts are destined and eventually paid. WONG & LEE *v.* COURT OF TAX APPEALS, G.R. No. L-10155, August 30, 1958.

POLITICAL LAW — TAXATION — WHERE A TAXPAYER QUESTIONS AN ASSESSMENT AND ASKS THE COLLECTOR TO RECONSIDER OR CANCEL THE SAME BECAUSE HE BELIEVES HE IS NOT LIABLE THEREFOR, THE ASSESSMENT BECOMES A "DISPUTED ASSESSMENT" THAT THE COLLECTOR MUST DECIDE, AND THE TAXPAYER CAN APPEAL TO THE COURT OF TAX APPEALS ONLY UPON RECEIPT OF THE DECISION OF THE COLLECTOR ON THE DISPUTED ASSESSMENT. — On January 21, 1950, the petitioner St. Stephen's Association turned over the amount of ₱9,252.48 to the St. Stephen's Chinese Girls School, and the transfer of funds was entered in the ledger and cash book of the school as a donation. Accordingly the Collector of Internal Revenue imposed the corresponding donor's and donee's gift taxes. On November 13, 1954, the petitioners wrote the Collector a letter requesting the cancellation of the assessment on the ground that the amount was erroneously entered by the bookkeeper as a donation. On April 21, 1955, the petitioners received a letter from the Collector dated April 6, 1955. denying their request. On May 9, 1955, the petitioners asked for a reconsideration of the Collector's denial. On July 25, 1955, the petitioners received a letter from the Collector dated July 11, 1955, again denying their request and declaring his decision to be final thirty days after receipt. On August 13, 1955, within thirty days from the receipt of the letter, the petitioners filed a petition for review with the Court of Tax Appeals. The court dismissed the petition for lack of jurisdiction, on the ground that the 30 day period for appeal began to run from the receipt of the assessment notice. Hence this appeal. **Held,** where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment. ST. STEPHEN'S ASSOCIATION *v.* THE COLLECTOR OF INTERNAL REVENUE, G.R. No. L-11238, August 21, 1958.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS IN THE EXERCISE OF ITS EXCLUSIVE JURISDICTION ON A LABOR DISPUTE ARISING FROM UNFAIR LABOR PRACTICES, HAS THE EXCLUSIVE POWER TO ISSUE A TEMPORARY RESTRAINING ORDER TO ENJOIN ANY ACTS COMMITTED IN CONNECTION WITH SAID LABOR DISPUTE. — The petitioner company filed in the CFI a civil case alleging that the respondent union declared a strike without the required 30-day notice and for a trivial and unreasonable purpose, and in connection with said strike staged an unjustified and unlawful picketing, with acts of violence and coercion, in front of its offices in Port

Area, thus praying for a temporary restraining order pursuant to sec. 9 (d) of Rep. Act 875. The respondent filed a motion to dismiss the petition on the ground that the same arose from unfair labor practices which are exclusively cognizable by the CIR. **Held,** the records disclosed that the strike and picketing arose from charges of unfair labor practices levelled by the respondent union to the petitioner company, in that the latter allegedly was coercing and intimidating the members of the union to resign therefrom on threats of dismissal from the service; and that the petitioner company on the other hand, filed an unfair labor practice complaint against the union for having declared a strike without the 30-day notice required by law. Unfair labor practices having been committed by both parties, the labor dispute between them clearly falls within the exclusive jurisdiction of the CIR (sec. 5 (a) Rep. Act. 875). And as the dispute is exclusively cognizable by the CIR, so has it the exclusive power, in the exercise of its exclusive jurisdiction, to issue a temporary restraining order to enjoin any acts committed in connection with said labor dispute. ERLANGER AND GALLINGER, INC. *v.* ERLANGER AND GALLINGER EMPLOYEES ASSOCIATION (NATU), G.R. No. L-11907, June 25, 1958.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — CLAIMS FOR SEPARATION AND OVERTIME COMPENSATION ARE WITHIN THE JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS. — Plaintiff Gomez was employed by the North Camarines Lumber Co., Inc. as oilman aboard the M/V Vega. On September 30, 1955, Gomez was relieved of his employment. On December 29, 1955, he filed a complaint with the Department of Labor against the company for overtime, underpayment and separation pay. The claim was later limited to the question of the separation pay. After proper investigation, the claim was dismissed. On July 3, 1956, Gomez filed an action for collection of overtime and separation pay with the Court of First Instance. The defendant company moved to dismiss the action on the ground that the decision of the Department of Labor dismissing the claim constituted **res judicata.** Hence this appeal. **Held,** in order that the decision of an investigator of the Department of Labor be binding, there must be an agreement to abide in writing and signed by the parties. There was no such agreement. However, the appeal must fail, because claims for separation and overtime pay are within the jurisdiction of the Court of Industrial Relations. GOMEZ *v.* NORTH CAMARINES LUMBER CO., INC., G.R. No. L-11945, August 18, 1958.

LABOR LAW — MINIMUM WAGE LAW — THE ACTION TO RECOVER UNDERPAYMENTS IS BARRED IF NOT BROUGHT WITHIN 3 YEARS FROM THE DATE OF ACCRUAL OF THE CAUSE OF ACTION. — On May 3, 1956 in behalf of 297 persons as plaintiffs, Atty. Legaspi presented to the Municipal Court of Manila a complaint, alleging partial non-payment of wages by their employer, Compañia Maritima. On May 23, 1956, defendant moved to dismiss the complaint on the ground, among others, that the claims had prescribed. Motion was sustained. On appeal to the CFI, the order was reversed and the case remanded for further proceedings on the merits. Hence, this second instance which involves legal question only. The Compañia Maritima invoked sec. 17 of the Minimum Wage Law barring the right to recover underpayments unless commenced within 3 years after the cause of action accrued.

As most of the claimants had not been adequately paid since August 1951 and the complaint was filed on May 3, 1956 — more than 3 years — prescription had set in, maintains the appellant. **Held,** such claims of the plaintiffs, as have accrued between 1951 and April 1953 — more than 3 years — are already barred; but those accruing from and after May 1953, may still be enforced for, as to them, the 3-year period had not yet elapsed when this complaint was filed. It is logical to hold that every monthly payment of salaries made by defendant for amounts less than those fixed by the Minimum Wage Law gave each employee a separate and independent cause of action to recover underpayment. Hence, the 3-year period is to be computed from the date of each and every monthly payment. ABRASALDO *v.* COMPAÑIA MARITIMA, G.R. No. L-11918, July 31, 1958.

LABOR LAW — UNFAIR LABOR PRACTICE — SEC. 14 OF COMMONWEALTH ACT NO. 103 APPLIES ONLY IN COMPULSORY ARBITRATION CASES; AND SEC. 6 OF R.A. NO. 875 APPLIES EXCLUSIVELY TO UNFAIR LABOR PRACTICE CASES. — In granting the motion to execute its decision of Jan. 27, 1958, the Court of Industrial Relations applied sec. 6 of R.A. No. 875 to a case which it properly believes to be an unfair labor practice case (even if on appeal it be not so declared). Petitioners claim the Court **a quo** should instead have applied sec. 14 of C.A. No. 103. **Held,** sec. 14 of C.A. No. 103 is applicable only in compulsory arbitration cases. It cannot apply in an "unfair labor practice case" because it is inconsistent with sec. 6 of R.A. No. 875 which governs unfair labor practice cases. While sec. 14 of C.A. No. 103 permits the stay of the order in the discretion of the court, sec. 6 of R.A. No. 875 explicitly states that an appeal from an order of the CIR shall not stay the order of the Court. KAPISANAN NG MGA MANGGAGAWA SA MANILA RAILROAD CO., *v.* BUGAY, G.R. No. L-10265, July 31, 1958.

LABOR LAW — WORKMEN'S COMPENSATION COMMISSION — A PETITION FOR REVIEW OF A DECISION OF THE COMMISSION MUST BE FILED WITH THE SUPREME COURT AND THE NOTICE OF APPEAL WITH THE COMMISSION WITHIN 10 DAYS FROM THE RECEIPT OF THE DECISION, ORDER OR AWARD SOUGHT TO BE REVIEWED, SO THAT FAILURE TO COMPLY WITH THE PERIOD PROVIDED FOR IS CERTAINLY FATAL TO THE ACTION. — While working as a mason — carpenter in the employ of the Union Construction Co., Patricio Pabores sustained on July 19, 1956 injuries which caused his death and which was certified as "gangrene." The heirs of the deceased represented by their guardians filed a claim for compensation for their father's death with the Workmen's Compensation Commission. The referee who conducted the hearing, relying on the report of the Quezon City police who investigated the incident, held that the death of Pabores did not arise out of employment and therefore was not compensable since the deceased, according to the referee must have tried to tamper or tinker with the shock absorber of the airplane found in the scene of the accident causing the injury when the compressed air was released. However, the declaration of Pabores to the physician who attended him was that he sustained the injury when he fell from a scaffolding of the building under construction. The decision was affirmed by the Workmen's Compensation Commissioner. Hence this appeal. The respondents raised the point that the therein petitioner filed notice of appeal with the Commission only on Feb. 19, 1957 despite the fact that they received copy of

the decision of the Workmen's Compensation Commission upholding the ruling of the referee on Feb. 4, 1957, although it is admittedly true that the petition for review of said decision was filed with the Supreme Court on Feb. 14, 1957. **Held,** a petition for review of a decision of the Commission must be filed with the Supreme Court and the notice of appeal with the Commission within 10 days from the receipt of the decision, order or award sought to be reviewed, so that failure to comply with the period provided for is certainly fatal to the action. Although the petition for review was filed with the Supreme Court within the reglamentary period, the petitioners filed their notice of appeal with the Commission 15 days after they were notified of the Commission's decision. HEIRS OF PATRICIO PABORES *v.* WORKMEN'S COMPENSATION COMMISSIONER, G.R. No. L-12034, Aug. 30, 1958.

LABOR LAW — WORKMEN'S COMPENSATION COMMISSION — THE EMPLOYER'S FAILURE TO SUBMIT A REPORT OF THE ACCIDENT WITHIN 14 DAYS FROM THE DATE OF DISABILITY OR WITHIN 10 DAYS AFTER HE ACQUIRE KNOWLEDGE THEREOF, RESULTS IN THE WAIVER OF HIS RIGHT TO QUESTION THE VALIDITY OR REASONABLENESS OF THE CLAIM FOR COMPENSATION AND THE COMMISSIONER'S DENIAL OF HIS PETITION TO REINSTATE SUCH RIGHT WILL NOT BE DISTURBED UNLESS GRAVE ABUSE OF DISCRETION HAS BEEN COMMITTED. — Juan Mendiola served as a truck driver of Francisco Tan Lim Te, the herein petitioner, in the latter's rice mill at Angeles, Pampanga. On January 28, 1952, while sitting on top of several sacks of palay loaded in a jeepney belonging to the petitioner and driven by another chinaman, to prevent the sacks from falling, Mendiola was forcibly thrown to the ground when the vehicle happened to pass on a roadhole and sustained injuries for which he received medical treatment. He reported back to work after a month. On Jan. 25, 1953, Mendiola succumbed to his ailment diagnosed as "Portal Cirrhosis." On March 3, 1953, the widow of the deceased and her minor children filed a claim for compensation before the Workmen's Compensation Commission, for the death of Mendiola. The commission transmitted a copy of the claim together with W. C. C. Form No. 3, Employer's Report of Accident and Sickness, to the employer for accomplishment on Sept. 18, 1953. The employer, herein petitioner Tan Lim Te, submitted the report containing his opposition to the claim only on Feb. 10, 1954. On Sept. 7, 1955, the Workmen's Compensation Commission awarded the widow and the children ₱2,880.80 as compensation and the amount of ₱200 for burial expenses. A motion for reconsideration having been denied, the petitioner herein filed a petition for review and new hearing which was also denied. Hence this petition for review of the decision of the WCC. **Held,** the employer's failure to submit the report of the accident within 14 days from the date of disability or within 10 days after he acquired knowledge thereof, results in the waiver of his right to question the validity or the reasonableness of the claim for compensation and the commissioner's denial of his petition to reinstate such right will not be disturb unless grave abuse of discretion has been committed. In this case, the petitioner failed to comply with the requirement and the commissioner committed no grave abuse of discretion in awarding compensation to the claimants. TAN LIM TE *v.* WORKMEN'S COMPENSATION COMMISSIONER, G.R. No. L-12324, August 30, 1958.

REMEDIAL LAW — CIVIL PROCEDURE —AN ORDER OF THE COURT. UPON THE EXPIRATION OF THE PERIOD TO APPEAL WITHOUT SUCH ACTION HAVING BEEN PERFECTED, BECOMES FINAL AND EXECUTORY, AND NO MOTION FOR RECONSIDERATION MAY BE ENTERTAINED. — Pedro Samson entered into an agreement with Florencia de Guzman and Maria Santos whereby the former undertook to pay a part of the down payment and other expenses for the purchase of a parcel of land. Samson failed to comply with the agreement. Subsequently, he filed an action against de Guzman and Santos to compel the latter to recognize the partition agreement executed by them. However, after the defendants have filed their answers, an amicable settlement was presented to the court whereby one-fourth of the lot occupid by Samson was assigned to him upon the payment of ₱1,321.66, plus 10% interest to de Guzman and Santos. It was agreed upon that Samson was to undertake the segregation of his portion within three months and upon his failure to do so, his rights on the property would automatically be cancelled upon the return of the whole amount paid by him. The agreement was approved by the court. On January 17, 1956, Samson paid the sum agreed upon. On May 8, 1956, de Guzman and Santos filed a motion praying for the cancellation of Samson's rights on the property on the ground of his failure to comply with the obligation imposed upon him. On May 17, 1956, the date of the hearing of the motion, Samson failed to appear and the cancellation of his rights was ordered by the court. A motion for reconsideration was filed by Samson. This motion was denied on June 9, 1956. August 22, 1956 de Guzman and Santos filed another motion for the issuance of the title to them. The motion was granted on Sept. 1, 1956. On Feb. 6, 1957, Samson filed a motion for reconsideration of the orders of June 9 and September 1, 1956. The court denied the motion on the ground that the orders sought to be reconsidered have become final. Hence the petition for certiorari. **Held,** an order of the court, upon the expiration of the period to appeal without such action having been perfected, becomes final and executory, and no motion for reconsideration, although meritorious, may be entertained. SAMSON *v.* YATCO, G.R. No. L-12084, August 25, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — RULE 115, SECTION 9, DOES NOT IMPLY A PROHIBITION AGAINST THE DISCHARGE OF MORE THAN ONE CO-DEFENDANT. IT ALL DEPENDS UPON THE NEED OF THE FISCAL AND THE DISCRETION OF THE TRIAL JUDGE. — An information filed in May 1951, charged Marcelino Bacsa, Evaristo de los Santos, Pedro Gaspar and Martin Cranil with the crimes of robbery with homicide of aged woman, plus multiple rape committed on Celestina Torres. In Feb., 1952, after Gregorio Bacsa had been arrested, another information was filed describing the same offenses allegedly committed by him in conspiracy with the five defendants already mentioned. A joint trial ensued. Discharged to be state winesses, over the objection of the defendants, Martin Granil and Marcelino Bacsa testified for the prosecution. After weighing the evidence, the judge found Gregorio Bacsa guilty and sentenced him to life imprisonment and to pay ₱3,000.00 to the heirs of the deceased plus costs. However, for reasonable doubt, he acquitted the other three accused. Gregorio Bacsa appealed in due time contending among others, that the trial judge committed irregularity in permitting the release of two defendants because Rule 115, sec. 9 according to him contemplated the discharge of only one. **Held,** said rule does not imply a prohibition against the discharge of more than one co-defendant.

It all depends upon the need of the fiscal and the discretion of the trial judge. Anyway, any error of the trial judge in this matter cannot have the effect of invalidating the testimony of the discharged co-defendants. PEOPLE *v.* BACSA, G.R. No. L-11485, July 11, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE FISCAL OR CITY ATTORNEY, AS PROSECUTING OFFICER, IS UNDER NO COMPULSION TO FILE THE CORRESPONDING INFORMATION BASED UPON A COMPLAINT, WHERE HE IS NOT CONVINCED THAT THE EVIDENCE GATHERED OR PRESENTED WOULD WARRANT THE FILING OF AN ACTION IN COURT. — Apolonio Bagatua was the original registered owner of a parcel of land. Upon his death, his widow and their children, all of legal age, executed a document settling his estate and donating the parcel of land to the children. Deciding to subdivide the lot among themselves, the children engaged the services of Pangilinan, a real estate broker. On June 23, 1954, a part of the lot was sold and conveyed to Pangilinan. On June 21, 1956, Rodrigo Bagatua, one of the children of the deceased Apolonio, accused Pangilinan of **estafa** for having induced them to sign papers supposedly necessary for the subdivision of their lot, but one of which turned out to be a deed of sale. After conducting the proper preliminary investigation whereby testimonial and documentary evidence was presented for both parties, the assistant city fiscal recommended the dismissal of the complaint for lack of merit. Thus, the complaint was dismissed. A petition for mandamus was filed with the proper Court of First Instance to compel the filing of the corresponding information. The Court of First Instance dismissed the petition upon motion of the city fiscal. Hence this appeal. **Held,** the fiscal or the city attorney, as prosecuting officer, is under no compulsion to file the corresponding information based upon a complaint, where he is not convinced that the evidence gathered or presented would warrant the filing of an action in court. BAGATUA *v.* REVILLA, G.R. No. L-12247, August 26, 1958.

REMEDIAL LAW — SPECIAL PROCEEDINGS — AN ADJUDICATION OF THE INHERITANCE TO PERSONS WHO ARE NOT ENTITLED THERETO CANNOT HAVE THE EFFECT OF BARRING A SUBSEQUENT ACTION BY THE RIGHTFUL HEIRS FOR THE RECOVERY OF THE PROPERTIES. — Morin died intestate, leaving no ascendants nor descendants. So defendant Kilaycos, relatives of the deceased in the 5th degree and claiming to be his only heirs, filed a petition for judicial administration of the deceased's estate. Thereafter, Concepcion Kilayco, the duly appointed administratrix, submitted an inventory of all the properties of the deceased. In the latter part of Nov. 1951, alleging that they were his only surviving heirs, they submitted a project of partition which was duly approved by the Court in its order of June 7, 1952. The intestate proceedings were finally terminated on Nov. 14, 1953. On Oct. 1, 1954, plaintiff instituted a civil action for recovery of the properties of the deceased, alleging among others, that she was the half-sister of the deceased and, as such, the rightful heir and not the defendants. The defendants moved to dismiss on the ground of **res judicata.** The lower court found for the plaintiff. Hence, the appeal by the defendants. **Held,** as the order of the lower court of June 7, 1952, adjudicated the properties in question to the appellants who are not entitled to the inheritance in view of the existence of plaintiff's superior right, the aforesaid order is reviewable and subject to readjustment within 2 years after the settlement and distribution of the estate (See Sec. 4 ,Rule 74 of the Rules of Court) and thus cannot have the effect of barring a subsequent action by the rightful heir for the recovery of the properties belonging to the estate of the deceased. MARABELLA *v.* KILAYCO, G.R. No. L-11141, June 27, 1958.

COURT OF APPEALS

CIVIL LAW — SALES — UNDER PARAGRAPH (3) OF ARTICLE 1505 OF THE CIVIL CODE, A PERSON WHO BUYS A THING AT A MERCHANT'S STORE AFTER THE SAME HAS BEEN PUT ON DISPLAY THEREAT, ACQUIRES A VALID TITLE TO THE THING ALTHOUGH HIS PREDECESSORS IN INTEREST DID NOT HAVE ANY RIGHT OF OWNERSHIP OVER IT. — The Sun Brothers sold and delivered to Francisco Lopez a refrigerator. The latter made a down payment of P500. It was stipulated that the latter should not remove the refrigerator from his address, nor part possession therewith without the express written consent of the former. On July 2, 1954, Lopez, in violation of the stipulation, sold the refrigerator to the J. V. Trading, owned by Jose Velasco. The next day, after displaying the refrigerator in his store, Velasco sold the same to Co Kang Chiu. The refrigerator was delivered to the latter. An action was filed by the Sun Brothers in the Municipal Court for the recovery of the article against Lopez, Velasco and Co Kang Chiu. Judgment was rendered against the plaintiff. The case was appealed to the Court of First Instance which declared that the plaintiff was the absolute owner of the refrigerator and ordered Co Kang Chiu to return the same to the plaintiff. Hence this appeal. **Held,** under paragraph (3) of Article 1505 of the Civil Code, a person who buys a thing at a merchant's store after the same has been put on display thereat, acquires a valid title to the thing although his predecessors in interest did not have any right of ownership over it. SUN BROTHERS & COMPANY *v.* CO KANG CHIU, (CA) G.R. No. 17085-R, January 13, 1958.

CIVIL LAW — PROPERTY — COURTS OF JUSTICE CAN DECLARE LANDS FORMED ALONG SHORES BY ACCRETION AS PRIVATE PROPERTY OF THE ADJOINING OWNERS. — On August 31, 1948, the plaintiffs filed a complaint in the Court of First Instance of Bulacan against the defendant Andaya, the Director of Fisheries, and the Secretary of Agriculture and Natural Resources. They alleged that they were the absolute owners and had been in the peaceful possession of the land in dispute; that despite this fact the Director of Fisheries granted a fishpond permit to the defendant and, the Secretary confirmed the decision of the Director upon appeal; and that a writ of preliminary injunction be issued restraining the defendants to absolutely abstain from the acts complained of. The defendants answered that the land in dispute was part of the shores of Manila Bay. On January 13, 1949, the plaintiffs filed a supplemental complaint alleging that the land in dispute was part of their titled property as found by a duly licensed surveyor who concluded a relocation survey of the lots. The defendants reiterated that the land was public land. The property in dispute was found to have been previously washed by waters of the Manila Bay, but was subsequently abandoned and accreted to the lands belonging to the plaintiffs. The trial court