animates the charter of the United Nations regarding the problem of non-self-governing territories.

It can be rightfully said, therefore, that to Vitoria belongs the distinction of having first enunciated and defended the right of self-determination of peoples, which right is now enshrined in the United Nations Charter. (Martin Arostegui, *Vitoria and the Right of Self-Determination,* 32 Phil. L.J. No. 4, at 451-457 (1957). ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Perfecto V. Fernandez, *Liberty as a Function of Power;* Gregorio R. Castillo, *The Status of Social Insurance in the Philippines.*)

CASE DIGEST

SUPREME COURT

CIVIL LAW — NATURALIZATION — THE REQUIREMENT OF ENROLLMENT IN PUBLIC SCHOOLS OR THOSE RECOGNIZED BY THE GOVERNMENT OF THE CHILDREN OF A PETITIONER FOR NATURALIZATION COULD NOT BE EXACTED FROM ONE WHOSE CHILDREN ARE NOT OF SCHOOL AGE. — The Court of First Instance of Cebu granted the petition for naturalization of Yukay Oh. The Government appealed on the sole ground of the fulfillment of the educational requirement of petitioner's children one two years old and the other in the grade school only. The Government maintained that because of this petitioner had failed to give his children primary and secondary education so as to exempt petitioner from filing a declaration of intention, petitioner having resided here for more than 30 years. As such petitioner did not file the declaration of intention. *Held,* the requirement of enrollment in public schools or those recognized by the government of the children of a petitioner for naturalization could not be exacted from one whose children are not of school age. Again, while petitioner's eldest son was still in the fourth grade, it is enough that the petitioner has given all his children of school age the opportunity of obtaining primary and secondary education by their enrollment and attendance in the schools mentioned by law. YUKAY OH *v.* REPUBLIC, G.R. No. L-10084, Dec. 19, 1957.

CIVIL LAW — NATURALIZATION — CIVIL WAR IS NOT A SUFFICIENT EXCUSE FOR FAILURE TO BRING MINOR CHILDREN BACK TO THE PHILIPPINES AND GIVE THEM THE EDUCATION REQUIRED BY OUR REVISED NATURALIZATION ACT. — Petition for naturalization of Vicente Lim alias Ng Sui Tan was denied by the lower court upon the ground of lack of qualification. It was found out that he was a Chinese citizen born in Amoy, China in 1915 and came to the Philippines in 1924. He had nine children. His eldest child Geraldina who was born in the Philippines in 1939 had been staying continuously in China since 1947 and had never enrolled in any school in the Philippines. She went to China by reason of ill health and had not been heard of since the Communist overran the mainland of China. Opposition was based on his failure to send Geraldina to any public or private schools in the Philippines, as required by the Naturalization Law. *Held,* such a requirement is mandatory and the civil war in China is not sufficient to excuse the failure to bring minor children back to the Philippines and give them the education required by our Revised Naturalization Law. LIM *v.* REPUBLIC, G.R. No. L-9999, Dec. 24, 1957.

CIVIL LAW — NATURALIZATION — TO QUALIFY AS A WITNESS TO THE PROPER AND LAW ABIDING BEHAVIOUR OF THE APPLICANT, THE PERSON DOES NOT NEED

TO PERSONALLY KNOW THE LATTER FROM BIRTH OR AGE OF REASON, EXISTING RECORDS, COMMON REPUTATION AND MUTUAL FRIENDS AND ACQUAINTANCE ARE AVAILABLE SOURCES OF INFORMATION. — In his application for naturalization before the Court of First Instance of Sulu, Soy, a Chinese, was thus admitted for naturalization by the said court. On appeal, it was questioned that the witnesses were incompetent because they did not know him since 1923, when he began to reside in the Philippines. One became acquainted with him in 1925 and the others in 1927. The argument being that having known him only on such date, they were incompetent to testify upon the petitioner's conduct during the entire period of his residence in the Philippines. *Held*, one does not need to personally know another from the moment of one's birth or age of reason to qualify as witness to his proper and law abiding behaviour. Existing records, common reputation and mutual friends and acquaintance are available sources of information. SOY KOCK *v.* REPUBLIC, G.R. No. L-9646, Dec. 21, 1957.

CIVIL LAW — NATURALIZATION — WHEN THE EVIDENCE SHOWS THAT PETITIONER FOR FILIPINO CITIZENSHIP HAD STAYED WITH HIS FILIPINO WIFE IN ILLICIT RELATIONS BEFORE HE MARRIED HER SIX MONTHS BEFORE HIS APPLICATION FOR NATURALIZATION, NATURALIZATION SHOULD BE REFUSED BECAUSE PETITIONER'S CONDUCT FALLS SHORT OF THE "PROPER AND IRREPROACHABLE CONDUCT" REQUIRED BY THE NATURALIZATION LAW. — Sy Kiam, a Chinaman, applied for naturalization. According to his own exhibit, he married his Filipino wife only six months before he applied for naturalization. The lower court granted his petition for naturalization and the Solicitor General appealed. *Held*, this means that petitioner had cohabited with his Filipino wife and begotten children by her without benefit of marriage; and this behavior falls short of the "proper and irreproachable conduct" that our naturalization law requires. SY KIAM *v.* REPUBLIC, G.R. No. L-10008, Dec. 18, 1957.

CIVIL LAW — PERSONS — IN AN ACTION FOR LEGAL SEPARATION, THE STATE HAS A RIGHT TO INTERVENE TO SEE TO IT THAT THERE IS NO COLLUSION BETWEEN THE PARTIES AND SUCH INTERVENTION CONSISTS IN FINDING OUT WHETHER ALL REQUIREMENTS OF LAW HAD BEEN COMPLIED WITH AND PUTTING OUT ALL AVAILABLE DEFENSES ALTHOUGH NOT ALLEGED BY DEFENDANT FOR LEGAL SEPARATION INVOLVES PUBLIC INTEREST. — In 1955 William Brown filed suit in the CFI of Manila to obtain legal separation from his lawful wife Juanita Yambao. He alleged that while interned by the Japanese invaders, from 1942 to 1945, at the University of Sto. Tomas, his wife engaged in adulterous relations with one Carlos Field of whom she begot a baby girl; that Brown learned of his wife's misconduct only in 1945 and thereafter the spouses lived separately and later executed a document liquidating their conjugal partnership. The wife was declared in default for failure to answer in due time despite service of summons. The court directed the City Fiscal to investigate in accordance with Art. 101 of the Civil Code, whether or not a collusion existed between the parties and to report to the court the result of his investigation within 15 days from receipt of copy of the order. Assistant Fiscal Jose appeared at the trial and cross-examined plaintiff. He was able to elicit the fact that after liberation Brown lived maritally with another woman and had begotten children by her. He also brought up the question of prescription which defendant did not put up because there was no answer. Plaintiff learned of the ground for legal separation in 1945, the same having been committed in 1942 but action was filed only in 1955. Under Art. 102, the action had prescribed. Defendant alleged that the Fiscal was limited only to finding out facts to show whether there was collusion between the parties but not in acting practically as counsel for the defendant. *Held*, collusion in matrimonial cases being "the act of married persons in procuring a divorce through *mutual consent*, whether by preconcerted commission by one of a matrimonial offense, or by failure, in pursuance of agreement, *to defend divorce* proceedings", it was legitimate for the Fiscal to bring to light any circumstance that could give rise to the inference that the wife's default was calculated, or agreed upon, to enable appellant to obtain the decree of legal separation that he sought without regard to the legal merits of his case. One such circumstance is obviously the fact of Brown's cohabitation with a woman other than his wife, since it bars him from claiming legal separation by express provision of Art. 100 of the Civil Code. Evidence of such misconduct, and the failure of the wife to set it up by way of defense, were proper subjects of inquiry as they may justifiably be considered circumstantial evidence of collusion between the spouses. BROWN *v.* YAMBAO, G.R. No. L-10699, Oct. 18, 1957.

CIVIL LAW — PERSONS — SPURIOUS CHILDREN ARE ENTITLED TO SUCCESSION FROM THEIR PUTATIVE FATHER, NO ACTION FOR RECOGNITION BEING NEEDED OR RECOGNITION OF THE PUTATIVE FATHER. — Antonio de Zuzuarregui died without a will on February 22, 1953. He was married to Pilar Ibañez, he having no issue with her. During the existence of this marriage, Antonio begot one child with his tenant and three children with the cousin of his wife. These children had been staying with the couple, been given the surname of Antonio, support, and recognition. On Antonio's death, they, with the widow Pilar Ibañez, claimed to be the heirs of decedent. Antonio's collateral relatives were excluded by the lower court. The same, on appeal to the Supreme Court, maintained that spurious children are entitled to support only; that supposing they are entitled to successional rights, the same must have been recognized by their putative father or must bring an action for recognition during his life. *Held*, spurious children are entitled to successional rights under the new Civil Code. To be so entitled, they need not bring an action for recognition or be recognized by their putative father. ZUZUARREGUI *v.* ZUZUARREGUI, G.R. No. L-10010, Oct. 31, 1957.

CIVIL LAW — PERSONS — THE HUSBAND MAY ONLY REACH THE FRUITS OF HIS WIFE'S PARAPHERNAL PROPERTY AFTER THE LIQUIDATION SHE HAS MADE CHARGING SUCH FRUITS WITH THE NECESSARY AND INDISPENSABLE EXPENSES INCURRED IN THE ADMINISTRATION AND PRESERVATION OF HER PROPERTY. — On February 1, 1945, Dee Chian Hong died intestate, leaving valuable stock in the China Banking Corporation and in other financial and commercial institutions. Crispina Dee was one of the legitimate children. In March, 1946 the heirs of Dee Chian Hong divided the estate among themselves by an extrajudicial settlement. Crispina Dee was excluded. In April, 1948 plaintiff married Crispina; and in March 1954 he filed an action demanding a new partition of the estate of Dee Chian Hong and the delivery of Crispina's inheritance

together with its income and attorney's fees. As Crispina did not want to join him, he included her as co-defendant. Plaintiff's suit was founded on a supposed fraud in the partition settlement which resulted in the exclusion of his wife. Therefore, the said partition, he argued, did not deprive Crispina of her share in the inheritance. Therefore, as husband of Crispina, he was entitled to its fruits which formed part of the conjugal property of plaintiff and Crispina, his wife. An adverse ruling by the CFI brought him to the Supreme Court. *Held*, the husband may only reach the fruits of his wife's paraphernal property after the liquidation she has made charging such fruits with the necessary and indispensable expenses incurred in the administration and preservation of her property. Before the liquidation there is nothing he can lay his hands on. Here there has been no liquidation. LIM *v.* DEE HAO KIM, G.R. No. L-8663, Oct. 31, 1957.

CIVIL LAW — FAMILY HOME — A FAMILY HOME EXTRA-JUDICIALLY CONSTITUTED IS NOT EXEMPTED FROM EXECUTION BASED ON A MONEY JUDGMENT RENDERED BEFORE ITS CONSTITUTION. — A money judgment was rendered against appellants who were spouses. Appellants had a house which had been extra-judicially constituted as a family home. However, this extra-judicial constitution took place after rendition of the money judgment against spouses. Consequently, the successful parties sought to execute the money judgment by a levy on appellants' house. Appellants claimed exemption for their house under the Civil Code. They argued, on appeal, that the "debts" contracted before the constitution of the family for which the same is liable do not include money judgments arising from torts. Hence, their house which had been extra-judicially constituted should not be held liable for the money judgment, even though the same had been rendered before the constitution of their family home. *Held*, a family home extra-judicially constituted is not exempted from money judgments which were rendered before its extra-judicial constitution. Morever, the money judgment was not, as appellants maintain, based on tort. It was based on liability for breach of contract of transportation. MONTOYA *v.* IGNACIO, G.R. No. L-10518, Nov. 29, 1957.

CIVIL LAW — SUCCESSION — THE VALIDITY OF A PARTITION BY A TESTATOR OF HIS ESTATE BY AN ACT *INTER VIVOS* RESTS UPON THE PRIOR MAKING OF A VALID TESTAMENT WITH ALL THE FORMALITIES PRESCRIBED BY LAW. — Mariano Villamor and Eustaquia Leopoldo were husband and wife. They had five children, one of which died, with four children. After Eustaquia Leopoldo died, Mariano Villamor divided the estate belonging to him and his wife among his children and grandchildren by an act *inter vivos*. This was in 1949. The grandchildren were not satisfied with the partition and they requested an intestate proceeding to be filed. Mariano Villamor died and on March 23, 1953 Doroteo Romero, one of the grandchildren, instituted an intestate proceeding. The children of Mariano Villamor opposed the same, holding on to the partition *inter vivos*. *Held*, the validity of a partition by a testator of his estate by an act *inter vivos* rests upon the prior making of a valid testament with all the formalities prescribed by law, the partition *inter vivos* being but the execution thereof. ROMERO *v.* VILLAMOR, G.R. No. L-10850, Dec. 20, 1957.

CIVIL LAW — SALE — IN THE LEGAL SENSE, WAR FORMALLY ENDED IN THE PHILIPPINES THE MOMENT PRESIDENT TRUMAN OFFICIALLY ISSUED A PROCLAMATION OF PEACE ON DEC. 31, 1946. — In 1944, Imperial Samson executed a document entitled "Escritura de Venta Con Pacto de Retro", conveying to Moralles a lot in the poblacion of Tabaco, Albay, with an area of about 1,000 sq. m. with a building of strong materials on it, for the sum of ₱25,000.00 (apparently Japanese Military Notes). The period for redemption was not less than 6 months nor more than 18 months after the termination of the war. Action was filed on March 13, 1947. According to defendant and sustained by the lower court, war ended in Greater East Asia on September 2, 1945, the signing of the armistice or the surrender of Japan, therefore the period for redemption had already expired since on March 12, 1947 more than 18 months had elapsed counted from Sept. 3, 1945. *Held*, in the legal sense, war formally ended in the Philippines the moment Pres. Truman officially issued a proclamation of peace on Dec. 31, 1946 upon the theory that the Philippines, even if independent, was an ally of the U.S. because, according to this Court war terminates when peace is formally proclaimed. And if counsel meant that there should be a formal treaty of peace, the purpose has been accomplished when the treaty of peace with Japan had been signed in San Francisco, California on Sept. 8, 1951 by the U.S. and the Allied Powers, including the Philippines. KARE *v.* IMPERIAL, G.R. No. L-7906, Oct. 22, 1957.

CIVIL LAW — SALE — UNDER ART. 1326 OF THE CIVIL CODE, ADVERTIZEMENTS FOR BIDDERS ARE SIMPLY INVITATIONS TO MAKE PROPOSALS, AND THE ADVERTIZER IS NOT BOUND TO ACCEPT THE HIGHEST OR LOWEST BIDDER, UNLESS THE CONTRARY APPEARS. — Defendant advertized a bid for the construction of electrical wiring of a proposed building of the same. Bidders were required to file a bond of ₱20,000.00 which would be subject to confiscation in case the successful bidder should refuse to undertake the work. Plaintiff, Benigno C. Gutierrez, participated in the bidding and was the lowest bidder. However, defendant refused to award the construction to him. Instead, defendant awarded the construction work to the second lowest bidder, despite the big difference in the price for the construction work. Claiming to have been damaged by this arbitrary refusal of defendant, plaintiff brought a civil action for damages. However, the lower court dismissed his complaint. Plaintiff appealed. Appellee relied on Art. 1326 of the Civil Code. *Held*, under Art. 1326 of the Civil Code, relied upon by the appellee, advertizements for bidders are simply invitations to make proposals, and the advertizer is not bound to accept the highest or lowest bidder, unless the contrary appears. As there is nothing in the complaint tending to show that in inviting proposals the appellee held out that the contract was to be awarded the lowest bidder, no enforceable right on the part of the appellant has been established. GUTIERREZ *v.* INSULAR LIFE ASSURANCE CO., G.R. No. L-9832, Nov. 29, 1957.

CIVIL LAW — COMMON CARRIERS — IF DEATH OCCURS AS A RESULT OF THE OVERTURNING OF THE BUS, IT IS THE PROXIMATE CAUSE OF DEATH AND THE SUBSEQUENT BURNING OF THE SAME WILL NOT AFFECT THE LIABILITY OF THE OPERATOR. — Shortly after midnight, on Sept. 13, 1952, bus No. 30 of the Medina Transportation Co. operated by Mariano Medina was on its way to

Pasay City from Amadeo, Cavite, driven by Conrado Saylon. There were around 18 passengers, one of them was Bataclan. At about 2:00 o'clock that same morning, while the bus was running within the jurisdiction of Imus, Cavite, one of the front tires burst and the vehicle began to zig-zag until it fell into a canal or ditch on the right side of the road and turned turtle. Some of the passengers managed to go out the best way they could, others had to be pulled out, while 3 passengers including Bataclan were left inside shouting for help. In answer to the calls or shouts for help, two men came, one of them carrying a lighted torch made of bamboo with a wick on one end, evidently fueled with petroleum. These men approached the overturned bus, and almost immediately, a fierce fire started burning and all but consuming the bus, including the 4 passengers trapped inside it. It would appear that as the bus overturned, gasoline began to leak and escape from the gasoline tank on the side of the chassis, spreading over and permeating the body of the bus and the ground under and around it, and that the lighted torch brought by one of the men who answered the call for help set it on fire. The widow and children of Bataclan brought action against the operator for the recovery of natural, moral, compensatory and other damages. The lower court held that the proximate cause of the death of Bataclan was the subsequent burning of the bus and that the negligence of the driver was merely contributory, hence it awarded damages to the extent of ₱1,000, and ₱600 as attorney's fees and ₱100, the worth of merchandise lost by Bataclan. *Held*, ordinarily, when a passenger bus overturns, and pins down a passenger merely causing him physical injuries, if through some event unexpected and extra-ordinary, the overturned bus is set on fire, say, by lightning, or if some highwaymen after looting the vehicle sets it on fire, and the passenger is burned to death, one might still contend that the proximate cause of his death was the fire and not the overturning of the vehicle. But in the present case and under the circumstances obtaining in the same, we do not hesitate to hold that the proximate cause of the death of Bataclan was overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was very dark (about 2:30 in the morning), the rescuers had to carry a light with them; and coming as they did from a rural area where lanterns and flashlights were not available, they had to use a torch, the most handy and available; and what was more natural than that said rescuers should innocently approach the overturned vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with the torch was to be expected and was a natural sequence of the overturning of the bus, the trapping of some of its passengers and the call for outside help. What is more, the burning of the bus can also in part be attributed to the negligence of the carrier, through its driver and its conductor. According to the witnesses, the driver and the conductor were on the road walking back and forth. They, or at least, the driver should and must have known that in the position in which the overturned bus was, gasoline could and must have leaked from the gasoline tank and soaked the area in and around the bus, this aside from fact that gasoline when spilled, specially over a large area, can be smelt and detected even from a distance, and yet neither the driver nor the conductor would appear to have cautioned or taken steps to warn the rescuers not to bring the lighted torch too near the bus. Said negligence on the part of the agents of the carrier comes under the codal provisions of the Civil Code, particularly, Articles 1733, 1759 and 1763. BATACLAN *v.* MEDINA, G.R. No. L-10126, October 22, 1957.

CIVIL LAW — COMMON CARRIERS — THE COURT NEED NOT MAKE AN EXPRESS FINDING OF FAULT OR NEGLIGENCE OF DRIVER OF COMMON CARRIER, FOR ANY INJURY THAT MIGHT BE SUFFERED BY THE PASSENGER IS RIGHT AWAY ATTRIBUTABLE TO THE FAULT OR NEGLIGENCE OF THE CARRIER. — Plaintiff took a taxicab owned and operated by the Malate Taxicab and driven by Catalino Ermino. The taxi collided with an army wagon driven by Sgt. Jesus Deguito as a result of which plaintiff suffered injuries, resulting in his hospitalization. He spent some ₱2,266,45 therefor. Plaintiff brought an action for damages based on a contract of carriage against the Malate Taxicab. After several developments, trial was finally had and the court awarded plaintiff the aggregate sum of ₱4,200. Defendant appealed, pointing as one error the lack of express finding that the defendant-appellant was responsible for the collision, and hence, civilly responsible to plaintiff-appellee. *Held*, the court need not make an express finding of fault or negligence of driver of the common carrier, for any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the carrier, for the action initiated therefor is based on a contract of carriage and not on tort. SY *v.* MALATE TAXICAB, G.R. No. L-8937, Nov. 29, 1957.

CIVIL LAW — DONATIONS — LIBERALITY OF THE DONOR IS DEEMED *CAUSA* ONLY IN THOSE CONTRACTS THAT ARE OF PURE BENEFICENCE; THAT IS TO SAY, CONTRACTS DESIGNED SOLELY AND EXCLUSIVELY TO PROCURE THE WELFARE OF THE BENEFICIARY WITHOUT ANY INTENT OF PRODUCING ANY SATISFACTION FOR THE DONOR. — One Salvador P. Lopez, in his lifetime, donated a parcel of land to one Conchita Liguez, then 16 years old. The cause of said consideration was stated in the deed of donation as the donor's "love and affection for the said donee". The widow and the heirs of Lopez, on the other hand, introduced evidence showing an illicit consideration for the donation; that was Conchita's agreeing to stay maritally with Lopez, which Conchita in fact did. These heirs of Lopez, therefore, sought the donation to be declared null and void. The CFI and the Court of Appeals voided the donation. In the Supreme Court, the donee argued vigorously that liberality could never be illegal or illicit, since it is neither against law or morals or public policy; and that in contracts of pure beneficence liberality is the only consideration. *Held*, the flaw in this argument lies in ignoring that under the law, liberality of the donor is deemed *causa* only in those contracts that are of "pure" beneficence, that is to say, contracts designed solely and exclusively to procure the welfare of the beneficiary, without any intent of producing any satisfaction for the donor; contracts, in other words, in which the idea of self-interest is totally absent on the part of the transferor. Here, the facts found by the Court of Appeals demonstrate that in making the donation in question, the late Salvador P. Lopez was not moved exclusively by the desire to benefit appellant Conchita Liguez, but to secure her cohabiting with him. Thus, this is not a contract of "pure" beneficence. LIGUEZ *v.* COURT OF APPEALS, G.R. No. L-11240, Dec. 18, 1957.

CIVIL LAW — STATUTE OF FRAUDS — IN ORDER THAT A PARTIAL PERFORMANCE OF AN ORAL CONTRACT MAY TAKE THE CASE OUT OF THE OPERATION OF THE STATUTE OF FRAUDS, IT MUST APPEAR CLEAR THAT THE FULL PERFORMANCE HAS BEEN MADE BY ONE PARTY WITHIN ONE YEAR, AS OTHERWISE THE STATUTE WOULD APPLY. — Celestina Perez owned 156 hectares of land. During her life, she entered into an oral agreement with Santiago Babao whereby the latter would clear and improve Celestina's land with pay. Santiago administered the land under said verbal agreement for twenty-two years. After Celestina's death her land was sold by her administrator under a power of attorney executed by her. Santiago's administrator sought to recover his, Santiago's, salaries and the expenses incurred in improving Celestina's land from the latter's estate. During the suit oral proof was sought to be presented by plaintiff on the verbal contract. Defendant, Celestina's administrator, opposed the oral evidence on the ground of the statute of frauds, the alleged verbal agreement being one which could not be performed within one year. The lower court admitted the oral testimony presented by plaintiff on the ground that the verbal contract had been executed on one side and, therefore, the case was out of the operation of the statute of frauds. Hence, defendant appealed. *Held*, it is clear that the obligation of Santiago Babao under the oral agreement could not be performed, and was not, by him within one year. Hence, the statute of frauds still applies. In order that a partial performance of an oral contract may take the case out of the operation of the statute of frauds, it must appear clear that full performance has been made by one party within one year, as otherwise, the statute would apply. BABAO *v.* PEREZ, G.R. No. L-8334, Dec. 28, 1957.

CIVIL LAW — INDEPENDENT CIVIL ACTIONS — IN CASES OF PHYSICAL INJURIES, A CIVIL ACTION FOR DAMAGES, ENTIRELY SEPARATE AND DISTINCT FROM THE CRIMINAL ACTION, MAY BE BROUGHT BY THE INJURED PARTIES, AND SUCH CIVIL ACTION SHALL PROCEED INDEPENDENTLY OF THE CRIMINAL PROSECUTION. — Petitioners were passengers in a jeepney which came into violent collision with a taxicab. Petitioners suffered injuries thereby. The jeepney and taxicab were driven and owned by respondents. Petitioners then brought a civil action for damages due to physical injuries in the respondent court. A motion was filed by respondents Lizaro, operator of the jeepney, and Asuncion, driver of the jeepney, to suspend the civil case until after the criminal case for serious physical injuries through reckless imprudence filed against respondent Raymundo, driver of the taxicab, and respondent Asuncion, should have been disposed of by the inferior court. This motion was approved by the respondent court over the objection of petitioners. A motion for reconsideration was denied. The respondent court relied on the previous ruling of the Supreme Court to the effect that a civil case should be suspended in favor of a criminal case involving the same facts. *Held*, it is settled that in cases of physical injuries a civil action for damages entirely separate and distinct from the criminal action, may be brought by the injured parties and such civil action shall proceed independently of the criminal prosecution. DIONISIO *v.* ALVENDIA, G.R. No. L-10567, Nov. 26, 1957.

CIVIL LAW — EFFECT AND APPLICATION OF LAWS — THE PROVISIONS OF THE NEW CIVIL CODE WILL NOT BE GIVEN EFFECT, IF THE SAME WOULD IMPAIR A

RIGHT ACQUIRED UNDER THE PROVISIONS OF THE OLD CIVIL CODE. — Plaintiffs' father executed on March 3, 1939, a deed of sale of a parcel of land in favor of defendant's father. According to the deed, the vendor or his successors had one year from the execution thereof within which to redeem the land. In an action brought by plaintiffs against defendants, the court declared the deed to be a true contract of sale with right of repurchase, but that the time within which the vendor could exercise the right of repurchase had already expired. After the judgment became final and executory and within 30 days therefrom, on July 30, 1954, to be precise, plaintiffs wanted to exercise the right accorded vendors *a retro* by the New Civil Code, which then was in force; the last paragraph of Art. 1606 of the new Code gives the vendor 30 days from finality of the judgment rendered in a civil action on the basis that the contract was a true sale with right of repurchase within which to exercise the right to repurchase. However, under the old Code the right of the vendee had become irrevocable. *Held*, to apply and give effect, therefore, to the New Civil Code, invoked by appellants, would impair the right of the appellees acquired under the provisions of the old Civil Code — an impairment prohibited by Art. 2253 of the New Civil Code. DE LA CRUZ *v.* MUYOT, G.R. No. L-9402, Oct. 31, 1957.

CIVIL LAW — DAMAGES — TO BE LIABLE, THERE MUST BE A DIRECT AND PROXIMATE CAUSAL CONNECTION BETWEEN THE NEGLIGENCE OR VIOLATION OF THE LAW BY THE DEFENDANT TO THE DEATH OF PLAINTIFFS' INTESTATE. — Defendant owned a truck which he instructed his cargador to drive. This cargador had only a student's permit. Defendant expressly prohibited his driver from turning over the wheel to anyone. While on the way, defendant's driver picked up passengers, a uniformed policeman among them. This latter insisted in taking over the wheel. Defendant protested at first. With the policeman thus driving, defendant's truck ran over a pedestrian, killing him. Plaintiffs were his wife and children. Plaintiffs sought to hold defendant liable for negligence because he allowed his driver to drive his truck despite the fact he had no license therefor. Before this, the policeman who caused the death of deceased had been convicted for homicide through reckless imprudence. The lower court absolved defendant. *Held*, it is evident that the proximate, immediate and direct cause of death of plaintiffs' intestate was the negligence of the policeman. Defendant should be absolved because there is no direct and proximate causal connection between the negligence or violation of the law by the defendant to the death of plaintiffs' intestate. GREGORIO *v.* GO-CHONG BING, G.R. No. L-7663, Dec. 2, 1957.

COMMERCIAL LAW — CORPORATION LAW — THE ROMAN CATHOLIC APOSTOLIC CHURCH IN THE PHILIPPINES HAS NO NATIONALITY AND THE FRAMERS OF THE CONSTITUTION DID NOT HAVE IN MIND THE RELIGIOUS CORPORATION SOLE WHEN THEY PROVIDED THAT 60 PER CENTUM OF THE CAPITAL THEREOF BE OWNED BY FILIPINO CITIZENS. — The Roman Catholic Apostolic Administrator of Davao sought to register a parcel of land in the Register of Deeds of Davao. The registrant was a Canadian citizen. He bought the land from Mateo L. Rodis, a Filipino citizen, on Oct. 4, 1954, in his capacity as corporation sole. The Register of Deeds refused him registration on the ground that he was not a Filipino citizen or that 60% of the capital stock of this

corporation was owned by Filipino citizens as required by the constitution. The question presented to the Supreme Court was: Is a corporation sole covered by the constitutional provisions on the 60% capital stock requirement? *Held*, under our Corporation Law the Roman Catholic Apostolic Church in the Philippines has no nationality and the framers of the constitution did not have in mind the religious corporation sole when they provided that 60 per centum of the capital thereof be owned by Filipino citizens. THE ROMAN CATHOLIC APOSTOLIC ADMINISTRATOR OF DAVAO, INC. *v.* LAND REGISTRATION COMMISSION, G.R. No. L-8451, Dec. 20, 1957.

COMMERCIAL LAW — TRANSPORTATION — AN ESTABLISHED COMMON CARRIER MAY ONLY BE PERMITTED TO INCREASE HIS UNITS TO UNDERTAKE ADDITIONAL TRIPS ON HIS ROUTE IF AND WHEN HE POSITIVELY SHOWS THAT: FIRST, THAT HE HAD REGULARLY UNDERTAKEN ALL HIS AUTHORIZED TRIPS, SECOND, THAT HIS BUSSES WERE ALWAYS SUFFICIENTLY LOADED WITH PASSENGERS AND THIRD, THAT MANY TRAVELERS COULD NOT BE CONVENIENTLY ACCOMMODATED. — In September of 1953 Elpidio Francisco was granted a certificate of public convenience to operate three auto-buses on a designated route. He was authorized to operate two regular auto-buses and one for reserve. He was authorized to make 16 trips a day. Nine months later he requested for authority to make other trips along the same route with three additional auto-busses. Petitioner, which was operating a transportation service over the same road, objected to the request, alleging that public convenience required neither the additional trips nor the extra equipment. The Public Service Commission, however, granted the authority sought for. Petitioner, therefore, sought the Supreme Court for the review of the PSC order granting the authority. The Supreme Court examined the evidence presented by the applicant Elpidio Francisco to prove his claim. It found that applicant had presumed, than proved, the existence of public need for the additional bus service. He failed to sufficiently prove that he made all his authorized trips; or that all his trips were sufficiently loaded with passengers. *Held*, in either case there was no justification to grant him additional busses to operate other trips between the two terminals of his line. For it goes without saying that an established common carrier may only be permitted to increase his units to undertake additional trips on his route if and when he positively shows the public need for it; in other words, he must prove, first, that he had regularly undertaken all his authorized trips, second, that his busses were always sufficiently loaded with passengers and, third, that many travelers could not be conveniently accommodated. A. L. AMMEN TRANSPORTATION *v.* FRANCISCO, G.R. No. L-9746, Nov. 29, 1957.

COMMERCIAL LAW — SURETYSHIP — IN A BOND FOR GUARANTEE AGAINST LARCENY OR ESTAFA BY THE SECURED EMPLOYEE IT IS NOT NECESSARY THAT CRIMINAL CONVICTION SHOULD HAVE FOUND THE SAID EMPLOYEE GUILTY OF LARCENY OR ESTAFA. — Luzon Surety Company guaranteed the faithful performance by Jose Trillanes, salesman of plaintiff company. Defendant surety secured plaintiff against larceny or estafa by Jose Trillanes. Later, Jose Trillanes misappropriated funds of the plaintiff company, which he could not fully pay. Plaintiff, therefore, brought an action against Trillanes and defendant company on the bond undertaken. The lower court found as a fact

that Jose Trillanes did misappropriate plaintiff's funds. So it held defendant liable on the bond it had executed. The latter appealed, maintaining that court action should have specifically found Trillanes guilty of larceny or estafa before it, the Surety Company, could be held liable on its bond. *Held*, in a bond for guarantee against larceny or estafa by the secured employee it is not necessary that criminal conviction should have found the said employee guilty of larceny or estafa. CHUNG TE & COMPANY *v.* LUZON SURETY COMPANY, G.R. No. L-10790, Oct. 31, 1957.

COMMERCIAL LAW — SURETYSHIP — REP. ACT NO. 487 IS NOT APPLICABLE TO BONDS ISSUED BY SURETY COMPANIES. — Petitioner Philippine Surety guaranteed the faithful performance by Monico Perfecto of his duties as agent of respondent Royal Oil Products. Monico Perfecto later defaulted and Royal Oil sought to hold petitioner liable on its bond. However, petitioner refused to honor its bond and, instead, contested Royal Oil's claim in the court. The lower court's decision was for Royal Oil. This court applied Rep. Act 487 which awards to the winning party in a claim involving insurance contracts damages consisting of attorney's fees and other expense incurred by reason of the refusal of losing party to perform its obligation, plus 12% interest of the amount of the claim due the insured. The Court of Appeals affirmed the lower court's decision on all points, only reducing the amount of attorney's fees awarded. *Held*, Rep. Act No. 487 is not applicable to bonds issued by surety companies. The law contemplates contracts in the form of insurance policies issued by insurance companies. PHILIPPINE SURETY & INSURANCE COMPANY *v.* ROYAL OIL PRODUCTS, INC., G.R. No. L-9981, Oct. 31, 1957.

CRIMINAL LAW — LIBEL — THE PROVINCIAL FISCAL OF THE PROVINCE WHERE THE ALLEGED LIBELOUS ARTICLE IMPUTING A CRIME THAT COULD BE PROSECUTED *DE OFICIO* IS CIRCULATED HAS AUTHORITY TO CONDUCT PRELIMINARY INVESTIGATION AND TO FILE THE INFORMATION FOR LIBEL, EVEN IF A PREVIOUS PRELIMINARY INVESTIGATION HAD BEEN CONDUCTED BY ANOTHER PROVINCIAL FISCAL IN ANOTHER PROVINCE IN CONNECTION WITH THE SAME LIBEL. — The Philippines Free Press published an article entitled "The Senator and the Subdivision" in its Dec. 2, 1953 issue. The writer of the article was Teodoro M. Locsin, staff member, and the magazine's publisher was R. McCulloch Dick. The Free Press carrying the article was circulated throughout the Philippines, including the provinces of Rizal and Iloilo. The senator involved was Sen. Jose C. Zulueta. Sen. Zulueta considered the article libelous. The same imputed to the Senator violation of the Constitution for Sen. Zulueta's allegedly having used government money for the construction of roads in Sen. Zulueta's subdivision in the province of Iloilo. The source of Locsin's information was the governor of Iloilo, his co-defendant. The Provincial Fiscal of Rizal, in connection with a complaint filed with him for libel because of the Locsin article, conducted a preliminary investigation. He dropped the case, however, for being unmeritorious. Subsequently, the Provincial Fiscal of Iloilo made another preliminary investigation on the same case, and filed an information for libel with the CFI of Iloilo. Defendants herein — Teodoro M. Locsin, R. McCulloch Dick, and Wenceslao Pascual, governor of Iloilo — moved to quash the information on several grounds, the first of which reads: (1) the Provincial Fiscal of Iloilo had no jurisdiction to file said information, be-

cause a complaint for the same offense had, in February, 1954, been filed by Jose Zulueta with the Provincial Fiscal of Rizal, who, after conducting a preliminary investigation, dropped the case on May 4, 1954, upon the ground that the defendants had not committed the crime charged. The CFI of Iloilo sustained this ground and dismissed the case. *Held*, the alleged libel here consists of the imputation of a violation of the Constitution, a crime which could be prosecuted *de oficio*. As such the Provincial Fiscal of Iloilo could have filed the information herein, upon his own initiative, *without* the offended party's complaint, and, *even over his objection*. If, the offended party could not, by *direct*, positive and explicit prohibition, restrain the Provincial Fiscal of Iloilo from instituting this case, it follows necessarily that neither could the former achieve the same result *indirectly*, by merely filing the first complaint with the Provincial Fiscal of Rizal. Accordingly, the lower court erred in holding that the Provincial Fiscal of Iloilo had no authority to conduct a preliminary investigation and to file the information in the present case. It should be noted that the complaint filed with the Provincial Fiscal of Rizal was dropped by him. No information was filed with the CFI of Rizal. Hence, the same acquired no jurisdiction over the case and did not divest other courts of the authority (venue) to receive and hear a charge for the same offense. PEOPLE *v.* PASCUAL, G.R. No. L-9490, Nov. 29, 1957.

CRIMINAL LAW — USE OF NAME — IN FORBIDDING THE USE OF NAME DIFFERENT FROM THAT BY WHICH ONE HAS BEEN KNOWN SINCE CHILDHOOD, SEC. 1 OF COMMONWEALTH ACT NO. 142 BY NECESSARY IMPLICATION ALLOWS THE USE OF THE LATTER. — Uy Jui Pio was charged in the Municipal Court of Manila with violation of Commonwealth Act No. 142 for using publicly a name different from the one with which he was christened or by which he was known since childhood. Convicted, he appealed to CFI which decision was solely on his admissions which was to the effect that since childhood he was known as Uy Jui Pio or Juanito Uy, which was also used by him in school and since 1936, within Commonwealth Act No. 142, he had been using it and in his marriage contract he signed Juanito Uy. He was convicted for using Juanito Uy which he was already known in his country as Uy Jui Pio. *Held*, in forbidding the use of a name different from that by which one has been known since childhood, the law by necessary implication, allows the use of the latter. PEOPLE *v.* UY JUI PIO, G.R. No. L-11489, Dec. 23, 1957.

CRIMINAL LAW — DEFENSE OF RELATIVES — CONCEDING THAT THE DECEASED HAD COMMITTED AN ACT OF UNLAWFUL AGGRESSION UPON DEFENDANT'S SISTER, STILL NO REASONABLE NECESSITY AROSE OF CAUSING HIS DEATH, BECAUSE DEFENDANT'S SISTER WAS ALREADY FREE FROM HIS CLUTCHES. — Moro Pisingan killed Moro Pereng with a *barong* and from behind. The killing was precipitated by Pereng's attempted mashing of Mora Ajira, Pisingan's sister. Pereng had grabbed Ajira's hand one night, tore at her dress but Ajira was able to escape, shouting for help. As Pereng pursued her, Pisingan came and hacked Pereng with a *barong* from behind. The blow felled Pereng. Two more blows finished him. Accused was charged and convicted of murder. Pisingan appealed. *Held*, conceding that Pereng had committed an act of unlawful aggression upon defendant's sister, Ajira, still no reasonable necessity arose of causing his death, because Ajira was already free from his clutches. Besides, after Pereng had fallen down there was no reason to inflict two additional mortal wounds. Hence, appellant may not be wholly absolved from criminal liability for having defended a near relative. PEOPLE *v.* PISINGAN, G.R. No. L-8226, Oct. 31, 1957.

CRIMINAL LAW — PENALTIES — THE KILLING HAVING BEEN COMMITTED WITH *ALEVOSIA*, AND THERE BEING NO CIRCUMSTANCE TO MODIFY CRIMINAL LIABILITY, DEFENDANT WAS RIGHTLY FOUND GUILTY OF MURDER AND THE SENTENCE IMPOSED SHOULD BE LIFE IMPRISONMENT. — Defendant-appellant Fidel Quidlat stood accused of murder committed on the person of Andres Quirimit. The trial court found him guilty and sentenced him to an indeterminate penalty of 10 years and 1 day of *prision mayor* to 17 years, 4 months and 1 day of *reclusion temporal*. Prosecution presented three witnesses who identified defendant Quidlat as the person who did the shooting leading to the death of deceased. The shooting took place at seven in the evening. The first witness for prosecution, mother of deceased, actually saw defendant shoot her son with a gun from behind, from the ground, she and her son were then at the latter's house. The second witness saw defendant at about the same time, going away from the house of deceased, carrying a gun and telling his two companions, whom witness did not recognize, that deceased could no longer escape. The third witness saw defendant, with the same gun and companions, earlier, heading at the direction of the house of deceased. All three witnesses knew defendant from the latter's childhood. They recognized his voice even without seeing him. The testimony of a doctor and the trial court's ocular inspection of the house where the shooting took place, corroborated the testimony of the mother of deceased. Thus, an *alibi* raised by defendant was rejected by the trial court. Defendant appealed. *Held*, it is apparent that the killing was committed with *alevosia* so that the trial court did not err in declaring defendant guilty of murder. There being no circumstance to modify criminal liability, defendant should be sentenced to life imprisonment. In all other respects, the decision appealed from is affirmed. PEOPLE *v.* QUIDLAT, G.R. No. L-11318, Dec. 28, 1957.

CRIMINAL LAW—PENALTIES—IN APPLYING THE PROPER PENALTY, ARTICLE 70 PARAGRAPH 4 OF THE REVISED PENAL CODE CAN BE TAKEN INTO ACCOUNT NOT IN THE IMPOSITION OF THE PENALTY BUT IN CONNECTION WITH THE SERVICE OF THE SENTENCE THEREOF. — On Sept. 13, 1950, six separate informations for robbery were filed in the CFI of Rizal against Poblador Gustilo Escares who was then at-large. Decision was rendered convicting the defendants. On April 21, 1954 Escares was arraigned but pleaded not guilty which, subsequently, was changed to a plea of guilty and was sentenced in accordance with the provision of art. 70 of R.P.C. to 12 years 6 months and 1 day in all cases and the accessory penalties. He appealed raising as error the penalty imposed on the fact that there being no aggravating circumstance to affect his plea of guilty his penalty should be reduced to the minimum. *Held*, in applying the proper penalty, the trial court imposed upon the appellant the threefold rule provided for in par. 4 of art. 70 of the R.P.C. in which is an error. Said art. can only be taken into account not in the imposition of penalty but

in connection with the service of the sentence imposed. PEOPLE *v.* ESCARES, G.R. No. L-11128, Dec. 23, 1957.

CRIMINAL LAW — PENALTIES — THE INDETERMINATE SENTENCE LAW APPLIES TO A CASE OF ESTAFA INVOLVING AN AMOUNT OF P380.00. — Appellant Emma Sevilla was found guilty of estafa committed as follows: One Carmen Miranda gave appellant documents of ownership of a house and a real estate tax receipt therefor for the purpose of securing a loan of P500 for and in behalf of Carmen Miranda. With said documents appellant was able to secure a loan of P380 but appellant converted it to her own use. Upon arraignment appellant pleaded not guilty but after one witness for the prosecution had testified appellant declared that she was willing to plead guilty. The trial court sentenced her to five months of *arresto mayor* with the accessory penalties, to indemnify the offended party in the sum of P380 with subsidiary imprisonment. Appellant did not agree with the decision. The Solicitor General argued that the sentence imposed was not in accordance with law. *Held*, the Indeterminate Sentence Law should be applied and appellant should be sentenced to suffer a maximum penalty of one year and one day of *prision correccional* (minimum penalty for the offense, there being neither aggravating nor mitigating circumstances) and a minimum of three months of *arresto mayor*. PEOPLE *v.* SEVILLA, G.R. No. L-7928, Nov. 29, 1957.

CRIMINAL LAW—WAIVER—A CRIMINAL OFFENSE IS COMMITTED AGAINST THE PEOPLE AND THE OFFENDED PARTY MAY NOT WAIVE OR EXTINGUISH THE CRIMINAL LIABILITY WHICH THE LAW IMPOSES FOR THE COMMISSION OF THE OFFENSE. — Defendant received sweepstake tickets from the offended party for the purpose of selling the same under the express obligation of making an accounting thereof and turning over the proceeds of the sales to the offended party. Appellant failed to comply with his obligation within a reasonable length of time and misappropriated, misapplied and converted the tickets or their value to his own personal use and benefit to the damage of the offended party. The defendant, however, made a partial payment duly accepted by the offended party. It was then alleged that the acceptance of the offended party of the partial payment constituted extinguishment of the criminal liability. *Held*, a criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense. PEOPLE *v.* GERVACIO, G.R. No. L-7705, Dec. 24, 1957.

LABOR LAW -- LABOR DISPUTES — THE COURT OF FIRST INSTANCE CANNOT RECOGNIZE A SUIT FOR INJUNCTION WHEN IT APPEARS THAT THERE IS PENDING A COMPLAINT FOR UNFAIR LABOR PRACTICE IN THE COURT OF INDUSTRIAL RELATIONS INVOLVING THE SAME FACTS. — Petitioner labor union filed a complaint for unfair labor practice with the C.I.R. against the San Miguel Brewery Box Factory located in Mandaluyong, Rizal. Pending this, the union members went on strike and formed picket lines in the premises of the factory. Gonzalo Sanchez who supervized the work in the box factory filed a suit in the Court of First Instance, asking for a preliminary injunction to stop the union members from disturbing the box factory and for damages. The CFI granted the prayer for preliminary injunction. The union members went to the Supreme Court by certiorari on the ground of lack of jurisdiction on the part of the CFI over the case. *Held*, the court of first instance cannot recognize a suit for injunction when it appears that there is pending a complaint for unfair labor practice in the Court of Industrial Relations involving the same facts. S.M.B. BOX WORKERS' UNION *v.* VICTORIANO, G.R. No. L-12820, Dec. 20, 1957.

LABOR LAW—STRIKE—BY DECLARING A STRIKE THE LABORERS SO STRIKING DO NOT ABANDON THEIR WORK OR WAIVE THEIR RIGHT TO GO BACK THERETO AND, CONSEQUENTLY, THE STRIKERS MAY RETURN TO THEIR WORK. — Members of the Philippine Marine Radio Officers Association (PHILMAROA) who were serving with the vessel of the Phil. Navigation Co. and other shipping companies called a strike. Before the strike took place, the PHILMAROA filed a notice of intention to strike with the Conciliation Service of the Department of Labor against the above shipping companies. This act was inspired by the latter's refusal to accede to the demands of strikers for improvements in their pay and in the conditions of their employment. The Conciliation Service gave the shipping companies six days within which to settle with strikers. But before the period expired, the strike was made. The shipping companies, therefore, replaced the vacated positions with laborers from petitioner union. The C.I.R. ruled that the striking laborers had the right to go back to their old work. Petitioner intervened, claiming that, by striking and by the replacement of their positions with new workers, the striking members of PHILMAROA had abandoned their work and had waived their right to return to the same. *Held*, while it may be true that the strike was premature because the strikers did not wait for the expiration of the six-day period granted the companies to answer the demands of the striking union, the rashness of the strikers may be excused by the fact that their demands had been presented as early as August, 1953, and no answer thereto had been obtained for a period of four months. All the strikers lost by reason of their premature strike was their right to backpay. The demands of strikers were legitimate. Consequently, they did not lose their work, and their right to return to it, by striking, the employment of strike-breakers notwithstanding. RADIO OPERATORS ASSOCIATION *v.* PHILMAROA, G.R. No. L-10112, Nov. 29, 1957.

LABOR LAW — PRESIDENTIAL CERTIFICATION — EVEN AFTER A STRIKE HAS BEEN DECLARED, WHERE THE PRESIDENT BELIEVES THAT PUBLIC INTEREST DEMANDS ARBITRATION AND CONCILIATION, THE PRESIDENT MAY CERTIFY THE CASE FOR THAT PURPOSE. — The Bisaya Land Transportation employed certain persons who, through a labor union, presented several demands for concessions from the former. Notice of intention to strike was later filed with the Conciliation Service Division of the Dept. of Labor against petitioner herein. After the intended strike had taken place the President of the Philippines certified the case to the CIR. The decision of the CIR being unfavorable, petitioner, Bisaya Land Transportation, appealed, presenting six assignments of errors, the fifth being that the certification of the case to the CIR by the President was null and void, the same having been done after the strike had been declared. *Held*, there is no reason or ground for the contention that presidential certification is limited to the prevention of strikes and lockouts.

Even after a strike has been declared, where the President believes that public interest demands arbitration and conciliation, the President may certify the case for that purpose. BISAYA LAND TRANSPORTATION CO., INC. *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-10114, Nov. 26, 1957.

LABOR LAW — LABOR UNIONS — A LABOR UNION DULY ORGANIZED AND REGISTERED WITH THE DEPARTMENT OF LABOR HAS THE RIGHT TO COLLECTIVE BARGAINING AND THIS IT MAY DO SO IN BEHALF OF ITS MEMBERS. — The United Employees Welfare Association is a legitimate and duly registered labor union. Among its members were 36 pinboys employed by the Isaac Peral Bowling Alley. On October 6, 1952, the labor union presented a petition before the Department of Labor on behalf of its 30 pinboy members, allegedly affiliated with it. Among the demands was one asking recognition of the United Employees Welfare Association as the sole bargaining agency. The petition was certified by the Labor Department to the C.I.R. On the same day, the pinboys staged a strike. The Bowling Alley company filed its answer and, with respect to the demand of the labor union for recognition, answered that the petitioning union could not be recognized as the sole bargaining agency of its, the company's, pinboys because the same were not the only ones employed by it. When the C.I.R. granted this part of the demands, the company assigned the same as an error. The labor union, the company reasoned, had failed to comply with the provisions on certification election laid down by Rep. Act No. 875 (The Industrial Peace Act). *Held*, the labor union had been presumably registered with the Department of Labor. As such it has the right of collective bargaining with the employer in behalf of its members. As such, it may be recognized as the sole bargaining agency of its members. ISAAC PERAL BOWLING ALLEY *v.* UNITED EMPLOYEES WELFARE ASSOCIATION, G.R. No. L-9831, Oct. 30, 1957.

LABOR LAW — EMPLOYERS — EMPLOYERS HAVE THE RIGHT TO TRANSFER THEIR EMPLOYEES FROM ONE BRANCH OF THEIR BUSINESS TO ANOTHER. — The Farmacia Oro had several drugstores, among them, the branches at Rizal Avenue, Taft Avenue and Legarda. On August 2, 1952, Farmacia Oro sought authorization to close down these three branches due to business losses suffered. Before this, Farmacia Oro had reshifted its employees among its several stores. Petitioner, a labor union, representing its members employed by Farmacia Oro, opposed this move because the same would result in the laying off of several employees, members of petitioner union. Petitioner maintained that the transfer of employees by Farmacia Oro was an act of discrimination aimed against its employees who had worked longer and entitled to seniority rights. As a result of this transfer and the closing up of the three branches, these older employees would be laid off, argued petitioner. Against the decision of the CIR, petitioner went to the Supreme Court. *Held*, the lower court found as a fact that the transfer of employees by Farmacia Oro was not intended to discriminate against any employee. In the absence of the same, employers may legitimately transfer their employees from one branch of their business to another. ASSOCIATION OF DRUG STORE EMPLOYEES *v.* MARTINEZ, G.R. No. L-10263, Dec. 17, 1957.

LABOR LAW — WORKMEN'S COMPENSATION ACT — AN INJURED LABORER'S INCAPACITY FOR WORK IS NOT TO BE MEASURED SOLELY BY THE WAGES HE RECEIVES, OR HIS EARNINGS, AFTER THE INJURY, SINCE THE AMOUNT OF SUCH WAGES OR EARNINGS MAY BE AFFECTED BY VARIOUS EXTRANEOUS MATTERS OR FACTORS. — Leonardo Alla was hired by petitioner company to mend sugar sacks at ₱4.00 a day. He was injured while engaged in that work on board a freighter when a sack of sugar fell on him as it was being hoisted in a cargo net into the ship's hold. Both the company's physician and the medical officer of the Workmen's Compensation Commission found him to have suffered "fracture of the *pubis iscium* and slight bladder injury", which caused permanent partial disability. The Workmen's Compensation Commissioner awarded Leonardo Alla ₱1,248.00 compensation which was 50% of 50% of Alla's weekly wages for 208 weeks, the period during which Alla was not able to do any work. Alla was able to find new employment at the end of the preceding period, on Dec. 31, 1955, with the Nasugbu Watchmen Agency at a higher salary. Petitioner company wanted the compensation awarded Alla reduced. And so it brought the case to the Supreme Court for review by certiorari. The company contended that if the injured laborer was at all entitled to compensation for a permanent partial disability such compensation should be payable only from Nov. 1, 1955, the day following the cessation of his temporary total disability, to Dec. 31, 1955, the day before he found a new employment with the Nasugbu Watchmen Agency at a higher salary. *Held*, an injured laborer's incapacity for work is not to be measured solely by the wages he receives, or his earnings, after the injury, since the amount of such wages or earnings may be affected by various extraneous matters or factors. The decision appealed from, therefore, is hereby affirmed. GENERAL AZUCARERA DON PEDRO *v.* DE LEON, G.R. No. L-10036, Dec. 28, 1957.

LABOR LAW — WORKMEN'S COMPENSATION ACT — THE AMENDMENT OF SEC. 29 OF ACT NO. 3428 INTRODUCED BY REP. ACT NO. 772 DOES NOT HAVE A RETROACTIVE EFFECT. — Dezon Castillo and Federico Canino were seamen of vessel S.S. Regulus which sank off the coast of Panay on Nov. 2, 1949. Both died. Their fathers filed a claim with the Department of Labor for their death against the Madrigal Shipping Co., Inc., owner of the lost vessel. Each victim was entitled to a compensation amounting to more than ₱1,000. But their fathers entered into separate agreements, then allowed, and in the form prescribed by Sec. 29 of Act No. 3428 (Workmen's Compensation Act), whereby for an amount of ₱332.00 they released Madrigal Shipping Co. from their claim for compensation and waived their right thereto. On June 20, 1952, Rep. Act No. 722 took effect. The Act amended Sec. 29 of Act No. 3428, providing that an agreement on compensation for injury to a laborer, to be valid, must at least be the same as that provided for in the Act and approved by the Workmen's Compensation Commissioner. Now, fathers of the deceased seamen of S.S. Regulus wanted to claim the deficiency in the compensation given them by Madrigal Shipping Co. *Held*, these agreements entered into by the fathers of the deceased seamen and Madrigal Shipping Co. were allowed by the law then existing. The amendment introduced by Rep. Act No. 722 cannot be made to apply to the case. CASTILLO *v.* MADRIGAL SHIPPING COMPANY, G.R. No. L-10708, Nov. 21, 1957.

LABOR LAW — WORKMEN'S COMPENSATION ACT — COMPENSATION MUST BE ALLOWED FOR ALL THE CONSEQUENCES FLOWING FROM THE ORIGINAL INJURY AND NOT ATTRIBUTABLE TO OTHER INTERVENING CAUSES. — Antonio Manimtim was an employee of Co Cho Chit at the latter's shop named Grace Park Engineering, Inc. At his work, while sharpening an auger on the grinding machine, a flying piece of metal pierced his right eye. He reported the matter to his foreman immediately. Despite an immediate hospitalization and operation, plaintiff employee lost his right eye. Later he also suffered the loss of vision of his left eye. Dr. Gorospe of the Department of Labor found that the loss of vision of the plaintiff's left eye was due to transferred infection from the right eye injured. Now, plaintiff wanted to recover compensation for injury to both eyes. Defendant employer claimed he was only entitled to compensation for his right eye injury. *Held*, the disability of plaintiff's left eye is only traceable to the injury of his right eye, hence the general rule that compensation must be allowed for all the consequences flowing from the original injury and not attributable to other intervening causes should be applied. MANIMTIM *v.* CO CHO CHIT, G.R. No. L-7310, Dec. 28, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — A SLIGHT DELAY IN THE ADJUDICATION OF A CASE OCCASIONED BY A REASONABLY JUSTIFIED CONTINUANCE OF THE HEARING OF THE CASE, WOULD NOT MATERIALLY PREJUDICE A PARTY TO THE CASE, AND, THEREFORE, THE COURT SHOULD HAVE GRANTED THE REQUEST FOR CONTINUANCE OF THE HEARING OF SAID CASE. — Respondent labor union filed with the C.I.R. a petition for the adjudication of its 16-point demand upon petitioner Moises Selma, employer of respondent labor union's members. Counsel for petitioner requested continuance of the hearing due to his attendance in another case before the Electoral Tribunal of the House of Representatives. This was denied by the court. On the date set for the resumption of the hearing counsel for petitioner filed another motion for continuance on the ground that counsel for petitioner would be, on the date of the hearing, in Manila to argue a protest before the Electoral Tribunal of the House of Representatives. The court denied the same. So on the date set for the hearing, petitioner and his counsel were absent. Petitioner's counsel then moved for rehearing. Respondent labor union showed by a certification of the clerk of the lower House's Electoral Tribunal that on the date of the hearing, petitioner's counsel was not before the Electoral Tribunal. Actually, on that date, petitioner's counsel was in Manila, arguing a case before the Supreme Court. Hearing of this case was in Cebu City. The Industrial Court, therefore, denied petitioner's motion for rehearing, to allow him to cross-examine respondent labor union's witnesses and to afford him to introduce evidence on his behalf. Hence, petitioner went to the Supreme Court. *Held*, a slight delay in the adjudication of the case occasioned by a reasonably justified continuance of the hearing of the case, to afford the herein petitioner the opportunity to cross-examine the witnesses of herein respondent labor union and to present evidence in his behalf, would not materially prejudice the members of respondent labor union. It is in consonance with justice and fair play. The court should have granted the continuance prayed for. SELMA *v.* PHILIPPINE LAND-AIR-SEA LABOR UNION, INC., G.R. No. L-9884, Dec. 28, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS DOES NOT HAVE JURISDICTION OF A CASE WHICH REFERS TO RECOVERY OF DAMAGES OCCASIONED BY THE PICKETING UNDERTAKEN BY THE MEMBERS OF A UNION AND THE RESCISSION OF ARRASTRE AND STEVEDORING CONTRACT PREVIOUSLY ENTERED INTO BETWEEN THE PARTIES EVEN IF THERE IS ACTUALLY A CASE PENDING BETWEEN THE SAME PARTIES IN THE INDUSTRIAL COURT INVOLVING A REQUEST BY THE UNION TO BE RECOGNIZED AS THE SOLE BARGAINING UNIT OF THE COMPANY WITH REGARD TO ITS STEVEDORING AND ARRASTRE SERVICES. — The Compañia Maritima entered into an "arrastre and stevedoring contract" with petitioner with respect to the company's boats calling at Iligan City where petitioner was operating. Subsequently the company contracted with another arrastre service and notified petitioner that its contract with the latter would be terminated. Petitioner answered, claiming to be recognized as the sole collective bargaining agency for arrastre and stevedoring work in the port of Iligan City. When the company ignored its demand, petitioner's union members picketted the premises of the port, impeding the work undertaken in the company's vessels. Petitioner, at the same time, filed with the Court of Industrial Relation for certification of the union petitioner, as the sole and exclusive bargaining unit of the company at Iligan City in connection with the stevedoring and arrastre work of all the cargo of the vessels belonging to said company. The company, on the other hand, commenced a suit in the CFI of Lanao seeking to enjoin the union and its members from interfering with the loading and the unloading of the cargo on board the vessels of said company that were docked and that might dock at the port of Iligan City. The company also asked for damages that might have been suffered and would be suffered by the same because of the picket staged by the union, petitioner, and its members. The union moved to dissolve the preliminary injunction issued by the CFI, arguing that the CFI did not have jurisdiction of the case because of the pendency of the labor dispute between the same parties in the C.I.R. The court did not dissolve the injunction it issued. A subsequent motion to dismiss the case for the same ground was also denied. Hence this appeal. *Held*, the Court of Industrial Relations does not have jurisdiction of a case which refers to recovery of damages occasioned by the picketing undertaken by the members of a union and the rescission of arrastre and stevedoring contract previously entered into between the parties even if there is actually a case pending between the same parties in the Industrial Court involving a request by the union to be recognized as the sole bargaining unit of the company with regard to its stevedoring and arrastre services. ALLIED FREE WORKERS' UNION *v.* APOSTOL, G.R. No. L-8876, Oct. 31, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE FINDINGS OF FACT BY THE COURT OF INDUSTRIAL RELATIONS CANNOT BE REVIEWED BY THE SUPREME COURT. — Respondent ran a shoe factory. Among his employees were Daniel Montoya and Bienvenido Montoya, father and son. These two joined a labor union. The latter presented a petition with demands to respondent. Respondent dismissed the father and son. Upon advice of his lawyer, however, respondent sent two letters to the dismissed employees recalling them to work. Despite these letters, the two employees failed to report to work. Whereupon, respondent replaced the vacated positions. Subsequently, a lawyer appeared for the employees to prosecute their demands in their behalf. Fail-

ing, their lawyer went to the Court of Industrial Relations. The court found that the letters were in fact sent to the petitioning employees. But despite these letters, they failed to return to work. The CIR therefore, denied their petition. In the Supreme Court, petitioner, in behalf of dismissed employees, alleged that the C.I.R. abused its discretion in appreciating the evidence presented; in not finding that the Montoyas never received the letters sent by respondent. *Held*, the issue is one of fact. The Industrial Court found as a fact that Montoyas actually received the letters sent them. This Court cannot now review this finding of fact. NATIONAL LABOR UNION *v.* STA. ANA, G.R. No. L-9150, Oct. 31, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS DOES NOT HAVE JURISDICTION OF A PETITION FOR COLLECTION OF OVERTIME WAGES CLAIMED TO BE DUE AND UNPAID, NO STRIKE OR LABOR DISPUTE BEING INVOLVED. — Petitioner labor union had members employed by respondent Mindanao Bus Co. On April 27, 1955, petitioner union filed a petition with the C.I.R. praying that respondent company be ordered to pay the overtime wages claimed by its members to be due them. Respondent company answered, asking the C.I.R. to dismiss the petition, on the ground that the same did not have jurisdiction over the petition, there being no labor dispute, strike or collective bargaining involved. The Industrial Court dismissed the petition. Hence petitioner labor union appealed to the Supreme Court. *Held*, it is clear that the case is for collection of overtime wages claimed to be due and unpaid. Hence the Court of Industrial Relations does not have jurisdiction over the case and the same correctly dismissed the petition. MINDANAO BUS EMPLOYEES LABOR UNION *v.* MINDANAO BUS COMPANY, G.R. No. L-9795, Dec. 28, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE DECISION OF THE COURT OF INDUSTRIAL RELATIONS CANNOT BECOME FINAL AND EXECUTORY WHEN THERE IS SOMETHING LEFT TO BE DONE, WHICH IN THIS CASE WAS THE COMPUTATION TO BE MADE BY THE EXAMINER OF THE COURT OF INDUSTRIAL RELATIONS. — Petitioner was an employee of respondent Jose Salumbides. On October, 1953, he and several other employees of respondent filed a petition with the C.I.R. praying that their employer be made to pay them their overtime wage, differential and separation pays. After hearing, on Aug. 1, 1955, the court rendered judgment, holding that petitioner was entitled to pay for overtime work performed by him. The court ordered its examiner to compute the amount to which petitioner was entitled. The examiner submitted its report which petitioner found to be incorrect, requesting for another computation. Respondent company entered objection to the subsequent computation of the court's examiner. The matter was tossed back and forth between petitioner and respondent company, until the latter succeeded in convincing the court that petitioner herein was not among the claimants in the case. The court, therefore, directed his name, among others, to be stricken from the list of claimants. Now, petitioner contended that the court's original decision holding petitioner entitled to overtime pay could no longer be set aside, since it had already become final and executory for lack of appeal. *Held*, the contention is not correct because the decision could not become final, as there was something left to be done which was the computation ordered to be made by the court's examiner. AGUILAR *v.* SALUMBIDES, G.R. No. L-10124, Dec. 28, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS HAS, IN PROPER CASES, JURISDICTION OVER A GOVERNMENT-OWNED CORPORATION WHICH IS RUN AND OPERATED LIKE ANY ORDINARY CORPORATION WHICH MAY REALIZE PROFITS AND INCUR LOSSES. — Members of the PRISCO Workers Union, employees of the Price Stabilization Corporation (PRISCO), presented several demands to the PRISCO, asking concessions from the same, including compensation for overtime, Sundays and legal holidays' work, and for nighttime work. When these demands were refused the PRISCO Workers Union went to the C.I.R. The same took cognizance of the case, granted some demands of the Union, and denied some. The PRISCO appealed by certiorari, seeking the review of the order of the C.I.R. It alleged that the same was a government-owned corporation, performing governmental functions. As such, it was exempted from the provisions of the Eight Hour Labor Law (Com. Act No. 444) and that, therefore, the C.I.R. did not have jurisdiction to hear and determine the petition filed against it. However, among the duties and functions and aims of the PRISCO was, generally, to exercise all the powers of a corporation under the Corporation Law. It was shown that the PRISCO engaged in business, made profits, and incurred losses. *Held*, the petitioner is a government-owned corporation run and operated like any ordinary corporation which may realize profits and incur losses and the jurisdiction of the C.I.R. in labor disputes involving government-owned corporations is recognized. Moreover, is it a well-established doctrine that when the Government engages in business, it abdicates part of its sovereign prerogatives and descends to the level of a citizen, and thereby subjects itself to the laws and regulations governing the relation of labor and management. PRISCO *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-9797, Nov. 29, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE SUPREME COURT IS NOT EMPOWERED TO LOOK INTÓ THE FINDINGS OF FACT OF THE COURT OF INDUSTRIAL RELATIONS.—Petitioner, in behalf of its members, presented a set of demands to the Gonzalo Puyat Timber Concession among which were the payment of compensation for services allegedly rendered; for sick leaves with pay; free emergency dental treatment; reinstatement of one member-employee who had been allegedly expelled; and that the petitioner union be recognized as the sole bargaining agency on behalf of the employees. These demands were coursed through the Department of Labor which, later, certified the same to the C.I.R. The C.I.R. rendered its decision, allowing the Gonzalo Puyat Timber Concession to effect a reorganization of its personnel as petitioned; granting the workers only 12 days of sick leave; denying petitioner's demand for compensation for alleged overtime services; and denying petitioner's demand for vacation leave with pay. The decision of the court was based on its findings of fact to the effect that respondent company was not in a financial position to grant the demands for concessions; that alleged overtime services were not in fact rendered; and that the present system of respondent company's personnel was a losing proposition. Petitioner wanted the Supreme Court to review these findings of fact made by the C.I.R. *Held*, this Court is not empowered to look into the correctness of the findings of fact in an award, order or decision of the Court of Industrial Relations. G.P.T.C. EMPLOYEES UNION *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-10339, Nov. 29, 1957.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE CIR HAS THE DISCRETIONARY POWER TO SET ASIDE AN AWARD PROVIDED THE THREE YEAR PERIOD FOR THE EFFECTIVITY OF AN AWARD HAS NOT YET EXPIRED. — Employees of the Kim San Cafe & Restaurant, members of a registered labor union, presented certain demands to their employer for improvements of working conditions. Instead of answering the petition embodying the demands, their employers dismissed one Pedro Vinluan, member of the petitioning labor organization, for having been discovered to have engaged in union activities. Request to reinstate Vinluan was ignored. Petitioner, labor organization representing the employees of respondent restaurant, gave notice of its intention to strike. Attempt of the Labor Department at amicable settlement failed due to default of respondent employers. Petitioner then filed a charge for unfair labor practice with the CIR. On March 19, 1954, the CIR rendered an award favoring petitioner. On April 21, 1954, the CIR denied *en banc* respondents' motion for reconsideration. But on June 25, 1954, the court *en banc* issued a resolution setting aside the order it had previously entered on March 19, 1954. Petitioner, in a petition for certiorari with the Supreme Court, alleged this act of the CIR to be in excess of the CIR's jurisdiction and a grave abuse of discretion. *Held*, the CIR has the discretionary power to set aside an award provided the three year period for the effectivity of an award has not yet expired. HOTEL & RESTAURANT FREE WORKERS *v.* KIM SAN CAFE & RESTAURANT, G.R. No. L-8100, Nov. 29, 1957.

LAND REGISTRATION LAW — REGISTRATION — A JUDGMENT AFFECTING LAND REGISTERED IN A CADASTRAL PROCEEDING CAN BE REGISTERED AND A TRANSFER CERTIFICATE MAY BE ISSUED PURSUANT TO SAID JUDGMENT WITHOUT PREVIOUS CONFIRMATION BY THE CADASTRAL JUDGE TAKING COGNIZANCE OF THE CADASTRAL PROCEEDINGS INVOLVING THE LAND. — Guillermo Nombre died intestate, leaving eight lots of the cadastral survey of Kabankalan, Negros Occidental. These lots were his conjugal property with his surviving wife, Victoriana Carian. Nombre had no ascendants and descendants but only collateral relatives. The court, by virtue of a compromise entered into between the heirs, rendered a decision awarding Lot No. 1516 to Victoriana. One year later Victoriana died, having no heir except Gregorio Carian, a nephew by a lone brother. Fourteen years after her death, Gregorio Carian asked the Register of Deeds of Negros Occidental to register the decision above, asking him to cancel the Original Certificate of Title of lot No. 1516 and to issue a Transfer Certificate of Title in his, Gregorio Carian's, name. The Register of Deeds did as requested. But three years later the Register of Deeds petitioned the CFI of Negros Occidental, in the cadastral case covering Lot No. 1516, asking the cancellation of the Transfer Certificate of Title he issued to Gregorio Carian, the same having been issued improperly, because the judgment upon which it was based had been registered, and the cancellation of the Original Certificate of Title of Lot No. 1516 had been done, without previous confirmation by the cadastral judge who took cognizance over the cadastral proceedings which had decreed title to the lot. The lower court granted the petition of the Register of Deeds. Gregorio Carian appealed. The Supreme Court found that lot No. 1516 had no obligations. *Held*, a judgment affecting land registered in a cadastral proceeding can be registered and a transfer certificate

may be issued pursuant to said judgment without previous confirmation by the cadastral judge taking cognizance of the cadastral proceeding involving the land. ABRASIA *v.* CARIAN, G.R. No. L-9510, Oct. 31, 1957.

LAND REGISTRATION LAW — REGISTRATION OF INTERESTS IN LAND — INSTRUMENTS EVIDENCING INTERESTS IN REGISTERED LAND THAT MUST BE REGISTERED MUST NEEDS BE PUBLIC INSTRUMENTS. — Salvador Araneta purchased from the administrator of Testate Estate of N. T. Hashim certain lots. In the deed of sale, the vendor agreed to grant a right of way to the vendee. On the same day, the patries executed a memorandum agreement, a private document. touching upon the right of way above. Salvador Araneta sub-divided the lots he bought and resold them. The Collegio de San Jose was one of the vendees. Subsequently. the new administrator of Hashim's intestate wrote to the rector of the Collegio de San Jose, offering to sell the land which had been given as a right of way and which had been used as such by the public. Learning of this development, Salvador Araneta filed a petition with the CFI of Rizal, praying for the annotation of the right of way in the title certificate of the land belonging to Hashim as evidenced by the memorandum agreement. The new administrator of the estate of Hashim opposed, among others, on the ground that sec. 52 of the Public Land Act requires all instruments evidencing interests in registered land to be registered with the Register of Deeds; that by failing to comply with this requirement, the CFI could not acquire jurisdiction over the subject matter of the petition. *Held*, instruments evidencing interests in registered land that must be registered must be public instruments. Therefore, failure to register the memorandum agreement, which was only a private instrument, was not fatal to the jurisdiction of the court. ARANETA *v.* HASHIM, G.R. No. L-10082, Nov. 19, 1957.

LAND REGISTRATION LAW — PUBLIC LAND LAW — AN AGGRIEVED APPLICANT FOR HOMESTEAD MUST FILE HIS COMPLAINT WITH THE DIRECTOR OF LANDS, IF HE IS NOT SATISFIED WITH HIS DECISION, HIS RECOURSE IS TO APPEAL TO THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES. — In 1918, Gregorio Lachica, father of the plaintiffs, filed an application for homestead of a government land. But he failed to prosecute his claim and his application was subsequently dismissed. The land was, therefore, declared part of the public domain. Later, Fermin Ducusin applied for homestead over the same piece of public land. His application was given due course and patent was issued to him. Plaintiffs brought an action in court to annul the issuance of patent to Ducusin. They claimed that Ducusin secured the same through fraud, by pretending that the land he applied for was vacant when, in fact, plaintiffs had been in occupation of the same. However, plaintiffs did not prosecute their claim with the Director of Lands, nor with the Secretary of Agriculture and Natural Resources. They went to court immediately. *Held*, the remedy of plaintiffs was with the Director of Land, and if not satisfied with his decision, they could have appealed to the Secretary of Agriculture and Natural Resources. They failed to do this. They cannot now come to court for the redress of a grievance which comes exclusively under the jurisdiction of the Bureau of Lands. HEIRS OF GREGORIO LACHICA *v.* DUCUSIN, G.R. No. L-11373, Nov. 29, 1957.

LAND REGISTRATION LAW — LAND REGISTRATION COURT — THE COURT OF FIRST INSTANCE SITTING AS A LAND REGISTRATION COURT, CAN ENTERTAIN AND PASS UPON THE VALIDITY AND INVALIDITY OF A DEED OF SALE INVOLVING THE LAND UNDER REGISTRATION. — Rev. Fr. Martin S. Alcazar was the original owner of 2 parcels of land. In an absolute deed of sale dated Feb. 17, 1948, he appeared to have sold the land to the Roman Catholic Bishop of Nueva Caceres in consideration of ₱12,000.00 It was provided that upon issuance of the decree of registration the deed of sale would be registered therein. The decree was finally issued in Fr. Alcazar's name but the Roman Catholic Bishop of Nueva Caceres was substituted in his name. Subsequently, the Roman Catholic Bishop of Legaspi, with Mons. Flaviano B. Ariola as present incumbent, was issued a Transfer Certificate of Title by virtue of a cession of properties and rights to him by the Bishop of Nueva Caceres. Petitioners, nephews and nieces and alleged heirs of Fr. Alcazar, who had died, sought to cancel the Transfer Certificate of Title for being allegedly illegally issued. The deed of sale, they contended, was merely simulated and was null and void. The Court of First Instance sitting as a Land Registration Court, declared the deed of sale valid. Hence petitioners appealed contending, among others, that a Land Registration Court does not have jurisdiction to pass upon the validity or invalidity of a document of sale. *Held*, there is no reason why Land Registration Courts, that are at the same time Courts of First Instance and of general jurisdiction could not, at least for the sake of expediency, entertain and dispose of the question of the validity or invalidity of the instrument of sale. LUNA *v.* SANTOS, G.R. No. L-9914, Dec. 19, 1957.

LAND REGITRATION LAW — APPLICABILITY OF THE RULES OF COURT — PROVISIONS OF THE RULES OF COURT DO NOT APPLY TO LAND REGISTRATION CASES. Petitioners-appellants herein were the heirs of one Rafael Tumaclas who had applied for a free patent over a piece of public land. Applicants-appellees applied for registration of 13 lots which allegedly included land applied for by appellants' predecessor in interest. However, appellants did not appear and oppose appellees' application for registration. It was only after the decree of the court ordering registration of the lots that appellants intervened, by petitioning for the review of the decree of registration. Appellees filed an opposition to this petition of appellants after the lapse of 15 days from receipt by appellees of a copy thereof. The lower court granted appellees' opposition and dismissed appellants' petition for review. Appellants contended that the court erred in entertaining appellees' opposition to their petition for review since said opposition had been filed after 15 days from receipt by appellees of the copy of the petition for review. This, appellants urged, was contrary to Rule 35, Sec. 5, of the Rules of Court. *Held*, Rule 35 applies to civil "actions" and a land registration case is not an "action" within the purview of the Rules of Court. The Rules do not apply to land registration cases, except by analogy or in a suppletory character and whenever practicable and convenient. OCHOTORENA *v.* DIRECTOR OF LANDS, G.R. No. L-10795, Dec. 17, 1957.

LAND REGISTRATION LAW — NATURAL RESOURCES — THE PRODUCTION OF MARBLE CHIPS AND SLABS EXTRACTED FROM MINES IS NOT A NEW AND NECESSARY INDUSTRY SO AS TO BE EXEMPTED FROM INTERNAL REVENUE TAXES. — Petitioner, a domestic corporation, engages in extracting marble from its quarry. It also produces limestone by-products in commercial quantities. On May 9, 1950 it applied for tax exemption as a new and necessary industry. The Undersecretary of Finance granted it exemption as regards its manufacture of limestone products, but denied it exemption as regards its marble extraction. Petitioner wanted exemption for the marble production also, contending that the same was necessary for the production of the limestone products. However, it was found that the marble slabs had market value of their own and that they were also sold, apart from their being converted into limestone products. The Court of Tax Appeals, affirming the decision of the Secretary of Finance, held that the production of marble slabs was not a new and necessary industry and, therefore, was not exempted from internal revenue taxes. *Held*, the production of marble is not a new and necessary industry as to be exempted from internal revenue taxes. MARBLE CORPORATION OF THE PHILIPPINES *v.* COURT OF TAX APPEALS, G.R. No. L-8677, Dec. 28, 1957.

LEGAL ETHICS — CONTEMPT — A LETTER TO THE PRESIDENTIAL COMPLAINT AND ACTION COMMISSION REGARDING THE PENDENCY OF A CASE WHICH "HAS LONG DEPRIVED HIM OF HIS LAND THRU THE CAREFUL MANEUVERS OF A TACTICAL LAWYER"; AND THAT THE CASE WHICH HAD LONG BEEN PENDING "COULD NOT BE DECIDED DUE TO THE FACT THAT THE TRANSCRIPT OF THE RECORDS HAS NOT, AS YET, BEEN TRANSCRIBED BY THE STENOGRAPHERS WHO TOOK THE STENOGRAPHIC NOTES" DOES NOT PUT THE COURT IN RIDICULE AND THEREFORE CANNOT SERVE AS THE BASIS FOR A CONTEMPT PROCEEDINGS. — Apolonio Cabansag filed in Jan. 1947 in the CFI of Pangasinan a complaint seeking the ejectment of Geniniava Fernandez from a parcel of land. Several partial hearings were had and several postponements allowed by the court so that trial had not yet been completed up to December 9, 1952. On this date, the stenographers were ordered by the court to transcribe their notes but no transcription had been made up to August 12, 1954. On this date, Cabansag, apparently irked and disappointed by the delay in the disposition of his case, wrote the PCAC a letter, copy of which he furnished the Secretary of Justice and the Executive Judge of the CFI of Pangasinan, the pertinent parts of which are as follows: "Undaunted, the undersigned begs to request the help of the PCAC in the interest of public service, ... to have this old case be terminated once and for all. The undersigned has long since been deprived of his land thru the careful maneuvers of a tactical lawyer. The said case which had long been pending could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenographic notes." On the basis of this letter, Cabansag was prosecuted for contempt and was sentenced to pay a fine. The lower court based its decision on the fact that such letter tends to undermine the independence of the judiciary and puts it in ridicule before the public. *Held*, Cabansag by sending that letter did not have in mind to put the court in ridicule and much less to belittle or degrade it in the eyes of those to whom the letter was addressed for, undoubtedly, he was compelled to act the way he did simply because he saw no other way of obtaining the early termination of his case. This is clearly inferable from its context wherein, in respectful and courteous language, Cabansag gave vent to his feeling when he said that he "has long

been deprived of his land thru the careful maneuvers of a tactical lawyer", that the case which had long been pending "could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenegraphic notes"; and that the "Judge could not proceed to hear the case before the transcription of the said notes." Analyzing said utterances, one criticism refers not to the court, but to opposing counsel whose "tactical maneuvers" have allegedly caused the undue delay of the case. The only disturbing effect of the letter which perhaps has been the motivating factor of the lodging of the contempt charge by the trial judge is the fact that the letter was sent to the Office of the President asking for help because of the precarious predicament of Cabansag. While the course of action he had taken may not be a wise one for it would have been proper had he addressed his letter to the Secretary of Justice or to the Supreme Court, such act alone would not be contemptuous. To be so, the danger must cause a serious *imminent threat* to the administration of justice. Nor can we infer that such act has "a dangerous tendency" to belittle the court or undermine the administration of justice for the writer merely exercised his constitutional right to petition the government for redress of a legitimate grievance. CABANSAG *v.* FERNANDEZ, G.R. No. L-8974, Oct. 18, 1957.

POLITICAL LAW — TAXATION — THE TERM "CORPORATION" AS USED IN SECS. 24 AND 84 INCLUDES PARTNERSHIP AS UNDERSTOOD IN CIVIL LAW AND ALSO THOSE ENTITIES AND ORGANIZATIONS WHICH ARE NOT NECESSARILY "PARTNERSHIPS" IN THE TECHNICAL SENSE OF THE TERM. — The petitioners, Eufemia, Manuel and Francisca all surnamed Evangelista, acquired 24 lots in the years 1943 and 1944 amounting to a little less than half a million. From 1945 to 1948 they derived incomes ranging from ₱9,000 to ₱18,000.00. On these amounts collected as rents the Collector of Internal Revenue tried to collect income tax based on Secs. 24 and 84 the pertinent provisions of which are as follows: "Sec. 24. *Rate of tax on corporations.* — There shall be levied, assesed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized but not including duly registered general co-partnerships (*compañias colectivas*), a tax upon such income equal to the sum of the following: x x." "Sec. 84 (b). The term 'corporation' includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations or insurance companies, but does not include duly registered general copartnerships (*compañias colectivas*)." Petitioners maintained that since they had not organized formally as a partnership with a personality separate from the members, they are therefore not included within said provisions of law. *Held*, the tax in question is one imposed on "corporations", which, strictly speaking, are distinct and different from "partnerships". When our Internal Revenue Code includes "partnerships" among the entities subject to the tax on "corporations", said Code must allude, therefore, to organizations which are not necessarily "partnerships", in the technical sense of the term. Thus, for instance, Sec. 24 of said Code exempts from the aforementioned tax "duly registered general partnership", which constitute precisely one of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in Sec. 84 (b) of said Code, "the term corporation includes partnerships, *no matter how created or organized.*" This qualifying expression clearly indicates

that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one could be deemed constituted for purposes of the tax on corporations. Again, pursuant to said Sec. 84 (b), the term "corporation" includes, among others, "joint accounts, (*cuentas en participacion*)" and "associations", *none of which has a legal personality of its own, independent of that of its members.* Accordingly, the lawmaker could not have regarded that personality as a condition essential to the existence of the partnerships therein referred to. In fact, as above stated, "duly registered general copartnerships" — *which are possessed of the aforementioned personality* — have been expressly excluded by law (Secs. 24 and 84 (b) from the connotation of the term "corporation." It may not be amiss to add that petitioners' allegation to the effect that their liability in connection with the leasing of the lots above referred to, under the management of one person — even if true, on which we express no opinion — tends to *increase* the similarity between the nature of their venture and that of corporations and is, therefore, an additional argument *in favor* of the imposition of said tax on corporations. EVANGELISTA *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-9996, Oct. 15, 1957.

POLITICAL LAW — TAXATION — WHEN SO PROVIDED BY STATUTE, A TAXPAYER CANNOT RECOVER TAXES PAID WITHOUT PROTEST, THOUGH THE ORDINANCE EXACTING SAID TAXES WAS SUBSEQUENTLY DECLARED NULL AND VOID. — The City of Dumaguete passed an ordinance taxing plaintiff Visayan Electric Company. Plaintiff paid taxes under this ordinance without protest. Subsequently, plaintiff sought to recover said taxes. The lower court declared the tax ordinance void but ruled plaintiff could not recover the taxes it paid under the ordinance for failure to pay same under protest. The charter of the City of Dumaguete provides that the courts could not entertain suits for recovery of taxes paid under city ordinances unless said taxes were paid under protest. *Held*, it is true that the National Internal Revenue Code provides that an action for recovery of any National Internal Revenue tax may be maintained regardless of whether such tax has been paid under protest or not, but this provision refers to a National Internal Revenue tax and not to a tax assessed under a city or municipal ordinance. A statute could provide, as in this case, that taxes could only be recovered when the same were paid under protest. VISAYAN ELECTRIC CO. *v.* CITY OF DUMAGUETE, G.R. No. L-10787, Dec. 17, 1957.

POLITICAL LAW — TAXATION — THE ORDER OF THE PROBATE COURT DIRECTING ADMINISTRATOR OF AN ESTATE TO PAY ESTATE AND INHERITANCE TAXES, WHEN NOT OBJECTED TO TIMELY, IS PRESUMED TO HAVE BEEN VALIDLY ISSUED. — Placido Mina died and his estate was brought under judicial administration. On August 30, 1940, the Collector of Internal Revenue made an assessment of the estate and inheritance taxes to be paid. In September, 1946 the probate court ordered the administrator of the estate to pay the taxes assessed. No objection was interposed to this court order. On March 17 and 22, 1955, the administrator wrote the Collector of Internal Revenue since he had not brought any suit to collect the taxes assessed on the estate he administered within 5 years from August 30, 1940, the right of the government to collect

the taxes already prescribed. *Held*, such defense should have been interposed against the order of the probate court of September, 1946. Evidently it was not interposed, because the claim had been submitted to the court on time. The order must be presumed to be valid and to have been issued upon proper legal foundations. DIRECTO *v.* BLAQUERA, G.R. No. L-10140, Dec. 24, 1957.

POLITICAL LAW — TAXATION — HOLDERS OF ELECTRIC FRANCHISES ARE EXEMPT FROM PAYMENT OF INCOME TAX. — Petitioner herein was a holder of an electric franchise. As such it was made to pay franchise taxes from April, 1950 to June 30, 1952 and an income tax amounting to ₱2,046.92. On October 20, 1952, petitioner requested the Collector of Internal Revenue for the refund of the money paid for the above taxes, the franchise taxes as being overpaid and the income tax as being exempted. The Collector denied the requests of petitioner. *Held*, holders of electric franchises are exempt from income tax. The appealed decision is affirmed in other respects. VISAYAN ELECTRIC CO. *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-9685, Oct. 30, 1957.

POLITICAL LAW — TAXATION — UNDER THE TERMS OF SEC. 7 OF REP. ACT NO. 1125 A CASE WHICH DOES NOT INVOLVE DISPUTED ASSESSMENTS OR PAYMENT OF DUTIES AND CHARGES SUBJECT OF DETENTION OR SEIZURE PROCEEDINGS IN THE BUREAU OF CUSTOMS DOES NOT COME WITHIN THE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS. — This is the case involving the celebrated seizure and detention by the Collector of Customs of the 1,463 copies of the October, 1953 issue of the "Pageant" magazine. The issue contained an article by Laura Berquist which contained references to, and quotations from, the famous Kinsey Report on sexual human behavior. The Collector of Customs, considering the article as obscene and immoral, ordered the seizure of the "Pageant" copies. The importer of the seized article, the Philippine Education Co., Inc. appealed the Collector's decision to the Commissioner of Customs who reversed the same, and directed the release of the seized magazines. The Secretary of Finance directed the Commissioner of Customs to transmit the original record of the seizure case to the Court of Tax Appeals for review, which directive was complied with. The Court of Tax Appeals returned the record, disclaiming jurisdiction over the seizure case. The Collector of Customs, in turn, appealed the Commissioner's decision to the Court of Tax Appeals. The Tax Court dismissed this appeal by the Collector, holding that it had exclusive jurisdiction to review decisions of the Commissioner of Customs only in cases involving disputed assessments and payment of duties of detention or seizure proceedings in the Bureau of Customs, which was not the case here. The Collector appealed this as error. *Held*, under the terms of Sec. 7 of Rep. Act No. 1125, the present case, which does not involve disputed assessments or payment of duties and charges subject of detention and seizure proceedings in the Bureau of Customs, does not come within the appellate jurisdiction of the Court of Tax Appeals. ACTING COLLECTOR OF CUSTOMS *v.* COURTS OF TAX APPEALS, G.R. No. L-8811, Oct. 31, 1957.

POLITICAL LAW — TAXATION — THE TERM "GENERAL MERCHANDISE" INCLUDES CIGARS, CIGARETTES AND OTHER TOBACCO PRODUCTS WHICH ARE SUBJECT TO SPECIFIC TAXES UNDER THE NATIONAL INTERNAL REVENUE CODE. — Republic Act No. 409, the Charter of the City of Manila, authorizes the Municipal Council to tax dealers in general merchandise. Under this authority, the Municipal Council passed Ordinance No. 3634 taxing dealers in cigars and cigarettes. These dealers, therefore, assailed the validity of the ordinance, maintaining that the term "general merchandise" does not include cigars and cigarettes that are already subject to specific taxes under the Internal Revenue Code. *Held*, the term "general merchandise" includes cigars, cigarettes and other tobacco products which are subject to specific taxes under the Revenue Code. MANILA TOBACCO ASSOCIATION *v.* CITY OF MANILA, G.R. No. L-9549, Dec. 21, 1957.

POLITICAL LAW — TAXATION — "COCOA BEANS" MAY NOT BE CONSIDERED AS "CHOCOLATE" FOR PURPOSES OF EXEMPTION FROM THE FOREIGN EXCHANGE TAX IMPOSED BY REP. NO. 601 AS AMENDED. — During the period from January 8, 1953, to October 9, 1953 plaintiff imported sun dried cocoa beans for which it paid the foreign exchange tax of 17%, totalling ₱74,671.04. Claiming exemption from said tax under Sec. 2 of the same Act, plaintiff sued the Central Bank that had exacted payment. Sec. 2 of Rep. Art. No. 601 exempted chocolate from the tax imposed. Plaintiff maintained that cocoa beans were included under the term "chocolate" and, therefore, should be exempted from the foreign exchange tax. The Solicitor General, for the government, contended otherwise. The case was dismissed by the lower court for lack of cause of action. Plaintiff appealed to the Supreme Court. *Held*, chocolate is made from cocoa beans but chocolate does not include cocoa beans for purposes of exemption from the foreign exchange tax imposed by Rep. Act No. 601 as amended. SONG KIAT CHOCOLATE FACTORY *v.* CENTRAL BANK, G.R. No. L-8888, November 29, 1957.

POLITICAL LAW — TAXATION — THE CITY ASSESSOR AND COLLECTOR IS THE OFFICER CHARGED WITH THE FUNCTION OF DISTRAINING PERSONAL PROPERTY FOR THE COLLECTION OF REAL ESTATE TAXES AND, THEREFORE, A DISTRAINT AND SALE MADE BY THE CITY TREASURER ARE NULL AND VOID. — Ricardo Velayo bought a piece of land in a tax sale made under the authority of the City Treasurer of Manila. The land was covered by a Transfer Certificate of Title in the name of Fernando, Ramon, Annie, Beatriz and Isabelita, all surnamed Ordovezas. Fernando tried to pay real estate tax thereon but a clerk of the office of the City Treasurer advised him of the sale of property. Fernando then wrote to Velayo, offering to redeem the land with interest. Velayo did not answer. Fernando wrote to the City Treasurer, offering to pay the real estate tax due on the property sold, plus interest and cost, enclosing a money order therefor. Fernando intimated that the sum be considered redemption of the land. Velayo, after having taken the certificate of sale from the City Treasurer, presented the same with the Register of Deeds for registration and for the cancellation of the Transfer Certificate of Title covering the property he bought. This officer informed Fernando that the money he had advanced could be considered only as a deposit because the redemption period had already elapsed. Subsequently, the Register of Deeds demanded from the Ordevezas the production of the owner's duplicate of the Transfer Certificate of Title. Meanwhile, the City Treasurer executed the

corresponding deed of sale. Velayo then went to compel the Register of Deeds to transfer the title of the property to his name. The Ordovezas opposed Velayo on the ground, among others, that the sale was null and void because the official charged by law with the same was not the one who conducted the distraint and sale of the land, that is, the City Assessor. *Held*, the City Assessor and Collector is the officer charged with the function of distraining personal property for the collection of real estate taxes and, therefore, a distraint and sale made by the City Treasurer are invalid. VELAYO *v.* ORDOVESA, G.R. No. L-9061. Nov. 18, 1957.

POLITICAL LAW — TAXATION — UPON THE ESTABLISHMENT OF THE COURT OF TAX APPEALS, THE REMEDY OF AN AGGRIEVED PARTY FROM THE DEFUNCT BOARD OF TAX APPEALS WAS AN APPEAL TO SUCH COURT WITHIN 30 DAYS FROM THE ESTABLISHMENT THEREOF. — On March 25, 1952 the Board of Tax Appeals (now defunct) upheld the decision of the Revenue Collector which levied on the properties of Sta. Clara Lumber Co., Inc. an assessment of P31,501.19 as deficiency 5% sales tax and surcharges for years 1948-50. The company appealed to this court but such appeal was dismissed without prejudice, due to the fact that the Board of Tax Appeals was declared defunct by a resolution of this court which became final on May 4, 1952. On June 16, 1954 the Court of Tax Appeals was created by Rep. Act No. 1125. On June 26, 1954 Sta. Clara filed a petition that its appeal be considered as one coming from the Court of Tax Appeals but was dismissed. So that on March 5, 1955 he resorted to the Court of Tax Appeals for review of the same tax questions but was opposed upon the fact that it was filed after the lapse of 30 days as provided for by Rep. Act No. 1125. *Held*, the remedy of Sta. Clara upon the abolition of the Board of Tax Appeals was to sue in the Court of First Instance. After paying the assessment, but after the establishment of the Court of Tax Appeals, its remedy was an appeal to such court within the 30-day period. STA. CLARA LUMBER CO., INC *v.* COURT OF TAX APPEALS, G.R. No. L-9833, Dec. 21, 1957.

POLITICAL LAW — TAXATION — THE REQUIREMENT CONCERNING PAYMENT OF A TAX UNDER PROTEST IS STATUTORY. — On March 9, 1817, the government granted to La Electrica, a sociedad anomina, a franchise to maintain and operate an electric plant for light, heat and power in Dumaguete for 50 years. The franchise was acquired by the plaintiff and was granted a certificate of public convenience. On December 14, 1949 the City of Dumaguete enacted Ordinance No. 6, amended by Ordinance No. 79, imposing certain license taxes on every operator of an electric plant within city limits. The ordinance was subsequently declared void. The plaintiff wanted to recover the taxes paid invoking the provision of Sec. 306 of the National Internal Revenue Code where protest is not necessary for recovery. Opposition was based on the fact that under the ordinance, protest was necessary for recovery. *Held*, the requirement concerning payment of a tax under protest is statutory. VISAYAN ELECTRIC CO. S.A., *v.* THE CITY OF DUMAGUETE, G.R. No. L-10787, Dec. 17, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — AUTHORITIES SUSTAIN THE DOCTRINE THAT THE INTERPRETATION GIVEN TO A RULE OR REGULATION BY THOSE CHARGED WITH ITS EXECUTION IS ENTITLED TO THE GREATEST WEIGHT BY THE COURTS, AND SUCH INTERPRETATION WILL BE FOLLOWED UNLESS IT APPEARS UNREASONABLE OR ARBITRARY. — When the Tambobong Estate was acquired by the government, a lessee of a portion thereof and the sub-lessees of the same applied to purchase the portion under lease. The Director of Lands awarded the land to the lessee, Jose Geukeko. Within 60 days, the sub-lessees appealed to the Court of First Instance. The latter, after 2 years, dismissed the appeal on the ground of lack of jurisdiction. The court held that sub-lessees should have appealed the decision of the Lands Director to the Secretary of Agriculture and Natural Resources. When this was done, Geukeko objected, claiming lack of jurisdiction on the part of the Secretary, the 60-day period having elapsed. The Secretary took jurisdiction of the appeal, basing its action on an administrative order he had issued, providing that appeals to the court suspend the running of the period for appeals to him. The Secretary's ruling was based on its own interpretation of the administrative order he had issued. *Held*, authorities sustain the doctrine that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the courts, and such interpretation will be followed unless it appears unreasonable or arbitrary. Here there is no question of the Secretary's right to issue the administrative order and his interpretation of it is reasonable and sound. GEUKEKO *v.* ARANETA, G.R. No. L-10182, Dec. 24, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — THE ANGAT RIVER IRRIGATION SYSTEM AS AN ENTITY UNDER THE BUREAU OF PUBLIC WORKS HAS NO PERSONALITY TO SUE OR BE SUED. — The Angat River Irrigation System is a Division or Section of the Bureau of Public Works engaged in the maintenance and operation of irrigation systems in Bulacan and nearby provinces, the appropriation for which project is included in the yearly General Appropriations Act being passed by Congress. As such, it employs many men. These employees, forming themselves into a labor union, sought to enforce 15 demands upon the Angat. The latter refused to recognize the demands of the employees, instead threatened dismissal of the employees who were showing discontent. The prosecutor of the C.I.R. filed, in behalf of the Angat's employees, a complaint for unfair labor practice against the Angat. The Angat moved to dismiss the complaint against it, raising its governmental character as a defense from suit by private individuals; that, as such, it was not subject to the provisions of the Industrial Peace Act, under which its employees were claiming their privileges against the Angat. Against an adverse decision of the C.I.R., the Angat went to the Supreme Court. *Held*, the Angat River Irrigation System is an entity under the Bureau of Public Works, doing strictly governmental functions. As such it has no personality to sue or be sued. It is the Republic of the Philippines that should be made a party in this case. The Angat employees are government employees, and hence, though they may organize into labor unions, they cannot claim the privileges and benefits granted by the Industrial Peace Act which are only accorded to ordinary labor unions. ANGAT RIVER IRRIGATION SYSTEM *v.* ANGAT RIVER WORKERS' UNION, G.R. No. L-10943 & 10944, Dec. 28, 1957.

POLITICAL LAW — PUBLIC CORPORATIONS — BEFORE A MUNICIPAL CORPORATION CAN VALIDLY ENTER INTO CONTRACTS WITH PRIVATE INDIVIDUALS THE PROVISIONS OF LAW MUST HAVE BEEN COMPLIED WITH. — The Municipality of Malolos, Bulacan, conducted a public bidding for the supply of road construction material to repair the roads of the municipality. Petitioner was the lowest bidder and the contract was awarded to him. The contract was signed by the Municipal Mayor in behalf of the Municipality. There was no fund appropriated for the purpose. And so after the petitioner had delivered road construction materials amounting to ₱19,399.57, the municipality had no available money to pay him, even if subsequently the municipal council ratified the public bidding which awarded to petitioners the contract. The matter eventually reached the Office of the Auditor General which refused to audit the same. The Deputy Auditor General declined on the ground that the requisites of law had not been complied with before the contract between the municipality and petitioner had been entered. *Held*, the law requires that municipal contracts must be negotiated by the district engineer so that money had been appropriated for the particular contract, among other requirements. The same were not complied with. Petitioner's claim was, therefore, properly denied. RIVERA *v.* MUNICIPALITY OF MALOLOS, G.R. No. L-8847, October 31, 1957.

POLITICAL LAW — IMMIGRATION LAW — AN ALIEN WHO HAD BEEN ADMITTED AS PERMANENT RESIDENT, SUBSEQUENTLY LEFT THE COUNTRY FOR HIS HOMELAND, RETURNED HERE AND ADMITTED AS A TEMPORARY VISITOR MAY BE DEPORTED AFTER EXPIRATION OF HIS AUTHORIZED VISIT. — Petitioner was a Chinawoman. Prior to 1946 she was a permanent resident in the country. Sometime in 1946 she went to China for a temporary visit from which she was expected to return. Petitioner was not able to return immediately and it was only on Nov. 17, 1947, that she came back and was admitted as a temporary visitor. Petitioner's stay as temporary visitor having expired, warrant of arrest against her was issued by the Commissioner of Immigration. Subsequently, an order for her deportation was issued, or on Mar. 27, 1952. However, on Aug. 14, 1954, petitioner requested for the correction of her status from temporary visitor to returning resident. This was granted by the Deputy Commissioner on Sept. 2, 1954. This was then raised by petitioner in her favor. *Held*, an alien who had been admitted as permanent resident, subsequently left the country for her homeland, returned and admitted as temporary visitor, may be deported after the expiration of her authorized visit. ANG IT *v.* COMMISSIONER OF IMMIGRATION, G.R. No. L-10225, Nov. 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A COMPROMISE ENTERED INTO BY PARTIES IS BINDING ON THEM AND HAS THE SAME AUTHORITY AS *RES JUDICATA*. — In 1941, shortly before the outbreak of the second World War, the Red Star Stores, Inc. was indebted to the National City Bank of New York, Manila Branch, in the amount of $19,956.75, representing certain import bills purchased by said Bank. Ernest Berg, plaintiff, and his brother guaranteed the indebtedness. During the Japanese occupation, the Bank of Taiwan required the Red Star Stores to liquidate its obligation and, accordingly, plaintiff paid the same in full. After the war, the Bank reopened and established a department to settle all pre-war accounts. The Bank wanted plaintiff to pay the obligations it had secured, defendant Bank not recognizing the payment made during the war. On January 1, 1946, plaintiff and the Bank entered into a compromise, whereby plaintiff agreed to pay the indebtedness and defendant would forego the interest. Before April 9, 1948, plaintiff liquidated all the accounts. On April 9, 1948, the Supreme Court promulgated the case of Haw Pia v. China Banking Corporation, holding that payments made in Japanese Military currency to the Bank of Taiwan were valid. So plaintiff sought to recover his second payment. The trial court upheld the same. *Held*, the compromise entered into by parties is binding on them and has the same authority as *res judicata*. Apparently, the trial court was of the belief that a compromise can only be effected if the claim to be settled was enforceable, which is not correct, for, as a rule, a compromise is entered into not because it settles a valid claim, but because it settles a controversy between the parties. And here there was a real compromise when defendant waived the payment of interest amounting to over $4,000.00. BERG *v.* NATIONAL CITY BANK OF NEW YORK, G.R. No. L-9312, Oct. 31, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE JURISDICTION OF THE COURT IS DETERMINED BY THE NATURE OF THE CAUSE OF ACTION AND THE RELIEF AS ALLEGED AND SOUGHT IN THE COMPLAINT, AND NOT BY THE AVERMENTS IN THE ANSWER. — Plaintiff filed in the CFI of Manila a complaint for the collection of rentals due from the defendant in the amount of ₱3,125.00. The latter filed a motion to dismiss, alleging lack of jurisdiction and *res judicata*. The ground of lack of jurisdiction was predicated on the averments in the answer that the case was one involving tenancy relationship and, therefore, within the jurisdiction of the Court of Agrarian Relations. The plea of *res judicata* was based on a prior dismissal of the case by the municipal court for lack of jurisdiction. The CFI dismissed the complaint. Hence, this appeal. *Held*, the CFI erred in sustaining the plea of *res judicata* because in order that a prior judgment may bar a second case, said judgment must be on the merits. The jurisdiction of a court is determined by the nature of the cause of action and the relief as alleged and sought in the complaint, and not by the averments in the answer. The complaint herein is for the recovery of unpaid rentals. The copy of the lease executed by the parties and attached to the complaint does not disclose any tenancy relationship. Hence, the CFI has jurisdiction. MANLAPAZ *v.* PAGDANGANAN, G.R. No. L-9640, Nov. 26, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A JUDGMENT FOR THE REFUND OF MUNICIPAL TAXES OR FEES UNLAWFULLY COLLECTED WOULD BE UNENFORCEABLE AGAINST THE CITY IF THE LATTER HAS NOT BEEN MADE A PARTY TO THE CASE. — Plaintiff was a corporation engaged in lumber business and dealer of lubricating oil in the City of Zamboanga. As such it made sales of lumber and lubricating oil. For these sales the City of Zamboanga imposed taxes thereon per ordinance No. 340, series of 1950. Plaintiff paid the taxes under protest. Subsequently, it brought an action in the proper court to recover the taxes it was made to pay. The acting City Treasurer of Zamboanga City was made sole defendant. The lower court upheld the tax on the sale of lubricating oil but declared the tax on the sale of lumber illegal as not author-

ized by the City Charter. One of the defenses of defendant was that he was not real party in interest. On appeal, he alleged this as one of his grounds for appealing. *Held*, the real party in interest is the city itself. A judgment for refund of municipal taxes or fees unlawfully collected would be unenforceable against the city if the latter has not been made a party to the case. JOS S. JOHNSTON & SONS INC. *v.* REGONDOLA, G.R. No. L-9355, Nov. 26, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — IN A PARTITION CASE, THE JUDGMENT OF THE COURT BECOMES FINAL ONLY UPON THE APPROVAL BY THE COURT OF THE PARTITION MADE BY THE COMMISSIONERS APPOINTED BY THE COURT FOR THE PURPOSE. — Dominga Miciano was the legal wife of Jorge Watiwat who died intestate leaving an estate and with his brother and two sisters as heirs to his estate, along with Dominga. These collateral heirs filed an action for the liquidation and distribution of the conjugal properties of Jorge Watiwat and Dominga Miciano. The latter was made sole defendant. The court rendered judgment on May 17, 1941, requiring the parties to submit, within 30 days, a project of partition in accordance with law and stating that in the absence thereof, the court would appoint commissioners of partition. War broke out and no action was taken on the case, until Dec. 23, 1946, when upon motion of the plaintiffs, the court appointed three commissioners to effect the appraisal and partition of the conjugal properties as decreed in the decision. On Feb. 8, 1949, the commissioners submitted their report which, after due notice given to Dominga Miciano, was approved by the court on Aug. 27, 1949. On Dec. 6, 1949, execution was issued. As a result, the properties involved were placed in the possession of the plaintiffs. Dominga Miciano commenced an action on Apr. 16, 1951, to recover said properties on the ground that the proceedings had in the civil case pursuant to which the court's order resulting in execution of the properties was given was null and void. The reason advanced for this stand was that the decision rendered by the court on May 17, 1941 had become final for over five years and therefore could could no longer be executed except by an ordinary court action. *Held*, in a partition case, the judgment of the court becomes final only upon the approval by the court of the partition made by the commissioners appointed by the court for the purpose. In this case the judgment became final only on Aug. 27, 1949. Therefore, execution thereof could be done on Dec. 6, 1949. MICIANO *v.* WATIWAT, G.R. No. L-8769, Nov. 21, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE FACT THAT THE COURT APPROVED THE REPORT OF THE COMMISSIONERS WOULD NOT PRECLUDE THE PARTIES FROM QUESTIONING IT, IF IT WERE REALLY NOT IN ACCORD WITH THE PARTITION AGREEMENT. — Antonino Rocas died, having three sets of children from his three wives. He left a considerably large tract of land. The heirs entered into a project of partition which was subsequently approved by the court taking cognizance of the special proceedings. Thereafter, commissioners were appointed to carry out the partition agreed upon by the parties and approved by the court. The commissioners submitted their report of partition and the court approved it. The children from the first and second marriages, oppositors, failed to appeal in due time from the order approving the commissioners' report. It turned out, however, that the partition was made by the heirs and approved by the court. Hence, oppositors petitioned for relief from the court's order. This petition and another injunction were dismissed. Oppositors then filed a civil case contesting the commissioners' partition. During the pendency of said civil case, the executrix of the estate of Antonio Rocas moved to declare oppositors and petitioner Eulogio Rocas in contempt for having tampered with the boundaries marked by the commissioners. Hence, Eulogio Rocas petitioned to the Supreme Court for certiorari with preliminary injunction. *Held*, the fact that the court approved the report of the commissioners would not preclude the parties from questioning it, if it were not really not in accord with the partition agreement entered into by the heirs and which was approved by the court. ROCAS *v.* GONZALES, G.R. No. L-10421, Nov. 20, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE RECEIPTS IN THE INSIDE MARKET RELIED UPON BY APPELLANT FOR THE GRANT OF NEW TRIAL COULD HARDLY BE CONSIDERED AS NEWLY DISCOVERED EVIDENCE FOR THE REASON THAT THEY WERE AVAILABLE TO HIM DURING THE ORIGINAL TRIAL. — In 1947, a large building on Azcarraga St. for textile stalls was constructed by Khim. By verbal agreement, Khim leased one of said stalls to Yan at ₱500.00 a month. Yan forthwith occupied it. Yan delivered ₱7,500 to Khim for the lease of the stall. It was agreed that the rental for the stall would be decreased or increased, depending on the fluctuation of rental of the textile market inside Khim's market building. Court actions were later on brought, Khim demanding the ejectment of Yan for non-payment of rent and Yan demanding the reduction of the rental price. Yan presented receipts of paymnt of rent in the inside stalls to prove that the rentals therein had been decreased and, therefore, her rent should also be decreased. Khim did not present evidence to this effect but relied on other points. When the lower court ordered Yan's rent reduced according to the receipts of payment of the inside stalls, Khim appealed. Among others, Khim asked for a chance to present receipts of payment of rent in the inside stalls to prove increase of rentals therein. The Court of Appeals decided favorably. Whereupon Yan appealed to the Supreme Court. *Held*, the receipts in the inside market relied upon by Khim for the grant of new trial could hardly be considered as newly discovered evidence for the reason that they were available to him during the original trial. TENG GIOK YAN *v.* COURT OF APPEALS, G.R. No. L-9929-30, Nov. 18, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE DELAY IN BRINGING AN ACTION FOR REINSTATEMENT, FOR MORE THAN ONE YEAR FROM THE SEPARATION FROM WORK, CONSTITUTES LACHES AND ABANDONMENT OF THE FORMER POSITIONS SEPARATED FROM. — Petitioners were not civil service eligibles. They were employed in the office of the City Treasurer of Cebu in different capacities. The City Mayor subsequently notified them of their severance from their positions. The earliest cause of action accrued on Nov. 24, 1952, with the dismissal of petitioner Jesus Felices and the latest accrued on Jan. 19, 1954, with the Felices and the latest accrued on Jan. 19, 1954, with the dismissal of petitioner of Soledad Calledo. The present proceedings for reinstatement and back salaries were commenced on April 15, 1955, more than one year from

the date of ouster from office. *Held*, the delay in the bringing of the action for reinstatement of petitioners to their work for more than one year constitutes laches and abandonment of the former positions of petitioners. ABELLA *v.* RODRIGUEZ, G.R. No. L-10512, Nov. 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE FINDINGS OF FACT MADE BY THE DIRECTOR OF FISHERIES CANNOT PREVAIL OVER THE FINDINGS OF FACT MADE BY THE TRIAL COURT. — Petitioner Nicolas Diego applied for a fishpond permit over a portion of the estero Sisilien which was a branch of the Agdao River. The Director of Fisheries to whom the application for fishpond permit was filed made a finding of fact to the effect that the portion of the estero applied for had become too shallow to be navigable and, therefore, granted the application. Fausto C. Meneses et al, who were effected by said permission to construct fishponds on the estero, opposed the application therefor and, when they failed, brought the matter to the court. The Court of First Instance of Pangasinan conducted an ocular inspection of the estero applied for during the driest part of the season. The court found the portion involved to be still navigable. Therefore, it annulled the fishpond permit granted the petitioner by the Director of Fisheries. The Court of Appeals affirmed the judgment on the lower court. Petitioner argued in the Supreme Court that findings of fact made by the Director of Fisheries are final and irreviewable by the courts. *Held*, Sec. 4 of Com. Act No. 141 makes findings of fact by the Director of Lands when affirmed by the Department Secretary final and irreviewable by the courts. But there is nothing said about findings of fact by the Director of Fisheries, and no statute is shown ascribing to the Director of Fisheries the same authority given the Director of Lands. The findings of fact by the court prevail. The portion of the estero applied for being still navigable, the same cannot be converted into fishponds. DIEGO *v.* COURT OF APPEALS, G.R. No. L-9217, Nov. 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN THE TRIAL JUDGE HAD NO OPPORTUNITY TO SEE AND HEAR THE WITNESSES IN HIS COURT, HIS FINDINGS OF FACT ARE NOT ENTITLED TO AS GREAT A WEIGHT AS WHEN OPPORTUNITY TO SEE AND HEAR WITNESSES IN COURT HAD BEEN ACCORDED HIM. — Guillermo Puatu died in Manila on June 1, 1953. Officially he was single, but it was soon shown that he had 17 children with two women. These children he had recognized. His nephews claimed, on one side, that he died without a will. His children, on the other, presented a will which the lower court allowed to probate. One Rosario Campus Fernandez, a Spaniard, intervened, claiming to be the lawful spouse of Guillermo Puatu, they having been married in Spain in 1896. Her contention, however, was supported merely with depositions, hers and her witnesses, taken in Spain. Her other witnesses who appeared in court and who testified as to her, Rosario's, marital relations with deceased Guillermo Puatu in the Philippines, were the parties challenging Guillermo Puatu's children's right to the inheritance. The lower court, basing its judgment on presumption in favor of marriage, ruled that Rosario Campus Fernandez was the legal spouse of Guillermo Puatu. Guillermo's acknowledged natural children appealed. *Held*, generally, the findings of fact made in an appealed decision are entitled to great weight, for the lower court has seen and heard the witnesses during the trial. However, in the case at bar, his Honor, the trial Judge, had no such opportunity. In view of the facts and circumstances attending the case, it would be best to remand the records to the lower court for a new trial and further reception of evidence. FERNANDEZ *v.* PUATU, G.R. No. L-10071, Oct. 31, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — IN AN ACTION FOR DAMAGES DUE TO WRONGFUL ATTACHMENT, THE SAME BEING SECURED BY A BOND, THE VENUE IS IN THE PROPER COURT OF THE PLACE WHERE ONE OF THE DEFENDENTS RESIDES, AND NOT THE VENUE STATED IN THE BOND, PLAINTIFF BEING A THIRD-PARTY CLAIMANT. — Emilio E. Lim and Consuelo Vda. de Buencamino entered into a contract of purchase of 7 dinner sets, Consuelo, the purchaser, to pay the same on installment. It was agreed that title to said property would pass only upon full payment of the purchase price. The full price was ₱2,170.00. When Consuelo had paid the amount of ₱450.00 Dionisia Bautista brought an action for the recovery of money from Consuelo in the municipal court of Quezon City. The dinner sets, found in Consuelo's possession, where attached. Emilio Lim filed a third-party claim with the sheriff of Quezon City who had his residence in Quezon City. But Dionisia Bautista filed a bond, undertaken by the First National Surety and Assurance Co. Lim, therefore, filed an action for recovery of personal property, the 7 dinner sets, from Consuelo Vda. de Buencamino. Judgment was rendered in his favor but no property could be executed in Consuelo's possession the dinner sets having been sold to Dionisia Bautista in a public auction for ₱1,712.00. Neither had Consuelo any money with which to satisfy the judgment in Lim's favor. Lim, therefore, brought an action for damages (₱1,712.00) for wrongful attachment and sought the sheriff of Quezon City, the Surety, and Dionisia Bautista liable. Lim brought the action in the Quezon City municipal court. Defendants therein moved to dismiss the action on improper venue. Their motion was based on a written statement included in the bond agreement to the effect that any action that might arise thereon or by virtue thereof should be prosecuted in the proper court in Manila City. This agreement as to venue, defendants contended should prevail. The CFI of Quezon City, sustaining the municipal court, held that the Quezon City municipal court was the proper venue, since the Quezon City sheriff, one of the defendants, had his residence in Quezon City. On appeal, the Supreme Court held that this was an action for damages for wrongful attachment and not an action on the bond. Agreements of the parties to the bond, the Court held, did not bind Lim, who was a third party as far as the same were concerned. *Held*, in an action for damages due to wrongful attachment, the same being secured by a bond, the venue is in the proper court of the place where one of the defendant resides, and not the venue stated in the bond, plaintiff being a third-party claimant. BAUTISTA *v.* PIGUING, G.R. No. L-10006, Oct. 31, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — IN CONSTRUING CONFIRMATORY DECISIONS OF APPELLATE COURTS, THE PRACTICE IS TO REGARD THE WHOLE OF THE APPEALED JUDGMENT TO HAVE BEEN UPHELD EVEN IF SEVERAL POINTS THEREOF HAVE NOT BEEN DISCUSSED NOR TOUCHED UPON IN SUCH CONFIRMATORY JUDGMENT. — This case is an offshoot of the Supreme Court's decision

in the case of Siari Valley Estates Inc. v. Filemon Lucasan, G.R. No. L-1046, August 31, 1955. In this case the Supreme Court had ruled: "Therefore, it is hereby affirmed (the judgment) with costs against appellant." Among the points of the judgment affirmed was one auhorizing the Siari Valley to round up its buffaloes which it might find in the ranch of Filemon Lucasan. However, in the dispositive part of the Supreme Court's judgment, the same failed to cite the portion of the judgment appealed from regarding the rounding up of the buffaloes by the Siari Valley. Hence, Filemon Lucasan refused to allow the Siari Valley to round up its strayed buffaloes, maintaining, and the CFI was with him, that this part of the appealed judgment was not affirmed by the Supreme Court. *Held*, in construing confirmatory decisions of appellate courts, the practice is to regard the whole of the appealed judgment to have been upheld even if several points thereof have not been discussed nor touched upon in such confirmatory judgment. SIARI VALLEY ESTATES, INC. *v.* LUCASAN, G.R. No. L-11005, Oct. 31, 1957.

REMEDIAL LAW — CIVIL PROCEDURE—A JUSTICE OF THE PEACE HAS AUTHORITY TO REVIVE HIS OWN JUDGMENT. — On March 22, 1950, a judgment was rendered by the justice of the peace court of Carmen, Bohol, in a forcible entry and detainer case. The judgment remained unsatisfied for more than five years. The plaintiffs, in whose favor the judgment had been issued, brought an action on Oct. 22, 1955 to have the same revived in the same court. The CFI held itself without jurisdiction to entertain an appeal because it believed the JP court did not have authority to revive its judgment. *Held*, the authority of a justice of the peace to revive his own judgment is clear. TORREFRANCA *v.* ALBISO, G.R. No. L-11114, Dec. 27, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE AN ULTIMATE FACT IS PLEADED IN THE PETITION AND ADMITTED IN THE ANSWER, THE TRIAL COURT MAY PROPERLY ENTER JUDGMENT IN ACCORDANCE WITH SUCH ADMITTED FACT WITHOUT THE INTRODUCTION OF EVIDENCE IN SUPPORT THEREOF. — On Dec. 7, 1953. the Philippine Government sought to recover ₱152,339.58 as alleged value of surplus properties obtained by appellant from the defunct Surplus Property Commission. Appellant admitted having obtained said properties listed in the complaint, except two compressors valued at ₱7,964.25, which appellant sought to be excluded from plaintiff's claim. Plaintiff moved for judgment on the pleadings in which it agreed to exclude the value of the two compressors to which no opposition was interposed by appellant before or during the hearing thereof. Subsequently, appellant, through an additional attorney, opposed the motion of plaintiff on the ground that the issues tendered by appellant's answer to plaintiff's complaint precluded immediate recovery by the plaintiff of the amount stated in its amended complaint. The CFI of Manila dismissed the opposition as groundless. Hence this appeal. *Held*, with the exclusion of the value of the two compressors as prayed for in appellant's answer to plaintiff's complaint and the admission of appellant of having obtained the surplus properties listed in plaintiff's complaint, the lower court had nothing more to do than to render judgment accordingly. Where an ultimate fact is pleaded in the petition and admitted in the answer, the trial court may properly enter judgment in accordance with such admitted fact without the introduction of evidence in support thereof. REPUBLIC OF THE PHILIPPINES *v.* ACOJE MINING COMPANY, INC., G.R. No. L-9870, Dec. 19, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — AFTER ITS JUDGMENT HAS BECOME FINAL, THE COURT CANNOT AMEND THE SAME, SO AS TO INCREASE THE AMOUNT INCLUDED IN SAID JUDGMENT BY ₱3,322.18, MISTAKE THEREON NOT BEING MERELY CLERICAL BUT SUBSTANTIAL. — The CFI of Nueva Ecija ordered the administrator of an estate pending settlement in the same to pay the First National Surety & Assurance Co. on its claim. The claim of the latter was for ₱14,030.10. The court, by mistake, awarded claimant only ₱11,717.48, intending ₱14,030.10. After the judgment was satisfied and after the same had become final, claimant petitioned the same court for an additional amount of ₱3,322.18, the balance of its original claim. Administrator of the estate opposed the petition, on the ground that the judgment of the court on petitioner's claim had already become final and had been satisfied. The court entertained the petition and granted petitioner ₱3,322.18 more, on the belief that what it did was merely to correct a clerical error the court had previously committed. *Held*, assuming that the court made a mistake, the same was not a mere clerical error, for to increase the judgment amount by ₱3,322.18 is a substantial and material change of the original order. Consequently, the lower court could no longer modify its original judgment. AURELIO *v.* FIRST NATIONAL SURETY & ASSURANCE CO., G.R. No. L-11142, Dec. 24, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — PETITION FOR RELIEF FILED MORE THAN NINE MONTHS AFTER RENDITION OF JUDGMENT BASED WHOLLY ON A COMPROMISE ENTERED INTO BY PARTIES IS FILED OUT OF TIME. — G. Bodiongan was the mortgagee of a truck with A. Barrientos as mortgagor thereof. The truck was delivered to Bodiongan. However, the mortgagor, allegedly by force and intimidation and without mortgagee's knowledge, took possession of the truck and thereafter sold it. Mortgagee Bodiongan brought an action to recover possession of the truck and to foreclose the mortgage thereon. Pending termination of the action, the parties entered into a compromise whereby the mortgagor would deliver possession of the truck to the mortgagee, the same to be returned to mortgagor within two months after its delivery. The court rendered judgment, enjoining the parties to abide and to follow the terms of their agreement. Barrientos later petitioned for compliance by Bodiongan with the terms of their agreement. After more than 9 months from rendition of the court's judgment urging compliance with the agreement, Bodiongan filed a petition for relief, imputing intimidation and fraud in the execution of said agreement. *Held*, petition for relief filed more than 9 months after rendition of judgment based on compromise is filed out of time. BODIONGAN *v.* CENIZA, G.R. No. L-8333, Dec. 28, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A PUBLIC OFFICER WHEN SUED IN HIS PRIVATE CAPACITY, MAY ENGAGE THE SERVICES OF A PRIVATE COUNSEL. — Plaintiffs herein were foremen, carpenters, camineros," truck drivers, and a watchman employed in the maintenance of the provincial roads and bridges of Leyte. The action that gave rise to this appeal was instituted against

Bernardo Torres, as Provincial Governor of Leyte, and Francisco Astilla and Manuel Nierras, as members of the Provincial Board of Leyte, for the purpose of restraining them from dispensing with the services of the plaintiffs and of securing indemnity for moral damages. Upon the filing of the complaint the CFI of Leyte issued a preliminary injunction, which was later made permanent, restraining defendants from removing plaintiffs. The Provincial Governor employed a private counsel to take up his case. The lower court ordered the amendment of defendants' answer, holding that a private counsel as employed by the Provincial Governor, cannot appear for a public official like the latter. The amendment was for the dropping off of the private counsel so employed. When defendants appealed from the decision of the court, they cited this holding as one error. *Held*, a public officer, when sued in his private capacity, may engage the services of a private counsel. Although, in the case at bar, the title of the complaint and some allegations thereof indicate that defendant Bernardo Torres is sued as Provincial Governor of Leyte, the complaint contains other allegations and a prayer for moral damages which, if due from the defendants, must be satisfied by them in their private capacity. ALBUENA *v.* TORRES, G.R. No. L-9634, Oct. 30, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE MORATORIUM ACT (REP. ACT NO. 342) WAS NOT UNCONSTITUTIONAL AND VOID *AB INITIO* AND, THEREFORE, IT SUSPENDED THE STATUTE OF LIMITATIONS. — Spouses Liboro owed defendant in the sum of ₱15,207.42. To secure this debt, mortgages were constituted on spouses' property which was covered by a Transfer Certificate of Title. The mortgages were constituted in 1938 and in 1939. They were annotated in the TCT. On Jan. 7, 1952, spouses and their co-plaintiffs — to whom they subsequently sold the land covered by the mortgages — brought an action for the cancellation of the mortgages on the property. Plaintiffs claimed that the debts secured by the property had been paid but that, however, the instruments evidencing payment thereof had been lost due to the second World War. In its answer, dated Feb. 11, 1952, defendant denied that the debt had been paid. By way of defense and counterclaim, defendant alleged that said debt amounted to ₱6,855.55 as of Dec. 31, 1941, and to ₱13,784.33 as of Feb. 8, 1952. Accordingly, it prayed for judgment in its favor for the last mentioned sum. Plaintiffs moved for summary judgment upon the ground that defendant's defense and counterclaim for ₱13,784.33 were based on the unpaid balance of ₱6,855.55 allegedly existing on Dec. 31, 1941, which had already prescribed on Feb. 11, 1952, when defendant's answer was filed. The lower court dismissed this motion for the reason that the fact of the suspension of the statute of limitations by the Moratorium Act (Rep. Act No. 342) was still to be threshed out. After the Supreme Court's decision in Rutter v. Esteban, L-3708, which held the Moratorium Act unconstitutional and void was promulgated and on Oct. 21, 1953, after the same had become final, plaintiffs presented another motion for summary judgment upon the ground, mainly, that having been declared unconstitutional and void, in the Rutter case, said Moratorium Act did not suspend, and toll the running of the prescriptive period of, the same. The court granted this motion and dismissed the defendant's counterclaim and ordered the cancellation of mortgages on the TCT of plaintiffs' property. Defendant appealed. *Held*, in Rutter v. Esteban this Court did not declare the Moratorium Act unconstitutional and void *ab initio*. It, therefore, suspended the running of the statute of limitations. Therefore, defendant's counterclaim as based on Dec. 31, 1941 did not yet prescribe on Feb. 11, 1952 when it filed its answer raising the same. LIBORO *v.* FINANCE & MINING INVESTMENTS CORPORATION, G.R. No. L-8948, Nov. 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — SEC. 13 OF RULE 41 REGARDING FILING OF NOTICE OF APPEAL, APPEAL BOND AND RECORD ON APPEAL WITHIN THE REGLAMENTARY PERIOD MUST BE STRICTLY COMPLIED WITH. — Respondents were plaintiffs in Civil Case No. 75 of the CFI of Agusan. Petitioners were defendants therein. After trial on the merits, judgment was rendered for plaintiffs. The decision was served upon defendants on March 27, 1954. On April 6, 1954, they filed a motion for new trial, thereby suspending the summing of time to appeal (20 days more). On April 28th plaintiffs filed a motion to correct error in the transcript of stenographic notes and for the modification of the judgment. On August 7th the two pending motions were denied. On August 10th, counsel for petitioners were served with the copies thereof. The remaining period of 20 days commenced to run anew on August 11th and should have expired on August 30th, 1954. On August 13th, petitioners filed their notice of appeal, but only on September 1st did they file their record on appeal and appeal bond. Respondents moved to dismiss this appeal for having been filed out of time and for the execution of the judgment. Motion was granted. Petitioners moved for reconsideration but were denied. Hence, they went to the Supreme Court. *Held*, it could be readily gathered from the foregoing that the record on appeal and the appeal bond were filed by petitioners two days beyond the 30-day allowed by law (Sec. 13, Rule 41) within which to perfect appeal and, therefore, the lower court was correct in denying the petitioners right to appeal. Sec. 13, of Rule 41 must be complied with strictly. TIONGKO *v.* ARCA, G.R. No. L-8612, Nov. 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE SUPERSEDEAS BOND AND APPEAL FILED BY LESSEE-DEFENDANT BENEFIT A SUB-LESSEE WHO HAS BEEN MADE HIS CO-DEFENDANT. — Eduardo del Castillo leased a piece of land to Sergio F. del Castillo. Sergio, in turn, subleased the same land under the terms and conditions as the original contract of lease to Rosalina Perez. Eduardo brought an illegal detainer action in the Justice of Peace Court and made Sergio and Rosalina Perez co-defendants. The JP Court decided for Eduardo and an appeal was made but only by Sergio who filed a supersedeas bond to forestall the execution of the judgment appealed from. Eduardo therefore moved to execute the judgment against Rosalina Perez. Sergio opposed this, contending that his appeal and supersedeas bond benefited his co-defendant. Turned down, he went to the Supreme Court. *Held*, the right of the sub-lessee to hold the possession of the property is directly inter-woven with the right of the lessee to the possession of the same property. This correlation and sequence of the right of lessee and sublessee would be frustrated if the judgment be executed against the latter pending disposal of the appeal of the former. The trial court therefore, erred in giving course to the writ of execution against Rosalina Perez notwithstanding the appeal taken by her co-defendant. The supersedeas bond and appeal filed by the lessee benefited his co-defendant, the sub-lessee. DEL CASTILLO *v.* TEODORO, SR., G.R. No. L-10486, Nov. 27, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — EVEN ASSUMING THAT THE OTHER CASES HANDLED BY ATTORNEY FOR APPELLANT HAD BEEN SET FOR MARCH 1 AND 3, BEFORE THE NOTICE FOR HEARING ON MARCH 3 OF CASE ON APPEAL, IT WAS THE PLAIN DUTY OF COUNSEL TO GIVE PREFERENCE TO THE CASE AT BAR, CONSIDERING THAT ITS HEARING HAD BEEN REPEATEDLY POSTPONED, AND THE REITERATED ADMONITIONS OF THE COURT TO PROCEED TO TRIAL. — This case was but a renewal of a suit on the same project instituted long before, in 1938, and not reconstituted despite notice of the destruction of the records. The new case, filed in April of 1948, had been set for hearing six times; had been postponed five times upon request of plaintiff; and three times (August 3, 1949, March 6, 1950, and August 7, 1950), the court had served warning to the plaintiff not to delay the case further. On the sixth setting for hearing of the case plaintiff and his attorney did not appear. So the court dismissed the case. On appeal, counsel of plaintiff appellant argued that he had presented a motion for postponement since, before he received notice for the hearing on March 3, 1952, he had already been notified of the hearing of his other cases on March 1 and 3 at the same time. *Held*, even assuming that the other cases handled by attorney for appellant had been set for March 1 and 3, before the notice for hearing on March 3 of case on appeal, it was the plain duty of counsel to give preference to the case at bar, considering that its hearing had been repeatedly postponed, and the reiterated admonitions of the court to proceed to trial. DE LOS REYES *v.* CAPULE, G.R. No. L-8022, Nov. 29, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE RULE AGAINST SPLITTING A CAUSE OF ACTION DOES NOT APPLY WHEN THE DIFFERENT OBLIGATIONS SUBJECT OF THE ACTION ARE COVERED BY SEPARATE TRANSACTIONS. — Defendant received on April 26, 1948 several articles for sale with the obligation to pay their value within 30 days. On May 3, 1948, he received another set with the same condition; on May 12, 1948 another set. The aggregate value of the three receipts amounted to ₱6,939.98. On March 3, 1951, plaintiff impleaded defendant in the municipal court of Manila to recover an account which became due on June 19, 1948. One Jan. 17, 1952, plaintiff brought an action against defendant in the CFI to recover the entire amount of ₱6,939.98. Defendant raised the previous case in the municipal court as a defense. He maintained that failure to include the other accounts which were then due in the first case worked as a bar to their inclusion in the latter case. The lower court found this contention untenable. Hence, defendant appealed. *Held*, defendant received the articles involved in this appeal on four different occasions under the express obligation of selling the same and accounting for the proceeds of the sale thereof within 30 days from receipt of each case. Since these contracts are separate and distinct from each other, it is evident that they constitute different causes of action. The rule, therefore, against splitting a cause of action does not apply here because the different obligations subject of the present action are covered by separate transactions. LANDAHL INC. *v.* MONROY, G.R. No. L-6991, Nov. 29, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE REMOVAL OF THE SPECIAL ADMINISTRATOR IS AT THE COURT'S SOUND DISCRETION. — On October 18, 1954,

respondents filed an application with the Court of First Instance of Albay for appointment of one of them, Jesus V. Samson, as administrator for the estate of Jose V. Samson, their predecessor in interest. Pending hearing thereof, the court appointed Jesus V. Samson special administrator. Petitioners opposed respondents' application. After two years of litigation, the court appointed Antonio Conda regular administrator, instructing the special administrator to turn over to him all the funds and properties under his possession. The appointment of Conda was appealed by respondents, contesting the propriety of the court's removal of the special administrator. Meanwhile, Conda qualified. The Court of Appeals held that the appeal suspended the appointment of Conda as regular administrator, and, therefore, the lower court should not have allowed him to qualify pending appeal. *Held*, the removal of the special administrator is at the court's sound discretion, and the court's orders show that there were good reasons to terminate the administration. ALCASID *v.* SAMSON, G.R. No. L-11435, Dec. 27, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A CONTINGENT CLAIM DOES NOT FOLLOW THE TEMPORARY ORDERS OF DISMISSAL OF AN ACTION UPON WHICH IT IS BASED, IT AWAITS THE FINAL OUTCOME THEREOF AND ONLY SAID FINAL RESULT CAN CAUSE ITS TERMINATION. — On October 15, 1953, petitioners filed a contingent claim for ₱500,000 against the estate of deceased spouses Buan. The claim was based on the fact that on August 3, 1952 a Philippine Rabbit Bus owned and operated by the deceased spouses collided with a car through the negligence of the bus owner resulting in the death of Sayo and injuries to his companion. The bus owner was charged and convicted for homicide through reckless imprudence. The CFI of Tarlac when claim was filed admitted it, but subsequently set it aside, because the reason for the claim ceased to exist due to the fact that judgment in the homicide case of the driver has not become final yet. *Held*, a contingent claim does not follow the temporary orders of dismissal of an action upon which it is based, it awaits the final outcome thereof and only said final result can cause its termination. INTESTATE ESTATE OF F. BUAN *v.* LAYA, G.R. No. L-7593, Dec. 24, 1957.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE MERE FACT THAT THE APPELLANT HAS BEEN USING A DIFFERENT NAME AND HAS BECOME KNOWN BY IT DOES NOT *PER SE* ALONE CONSTITUTE "PROPER AND REASONABLE CAUSE", OR JUSTIFICATION, TO LEGALLY AUTHORIZE A CHANGE OF NAME. — Appellant, a Chinaman, petitioned the court for a change of name. He wanted to assume the name of Vicente Chan Bon Tay by which he allegedly had been better known in social and business circles. However, appellant had been twice convicted for gambling. In the first conviction he went by the name of Ong Pin Can. In the second conviction appellant assumed the name of Ong Pen Oan *alias* Vicente Chan. So the lower court denied his petition for change of name. Hence, the appeal. *Held*, no merit in this appeal. A person with a criminal record will have evident interest in the use of a name other than his own, in an attempt to obliterate an unsavory record; hence, the mere fact that the applicant has been using a different name and has become known by it does not *per se* alone constitute "proper and reasonable cause" or justi-

fication, to legally authorize a change of name. Where prior conviction exists, it is the court's duty to consider the consequences of a change of name, and to deny the same, unless weighty reasons are shown. ONG PENG OAN *v.* REPUBLIC OF THE PHILIPPINES, G.R. No. L-8035, Nov. 29, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE COMPLAINANT CANNOT APPEAL FROM A DISMISSAL OF A CASE BY THE COURT ON MOTION OF THE FISCAL. — Accused Flores was the lawyer of his co-accused Arcilla in a tenancy case in the Court of Justice of the Peace, Papica. One of the plaintiffs in said tenancy case was one Atty. Luis Contreras. Flores filed a motion to dismiss the tenancy case because Justice of the Peace Papica and Atty. Contreras were law partners. In his motion, Atty. Flores alleged certain misconducts of Papica and Contreras in connection with the tenancy case. Atty. Contreras felt offended and filed a case for criminal libel. But the fiscal moved to dismiss the criminal case for lack of merit and evidence. Complainant Contreras appealed from this dismissal. *Held*, complainant cannot appeal from a dismissal by the court of a criminal complaint on motion of the fiscal. PEOPLE *v.* FLORES, G.R. No. L-7528, Dec. 18, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — IT CLEARLY APPEARING FROM THE RECORD THAT THE MUNICIPAL JUDGE, BEFORE ISSUING THE WARRANT OF ARREST OF THE ACCUSED, CONDUCTED HIS OWN INVESTIGATION TO SATISFY HIMSELF THAT "PROBABLE CAUSE" EXISTED JUSTIFYING THE ISSUANCE OF THE WARRANT, THE ORDER APPEALED FROM MUST BE AFFIRMED. — Jose Arches was accused of less serious physical injuries in the municipal court of Roxas City. The city attorney who made the preliminary investigation certified to the municipal judge of the fact, stating, at the same time, that he believed the crime charged was actually committed and there was reasonable ground to believe that accused had committed it. However, the municipal judge himself conducted another preliminary investigation. Satisfied that the crime charged had been actually committed and that there was reasonable ground to believe that it was committed by the accused, the municipal judge issued the warrant for his arrest. To avoid detention, the accused put up bail and then filed a motion to dismiss on the ground that the court did not acquire jurisdiction over his person because, according to him, the warrant for his arrest was issued without "previous examination conducted by the judge" and was for that reason not valid. This motion was denied by both the municipal court and the CFI of Capiz. *Held*, no rule can be laid down which will govern the discretion of the court. If he decides upon proof presented, that probable cause exists, no objection can be made upon constitutional grounds against the issuance of the warrant. It clearly appearing from the record that the municipal judge, before issuing the warrant of arrest of the accused, conducted his own investigation to satisfy himself that "probable cause" existed justifying the issuance of the warrant, the order appealed from must be affirmed. ARCHES *v.* MUNICIPAL JUDGE, G.R. No. L-10212, Oct. 30, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — MERE DISMISSAL OF THE CRIMINAL CASE WOULD NOT WARRANT THE EXONERATION OF BONDSMAN FROM THE

EFFECTS OF A PREVIOUS ORDER OF CONFISCATION AND EXECUTION, ALTHOUGH SAID CIRCUMSTANCE, CONSIDERED WITH OTHER CIRCUMSTANCES, MAY REDUCE APPELLANT'S LIABILITY. — Visitacion Almonte Coca stood criminally accused. Three bail bonds, constituted in her favor, had been ordered confiscated and executed because of her failure to appear in court. She was ordered released, however, by the filing of a fourth bail bond by herein appellant Equitable Insurance and Casualty Co., Inc. When the case was again called for hearing, accused again failed to appear. Accused merely sent a telegram from where she was, from San Pablo City, informing the court, the CFI of Manila, of her sick condition and promising to forward a medical certificate, which was later filed, describing her illness as acute rheumatism. The court denied her telegraphic motion for postponement and ordered the arrest of Visitacion and the confiscation of her bond, giving appellant company 30 days within which to produce the accused and to explain why judgment against the bond should not be rendered. After the issuance of an alias order of arrest, apellant company succeeded in surrendering Visitacion within the period fixed. Appellant company, therefore, asked for lifting of the order confiscating the bond. The court denied the motion and another motion for reconsideration. The case against Visitacion was subsequently dismissed for lack of evidence and she was accordingly ordered released. Sixteen days after the release of Visitacion, a writ of execution was issued against appellant company for the bond it had filed in favor of Visitacion. A motion for reconsideration was denied. Hence, this appeal by appellant company. *Held*, under the circumstances, the lower court wielded its discretion with undue strictness. The fact that other bonding companies might have been delinquent in their duties and obligations, should not affect the standing of appellant company. On the other hand, mere dismissal of the criminal case would not warrant the exoneration of appellant company from the effects of a previous order of confiscation and execution, although said circumstance considered with others attendant in this case, may reduce appellant's liability. PEOPLE *v.* QUERIDA, G.R. No. L-9739, Oct. 30, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — IN A PRELIMINARY INVESTIGATION IT IS NOT ENOUGH THAT THE INFORMATION IS READ TO ACCUSED, ACCUSED MUST ALSO BE INFORMED OF THE SUBSTANCE OF THE TESTIMONY AND EVIDENCE PRESENTED AGAINST THEM. — Santiago Medranas, Jr. and Sr., were accused in a murder complaint. The fiscal of Davao City, filed the information with the municipal court and certified that preliminary investigation had been conducted in the case. On the strength of this certification, the municipal judge caused the arrest of accused. He set the date for the preliminary investigation. Accused moved that they be informed of the substance of the testimony and evidence presented against them in accordance with Sec. 11 of Rule 108. Prosecution objected, contending that the reading of the information to accused was sufficient compliance with the rule. The CFI sustained the plea of the accused. The City Fiscal appealed. *Held*, in a preliminary investigation it is not enough that the information is read to accused, accused must also be informed of the substance of the testimony and evidence presented against them. MEDRANA, *v.* SEPULVEDA, G.R. No. L-10450, Oct. 31, 1957.

REMEDIAL LAW — EVIDENCE — IT IS A SETTLED RULE THAT THE COURTS MAY BELIEVE ONE PART OF THE TESTIMONY OF A WITNESS AND DISBELIEVE ANOTHER PART. — J. Hidalgo, M. Gotengco, I. Camilo, James Uy and Aw Ming were charged of arson in the CFI of Manila. Hidalgo and Gotengco were found guilty. James Uy and Aw Ming were acquitted. Camilo was discharged to become a state witness. Hidalgo and Gotengco were convicted on the strength of Camilo's testimony. However, the court disbelieved state witness' testimony as concerned James Uy and Aw Ming. Now, convicted, appellants appealed on the ground that since Camilo's testimony as regards the guilt of James Uy and Ming was not given credence, it should likewise be held unworthy of credence as regards the appellants. *Held*, it is a settled rule that courts may believe one part of the testimony of a witness and disbelieve another part. In the case at bar, the lower court found that Camilo's testimony concerning the accused James Uy and Aw Ming was uncorroborated while, with respect to appellants, there was corroboration. PEOPLE *v.* HIDALGO, G.R. No. L-6273, Dec. 27, 1957.

REMEDIAL LAW — EVIDENCE — THE ALLEGED *ALIBI* IS RENDERED VALUELESS BY APPELLANTS' FAILURE TO PRESENT THIS EVIDENCE AT THE FIRST TRIAL. — Appellants Sinforoso Samson and Puirico Cuartero were convicted of the crime of murder by the CFI of Nueva Ecija. Subsequently, they moved for new trial on the ground of newly discovered evidence. Among the alleged new evidence was the testimony of a Chief of Police and a policeman to the effect that on the day deceased was killed accused Samson and Cuartero were in jail. A police blotter was presented to support this testimony. However, these witnesses and the police blotter had not been presented in the first trial. The court convicted the two accused anew and the same appealed. *Held*, as to the *alibi*, the same is rendered valueless by appellants' failure to present this evidence at the first trial. Surely, if these two had been lodged in the Jaen jail on the night of the crime, they must have been aware of the fact and would have exerted every effort to subpoena the witness and the police blotter to show their innocence. This detail suffices to destroy the value of the *alibi*, even without taking into account the inherent weakness of this kind of defense. PEOPLE *v.* SAMSON, G.R. No. L-9528, Oct. 31, 1957.

REMEDIAL LAW — EVIDENCE — APPELLANT, BEING THE CLAIMANT HERSELF, WAS INCOMPETENT TO TESTIFY AS TO ANY MATTER THAT TOOK PLACE PRIOR TO THE DEATH OF THE ALLEGED DEBTOR. — Eligio Naval died, without descendants or ascendants, but with an estate. Various money claims were filed by his father-in-law, Potenciano Gabriel, and his sisters-in-law, Trinidad and Eulalia Gabriel. The estate was appraised at ₱95,355 while the aggregate claims of the Gabriels amounted to ₱138,472. Documentary and oral testimony was presented by claimants to prove their claims. However, the trial court dismissed their written evidence as being forged and false and discredited their witnesses as being biased, prejudiced and false. One of the witnesses for claimants was Trinidad Gabriel who was a claimant herself. Refusal of admisison of her testimony was one of the grounds for appealing. *Held*, as to the testimony of Trinidad Gabriel, sister of Isabel Gabriel, the trial court has correctly discarded it upon objection that, being the claimant herself, she was incompetent to testify as to any matter that took place prior to the death of the alleged debtor. GABRIEL *v.* GABRIEL, G.R. No. L-7923, Nov. 29, 1957.
