CASE DIGEST

SUPREME COURT

CIVIL LAW — HUMAN RELATIONS — THE WORDS "PHYSICAL INJURIES" IN ART. 33 OF THE NEW CIVIL CODE REFERS TO ORDINARY BODILY INJURIES, NOT TO THE SPECIFIC CRIME IN THE REVISED PENAL CODE — Defendant was found guilty of the crime of frustrated homicide committed against the person of the plaintiff. The former appealed to the CA where the case is now pending. Plaintiff in the meantime filed a separate civil action for damages against defendant and his parents for the bodily injuries received by him on the occasion of the commission of the crime. Upon motion of the defendants, the judge suspended the trial of the civil case pending the termination of the appeal of the criminal action. Plaintiff then filed this certiorari, alleging that under art. 33 of the New Civil Code a separate civil action was permitted "in cases of fraud, defamation and physical injuries." Defendants claim that the term "physical injuries" should be understood as designating a specific crime in the Revised Penal Code and as the crime charged is not physical injuries but frustrated homicide, said article is not applicable. *Held*, the art. in question also uses the words "defamation" and "fraud." But it must be noted that there are no such specific crimes in the Revised Penal Code. Thus, it is evident that the term "physical injuries" could not have been used in its specific sense as the crime defined in the penal code for the Code Commission could not have used, in the same art., some terms in their general meaning and another in its technical meaning in penal law. CARANDANG *v.* SANTIAGO, G.R. No. L-8238, May 25, 1955.

CIVIL LAW — PERSONS — THE MOTHER AND THE FATHER EXERCISE JOINT PARENTAL AUTHORITY OVER THEIR UNEMANCIPATED CHILDREN; IN THE ABSENCE OF THE FATHER, THE MOTHER SHOULD HAVE CUSTODY OF THE MINOR CHILD — Petitioner prays for the issuance of a writ of habeas corpus to recover the custody of her child who is allegedly being detained by the respondents. Respondents admit that the child is in their custody but argue that it was entrusted to them by the father before he left for Saigon. *Held*, art. 311 of the New Civil Code provides that the father and the mother exercise joint parental authority over their legitimate children who are unemancipated, and art. 316 of the same code imposes upon the parents the duty to support these unemancipated children and to have them in their company. The petitioner, being the mother, is therefore entitled to the custody of the child since her husband is unable to exercise his parental authority in view of his mission abroad. BANZON *v.* ALVIAR, G.R. No. L-8806, May 25, 1955.

CIVIL LAW — PERSONS — WHERE A BOND OF LOVE AND AFFECTION HAS BEEN CREATED BETWEEN THE MINOR CHILD AND ITS MATERNAL GRANDMOTHER, SUCH GRANDMOTHER SHALL BE PREFFERED TO THE PATERNAL GRANDFATHER IN

THE CARE AND CUSTODY OF SUCH CHILD. THE WELFARE OF THE CHILD IS THE PARAMOUNT CONSIDERATION. — Petitioner's wife died in 1953 and petitioner since then has been out of the country. Their child who was then only twetny days old was taken care of by respondent, petitioner's mother-in-law. When petitioner later came back to take the child, the child did not recognize him and refused to go with him. Petitioner instituted this action to recover the custody of his child, but actually it is the paternal grandfather who wants to have custody of the child. In support, petitioner cites art. 355 of the New Civil Code which preers paternal grandparents to the maternal ones in the exercise of substitute parental authority. *Held*, art. 363 of the New Civil Code, which petitioner seems to have overlooked, provides that in all questions in the care, custody, education and property of children, the latter's welfare shall be paramount. The maternal grandmother has been a mother to the child and there is mutual love between them. For the sake of the welfare of the child, she should have his legal custody, without prejudice to the father's obligation to contribute to his support and maintenance. FLORES *v.* ESTEBAN, G.R. No. L-8768, Aug. 6, 1955.

CIVIL LAW — PROPERTY — AN AGREEMENT TO ALLOW A PERSON TO PASS THROUGH THE LAND OF ANOTHER CREATES A REAL RIGHT IN FAVOR OF THE FORMER. — Petitioner's lot had no access to the provincial highway except through the lots of the respondents. For many years respondents have allowed petitioner to pass through their lots. When later on petitioner was denied passage, a dispute arose, which terminated in an agreement allowing petitioner, upon payment of compensation, to pass by foot through respondents' lots. Court judgment was rendered based on such agreement. But when petitioner sought to have the judgment registered and annotated on the certificates of title of the respondents, the latter refused to deliver such certificates. Petitioner filed a motion to compel them to produce said certificates. *Held*, passage by third persons over unenclosed real estate which is tolerated cannot give rise to any right to those passing over it regardless of the length of time elapsed. But in the present case, the owners of the different lots over which petitioner used to pass by mere toleration, signed an agreement before a notary public and later submitted it to the court for judgment, in which they undertook to allow petitioner continuous use of a footpath through their lots. This constitutes a valid right in petitioner's favor and respondents may be compelled to surrender their certificates of title in order that said right may be annotated thereon. BERNARDO *v.* CA, G.R. No. L-7248, May 28, 1955.

CIVIL LAW — DONATIONS — A DONATION GIVING THE DONEE THE RIGHT TO THE PROPERTY IMMEDIATELY UPON THE EFFECTIVITY OF THE DEED OF DONATION IS A DONATION INTER VIVOS AND IS THUS LIABLE FOR GIFT TAXES — Petitioner and her deceased husband in their wills bequeathed all their property to their children. Later, a deed of trust was executed transferring the entire community property of the marriage to the petitioner and the children before the husband's death. The Collector of Internal Revenue, believing that the deed of trust was a donation, assessed the same for donor's and donee's gift taxes. Petitioner contends that the donation is one *mortis causa* and therefore exempt from gift taxes. *Held*, the donation is one *inter vivos* and subject to gift tax.

It is apparent from the deed of trust that the donee's acquisition of the property or any right accrued immediately upon the effectivity of the instrument of donation and was not dependent upon the donor's death, a fact inconsistent with donations *mortis causa*. KIENE *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-5974, July 30, 1955.

CIVIL LAW — SUCCESSION — CERTIFICATION BY THE NOTARY THAT THE WILL HAS BEEN ACKNOWLEDGED IS NOT A PART OF THE ACKNOWLEDGMENT ITSELF NOR OF THE TESTAMENTARY ACT; A CERTIFICATION, EVEN IF MADE IN THE ABSENCE OF THE TESTATOR AND WITNESSES, DOES NOT INVALIDATE THE WILL — Two documents, a will and a codicil, executed by Apolinaria Ledesma, were admitted to probate. The oppositor contests the validity of the codicil on the ground that it was not duly certified by a notary public in the presence of the testator and of the witnesses. *Held*, a comparison of arts. 805 and 806 of the New Civil Code reveals that while the testator and witnesses must sign the will in the presence of one another, all that is required thereafter is that the "will must be acknowledged before a notary public." The subsequent signing and sealing, by the notary, of his certification that the testament was duly acknowledged by the participants is not part of the acknowledgment itself nor of the testamentary act. Hence, their separate execution out of the presence of the textatrix and her witnesses cannot be said to violate the rule that testaments should be completed without interruption. JAVELLANA *v.* LEDESMA, G.R. No. L-7179, June 30, 1955.

CIVIL LAW — OBLIGATIONS — A THIRD, PARTY, WHO ASSUMES THE OBLIGATION OF A VENDEE, CONTINUES TO BE LIABLE TO THE VENDOR, NOTWITHSTANDING THE VENDEE'S FAILURE TO COMPLY WITH HIS OBLIGATION TO SUCH THIRD PARTY — Dominguez bought from Realty Investments, Inc. a registered lot on installment. He made a down payment and promised to pay the balance in several regular installments. Subsequently he applied for a loan with the RFC which approved it, on the condition that a mortgage on the lot be constituted in its favor. For this reason, the RFC promised to pay the balance of the purchase price to Realty Investments if the latter would execute the necessary document of title in favor of Dominguez. Realty Investments complied with the request and a mortgage on the lot was executed in favor of RFC. When Dominguez failed to meet the regular amortizations on the loan RFC foreclosed the mortgage and refused to pay the amount promised to Realty Investments, on the ground that its obligation had been modified if not altogether extinguished. *Held*, RFC's contention is untenable. Realty Investments was induced to part with its title upon RFC's assurance to pay the balance of the purchase price. Lulled by this assurance, Realty Investments thereafter looked to RFC, instead of Dominguez, for payment. RFC never made Realty Investments know that it would not deliver the amount if Dominguez defaulted in his obligation to RFC. RFC *v.* CA, G.R. No. L-7185, Aug. 31, 1955.

CIVIL LAW — CONTRACTS — A PROMISE TO SELL SPECIFICALLY, WHICH MUST BE SUPPORTED BY A CONSIDERATION DISTINCT FROM THE PRICE, DOES NOT FALL UNDER THE GENERAL RULES ON OFFER AND ACCEPTANCE — Defendant compa

granted plaintiff an option to buy one of its barges within ninety days. Two months later, the plaintiff advised defendant that it was ready to exercise its option. Defendant replied that the transaction must be in cash, and later, that the barge was still unavailable because some work had to be done on it. In view of defendant's vacillating attitude, the plaintiff instituted this action for specific performance and deposited the price with the court. Two days later the defendant withdrew its offer giving due notice to plaintiff, setting up the defense that the offer was not supported by any consideration as provided by art. 1479 of the New Civil Code. Plaintiff invoked art. 1324 of the same code. *Held*, defendant is not bound by its promise to sell and the same may be withdrawn even after the promisee has signified its intention to accept the offer. It is true that under art. 1324, the general rule regarding offer and acceptance, when the offeror gives the offeree a certain period within which to accept, the offer may be withdrawn at any time before acceptance, except when the option is founded upon a consideration. But this rule must be interpreted as modified by art. 1479 which applies to a promise to buy and sell specifically. Under this provision, a promise to sell, to be binding, must be supported by a consideration distinct from the price. It is not disputed that the option was not supported by any consideration. It may therefore be withdrawn notwithstanding the acceptance thereof by the plaintiff. SOUTHWESTERN SUGAR & MOLASSES CO. *v.* ATLANTIC GULF & PACIFIC Co., G.R. No. L-7382, June 29, 1955.

CIVIL LAW — TRANSITIONAL PROVISIONS — NEW RIGHTS CREATED BY THE NEW CIVIL CODE DO NOT HAVE RETROACTIVE EFFECT AND CANNOT IMPAIR VESTED RIGHTS ACQUIRED UNDER PRIOR LEGISLATION — On the belief that the documents presented by defendant Benares to plaintiffs were contracts of lease, plaintiffs signed said documents. In 1940, plaintiffs discovered that the documents were in fact deeds of absolute sale in favor of defendant and that, by virtue thereof, defendant was able to obtain a transfer certificate of title in his name. In 1945, plaintiffs filed this action to compel defendant to execute the necessary deeds of reconveyance and to restore them in the possession and ownership of the lots. Defendant claims that the action was filed out of time, having been instituted more than 4 years from the discovery of the fraud. Plaintiffs however insist that under art. 1456 of the New Civil Code, defendant "is by force of law considered a trustee of an implied trust." They thus claim that their action against the trustee did not prescribe. *Held*, having failed to bring their action within the statutory period, the action of plaintiff must fail. And even conceding the plaintiff's claim that they are entitled to recover under art. 1456 of the New Civil Code, they cannot avail themselves of the benefits of such article. The right created by the article would be a new right which cannot impair the vested rights acquired by the defendant under prior legislation. HEIRS OF CARIDAD *v.* [illegible], G.R. No. L-6438, June 30, 1955.

CRIMINAL LAW — PRESCRIPTION OF CRIMES — THERE BEING NO SPECIFIC PROVISION IN THE REVISED PENAL CODE, IN COMPUTING THE PERIOD FOR THE PRESCRIPTION OF CRIMES, THE FIRST DAY SHOULD BE EXCLUDED AND THE LAST DAY INCLUDED IN ACCORDANCE WITH ART. 13 OF THE NEW CIVIL CODE — An information was filed in the municipal court against the defendant on July 27, 1953 for slight physical injuries, a light felony, committed on May 28, 1953. The defendant moved to quash the information on the ground that, according to

arts. 90 and 91 of the penal code, the crime had already prescribed, two months having elapsed since the commission of the offense. The court granted the motion in the belief that the prescriptive period began to run from the day on which the crime was discovered by the offended party and that therefore the two-month period for the prescription of the offense charged had already elapsed. The Solicitor however contends that the rule in art. 13 of the New Civil Code, excluding the first and including the last day, should be applied, in which case the information could be said to have been filed on the sixtieth day. *Held*, in the computation of a period of time within which an act is to be done, the law in this jurisdiction has always directed that the first day should be excluded and the last day included. Besides, art. 18 of the New Civil Code expressly provides that any deficiency in any special law, like the Revised Penal Code, must be supplied by the provisions of the New Civil Code. PEOPLE *v.* DEL ROSARIO, G.R. No. L-7234, May 21, 1955.

CRIMINAL LAW — CRIMES AGAINST PERSON — THE KILLING OF SEVERAL VICTIMS BY DIFFERENT BULLETS CONSTITUTE SEPARATE MURDERS AND NOT MULTIPLE MURDER — The accused, while inside a church, fired several shots at the worshippers with a gun, and, with different bullets, killed two persons and wounded another. The accused was convicted of double murder and frustrated murder. The defense contends that the accused should have been convicted of two separate murders instead of double murder. *Held*, the accused should only be convicted for two separate murders and one frustrated murder as the victims were not killed by one and the same bullet, but by different and separate bullets. PEOPLE *v.* BASARAIN, G.R. No. L-6690, May 24, 1955.

CRIMINAL LAW — CRIMES AGAINST PROPERTY — MALICIOUS MISCHIEF, AS DISTINGUISHED FROM DAMAGE TO PROPERTY THROUGH RECKLESS IMPRUDENCE, PRESUPPOSES DELIBERATE INTENT TO CAUSE DAMAGE — Charged in the JP of damages to property through reckless imprudence, accused moved to quash on the ground that under art. 365 of the Revised Penal Code, the penalty imposable (a fine of from ₱125.00 to ₱375.00) was clearly outside the jurisdiction of the JP. The case was forwarded to the CFI. But the CFI returned the case to the JP court, holding that the crime of "damage to property through reckless imprudence" is but a variant of the crime of "malicious mischief," over which the JP is authorized to exercise jurisdiction by § 87 (6) of the Judiciary Act. *Held*, the contention of the judge of first instance is untenable. "Damage to property through reckless imprudence" cannot be a variant of "malicious mischief" because the two crimes are incompatible with each other. Art. 327 of the penal code defines malicious mischief as *deliberate* damage to another's property not falling within the terms of the next preceding chapter. In the very nature of things, therefore, malicious mischief cannot be committed through negligence since deliberate intent or malice and negligence are essentially incompatible. In negligence, what is principally punished is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*. The Supreme Court of Spain has expressly recognized that malicious mischief cannot be committed through imprudence or negligence. QUIZON *v.* JP, G.R. No. L-6641, July 28, 1955.

LABOR LAW — RETIREMENT PENSION — A GOV'T EMPLOYEE WHO HAS RECEIVED RETIREMENT GRATUITY UNDER ACT NO. 4051 AND WHO WAS LATER RE-EMPLOYED IN THE GOV'T SERVICE MUST BE CREDITED WITH SUCH AMOUNT RECEIVED IF HE IS AGAIN RETIRED AND HE SEEKS TO INCLUDE HIS FORMER SERVICE IN THE COMPUTATION OF HIS RETIREMENT GRATUITY UNDER THE GOV'T SERVICE INSURANCE ACT — Petitioner Espejo, a civil engineer in the government service, retired in 1933 and received retirement gratuity under Act No. 4051 of the Phil. Legislature. In 1945 he was re-employed as an engineer in the Bureau of Public Works, without refunding the gratuity he received previously. In 1952 at the age of 65, he was retired under the GSIS Act, as amended. However the Auditor General deducted from his retirement gratuity the sum already received under the previous retirement. *Held*, the interpretation of the Auditor General is but just. If the petitioner, in the computation of his retirement annuity, is to be credited with his service prior to 1942, it is but just that all retirement benefits received by him prior to that date should be charged to his account. Otherwise, the petitioner would benefit under both Act No. 4051 and under the GSIS Act. Precisely, § 28 of the GSIS Act, as amended, provides that only those who do not desire to be retired under the law's system preserve gratuity rights under previous retirement plans. Petitioner's contention that his retirement in 1933 was without his consent, and that an exception should be made in his case, is without merit as the law make no distinction between optional and compulsory retirements for refund purposes. ESPEJO *v.* AUDITOR GENERAL, G.R. No. L-7123, June 17, 1955.

LABOR LAW — BONUS — A BONUS MAY BE DEMANDED AS OF RIGHT ONLY WHEN THE SAME CONSTITUTES PART OF THE SALARY OR WHEN A PROMISE TO GIVE SUCH BONUS HAS BEEN MADE. — Petitioner is a labor organization whose members are employed by the respondent mining company. In two previous years, the daily wage laborers were given Christmas bonuses. In 1951, the company gave a Christmas bonus to its monthly paid employees in an amount equivalent to one month's pay, so petitioner herein demanded that the daily wage earners also be paid their bonuses. A negotiation followed, and as a result, the company granted to the daily wage earners a Christmas bonus equivalent to one week's wages. The petitioner protested against the discrimination, but respondent company answered in writing that the granting of bonuses to the wage earners was a purely voluntary act on the part of the company and the fact that it had given bonuses to the laborers in previous years should not be construed to constitute an obligation to make such bonuses every year in spite of the company's being not in a position to do so. The CIR ordered the company to pay the bonus to laborers in the same rate as that given to the monthly salaried group. *Held*, only when the bonus is a part of the wages of the employee or the laborer, and only when there is a promise to give such bonus may the same be demanded. It may be said that the company considered itself under legal obligation, or at least promised to pay the bonus in question in its letter stating that it is not legally bound to grant bonuses every year when it is not in a position to do so, which indicates a promise to grant bonuses if it were in position to do so". No explanation having been offered to explain the discrimination against the daily wage earners in the granting of bonuses, justice and equity demand that such laborers be paid the same amount as the monthly paid workers. PAMBUJAN SUR UNITED MINE WORKERS *v.* CIR, G.R. No. L-7177, May 31, 1955.

LABOR LAW — CLOSED SHOP AGREEMENTS — A STIPULATION IN A CLOSED SHOP AGREEMENT BETWEEN EMPLOYER AND AN EMPLOYEES' UNION AUTHORIZING THE EMPLOYER TO DISCHARGE ANY MEMBER OF SUCH UNION, WHO JOINS ANOTHER UNION, IS VALID. — The National Labor Union, a labor organization whose members were workers of Aguinaldo, Inc., made several demands for sick leave, vacation leave, Christmas bonus, and other benefits. The formal demands of the NLU were later submitted to the CIR, which called a conference. Before this conference could be convened, the Aguinaldo Employees Association asked for the court's permission to intervene, alleging that it possessed a collective bargaining and closed shop agreement with the Aguinaldo, Inc. This motion having been granted over and above the objection of the NLU, the Aguinaldo Employees Association informed the court that in compliance with its obligation under the closed-shop agreement, the company had discharged several employees who are now presently affiliated with the petitioning labor union. The NLU protested these dismissals and prayed for the reinstatement of the discharged employees, arguing that the closed shop agreement was a violation of § 5 of Com. Act No. 213 which partly provides that any person who dismisses an employee or laborer from this employment for having joined any registered legitimate labor organization shall be guilty of a felony. *Held*, in this instance, the employees were dismissed by the employer not for having joined, but for having deserted or forsaken a legitimate labor organization, the Aguinaldo Employees Association. They were no longer members of such labor organization when they lost their jobs. There is no prevention of affiliation here, but at most, a prevention of withdrawals from a union, divided loyalties, or what is worse, disorganization. Besides, the dismissals resulted from a contract with the organization to which the employees belonged, a situation to which the section invoked does not apply. NLU *v.* AGUINALDO, G.R. No. L-7358, May 31, 1955.

LABOR LAW — EIGHT-HOUR LABOR LAW — IN COMPUTING THE MINIMUM ADDITIONAL COMPENSATION FOR WORK DONE ON SUNDAYS OR LEGAL HOLIDAYS, THE 25% ADDITIONAL REMUNERATION AUTHORIZED BY THE LAW SHOULD BE BASED ON THE MINIMUM DAILY WAGE AS PROVIDED FOR BY THE MINIMUM WAGE LAW. — Petitioners receive as daily wages from the respondent company the "take home" pay of ₱2.20, the balance after deducting the value of the facilities given by the company. For work done on Sundays and legal holidays, the company pays 50% of this "take home" pay as minimum additional compensation required by the Eight-Hour Labor Law. Petitioners contend that the 50% additional remuneration should not be based on ₱2.20, their take home pay, but on ₱4.00, the minimum daily wage provided for by the Minimum Wage Law. *Held*, the minimum legal additional compensation for work on Sundays and legal holidays is 25% of the laborer's regular remuneration. Under the Minimum Wage Law, this minimum additional compensation is 25% of ₱4.00 or ₱1.00 a day. While it is true that respondent company computes its additional compensation for work on Sundays and legal holidays on the take-home pay, it is giving the laborers 50% thereof, or ₱1.10, an additional remuneration that is even higher than that prescribed by the Eight-Hour Labor Law in relation with the Minimum Wage Law. ATOK-BIG WEDGE MUTUAL BENEFIT ASS'N. *v.* ATOK-BIG WEDGE MINING CO., G.R. No. L-7349, July 19, 1955.

LABOR LAW — INDUSTRIAL PEACE ACT — AN ORDER DENYING A LABOR UNION'S MOTION TO DISMISS IS MERELY INTERLOCUTORY AND, THEREFORE, NOT APPEAL-

ABLE; LABOR COLLECTIVE BARGAINING AGREEMENTS, BEING VESTED WITH PUBLIC INTEREST, ARE EXEMPT FROM THE OPERATION OF THE "NON-IMPAIRMENT OF CONTRACTS" CLAUSE OF THE CONSTITUTION — The PLDT filed with the CIR a petition for certification, alleging that it had received notice from the Free Telephone Workers' Union of its desire to bargain collectively, requesting that an investigation be conducted for the purpose of determining the proper collective bargaining agency for its employees. The PLDT Employees' Union moved to dismiss the petition on the ground that its collective bargaining agreement with the PLDT was still in operation and would expire on Sept. 14, 1954, and that a favorable action by the CIR on the PLDT's petition would permit another labor organization in the same establishment to present to the employer another set of demands and compel said employer to bargain with it during the lifetime of an existing bargaining agreement. Judge Roldan of the CIR dismissed the PLDT's petition for the reason that the collective bargaining agreement between the company and PLDT Employees' Union was still in operation and until the expiration thereof, the agreement may not be changed. This order of dismissal was subsequently set aside by the CIR *en banc* and the cause was remanded for determination of the appropriate collective bargaining unit, and the holding of a certification election in accordance with law, if necessary. From this order, petitioner appeals. *Held*, it is the general rule that only final judgments or orders, which put an end to the litigation, are appealable. An interlocutory order may not be appealed. When the judgment does not dispose of the case completely, but leaves something to be done upon the merits, it is merely interlocutory. The petitioner's motion to dismiss having been denied, the CIR still has to determine the proper bargaining agency, or direct a certification election. Of course, the law permitting appeals from any order of the CIR does not in any line employ the word "final". But it is reasonable to suppose that Congress did not intend to disregard such a well-known rule of orderly procedure. With respect to petitioner's argument based on the impairment of contracts, petitioner should keep in mind the modern concept embodied in the New Civil Code declaring that labor contracts, being impressed with public interest, are subject to special laws on labor unions, collective bargaining, strikes, lockouts, etc. PLDT EMPLOYEES' UNION *v.* PLDT, G.R. No. L-8138, Aug. 20, 1955.

LABOR LAW — PENSION BENEFITS — THE FACT THAT THE OPERATION OF A PENSION PLAN IS SUBJECT TO A SUSPENSIVE CONDITION DOES NOT AUTHORIZE THE EMPLOYER TO ABOLISH THE SAME AT WILL ON THE GROUND THAT HE HAS NO OBLIGATION UNDER THE PLAN UNTIL THE CONDITIONS SPECIFIED THEREIN ARE FULFILLED — In 1923, petitioner adopted a plan for employees' pensions subject to certain conditions. The funds accumulated under the plan reached ₱224,074.14 at the outbreak of the war. Because of alleged losses suffered during the war, the petitioner resolved to discontinue the pension plan. None of the respondent employees have fulfilled the conditions. Some of respondents, who have not been recalled to work after the resumption of the company's operations, now claim monetary benefits from the plan. *Held*, the plan has ripened into a binding contract and cannot now be abolished by the employer. Not being a donation, the acceptance by the employees need not be express, but may be inferred from their entering the employ of the company, or their stay therein after the plan was established and made known to them. The plan was not a mere offer of gratuity. It sought, in fact, to induce the employees to continue indefinitely in the service of the company, and to spur them on to greater efforts. The com-

pany definitely stood to benefit materially from the plan's operation. The mere fact that the benefits of the plan are subject to certain conditions, and that none of the respondents have fulfilled such conditions, does not of itself authorize the company to terminate the plan at its own pleasure. PLDT *v.* JETURIAN, G.R. No. L-7756, July 30, 1955.

LABOR LAW — TENANCY — THE LANDLORD CANNOT DISMISS HIS TENANT WITHOUT JUST CAUSE; OTHERWISE, HE SHALL BE LIABLE FOR LOSSES AND DAMAGES TO THE TENANT TO THE EXTENT OF THE TENANT'S SHARE IN THE PRODUCE OF THE LAND UNDER TENANCY — Potenciano leased a certain parcel of land to Armendi, while the same was under the tenancy of Estefani. Armendi subsequently ejected Estefani, who thereupon filed an action against both Potenciano and Armendi, praying for the liquidation of the harvest prior to his ejectment, and for his reinstatement as tenant. Decision was rendered in Estefani's favor, but because of his fear that his reinstatement would be delayed, Estefani filed a second complaint asking the court to fix the measure of damages due him under the court's decision. The CIR ordered Potenciano and Armendi to deliver to Estefani his share of the harvest for the two years of his unlawful ejectment, or the value thereof. Potenciano contends that during the period of his ejectment, Estefani found profitable employment, and therefore, cannot claim damages for the same period. *Held*, the landlord shall not dismiss his tenant without just cause, otherwise he shall be liable to him for losses and damages occasioned by such unjust dismissal. Such damages shall mean the share the tenant should have received if he had personally worked the land. The landlord, however, has the right to deduct the income which the dismissed tenant may have earned during the period of his ejectment. POTENCIANO *v.* ESTEFANI, G.R. No. L-7690, July 27, 1955.

LABOR LAW — WORKMEN'S COMPENSATION ACT — ACCIDENT WHICH BEFALLS AN EMPLOYEE WHILE DISCHARGING A DUTY HE IS AUTHORIZED TO PERFORM FOR THE FURTHERANCE OF HIS EMPLOYER'S BUSINESS, FALLS UNDER THE ACT, SUCH AN ACCIDENT BEING ONE THAT ARISES OUT OF AND IN THE COURSE OF THE EMPLOYMENT — Arsenio Rivera, an owner of a timber concession, was under exclusive contract to supply the Maloma Sawmill with logs. Dy Hian Tat, an agent of the Maloma Sawmill, owned a truck which at the time was being used by Rivera to haul logs to the sawmill. When the truck broke down Teofilo Loyola, a mechanic employed by the Maloma Sawmill, went to repair it. During the course of the repair an accident happened, killing him. The heirs of Loyola, upon petition, were granted compensation by the Workmen's Compensation Commission. Petitioner now asks for a review. *Held*, the death of Loyola arose out of and was in the course of his employment because: (1) the truck which was involved was owned by Dy Hian Tat, a sales agent of the Maloma Sawmill; (2) the truck was operated by Rivera who was under exclusive contract to deliver logs to the sawmill; (3) Loyola was tacitly permitted by Dy Hian Cho, the sawmill superintendent, to go to the mountain to repair the truck; and (4) both Rivera and Dy Hian Tat were associates in the business of hauling logs from the former's concession to the sawmill. Loyola's undertaking to repair the truck was impelled by his desire to promote the interest of his employer. AFABLE *v.* LOYOLA, G.R. No. L-7789, May 27, 1955.

LABOR LAW — WORKMEN'S COMPENSATION ACT WHERE A SPECIAL POLICEMAN WAS KILLED ACCIDENTALLY BY ANOTHER FELLOW POLICEMAN WHILE BOTH WERE ENGAGED IN THEIR DUTIES AS GUARDS, THE FACT THAT HE WAS GUILTY OF SIMPLE NEGLIGENCE BY ALLOWING ANOTHER TO HOLD AND PLAY WITH HIS GUN SHOULD NOT DEPRIVE HIM OF COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT — One Romeo Suataron was a special policeman in the employ of the plaintiff company. Another special policeman of the same company, while playing with the gun of Suataron and while they were both on duty as guards, accidentally shot Suataron. Upon finding that he had killed his friend, the special policeman turned the gun on himself. The heirs of Suataron now seek to recover compensation for Suataron's death under the Workmen's Compensation Act. *Held*, the heirs should be allowed to recover as the deceased's death arose out of his employment. Horseplay and larking are unfortunately common in factory life. The employees are placed in such an environment where it is natural for normal people to indulge in occasional foolery. The risks of such associations and conditions are risks of the employment. The deceased was not guilty of notorious negligence in allowing his fellow policeman to take hold of and play with his gun. If at all, he was merely guilty of simple negligence as he was supposed to keep the gun in his possession at times whenever he is on duty. But this should not deprive him of compensation. HAWAIIAN-PHIL. CO. *v.* COMMISSIONER, G.R. L-8114, May 25,, 1955.

LAND REGISTRATION — WRIT OF POSSESSION — THE ISSUANCE OF THE DECREE OF REGISTRATION IS PART OF THE REGISTRATION PROCEEDINGS; HENCE, A WRIT OF POSSESSION MAY BE ISSUED AGAINST ONE WHO OBTAINS POSSESSION AFTER JUDGMENT BUT BEFORE THE ISSUANCE OF THE DECREE — In a cadastral case, petitioner herein sought to register her ownership over the land in question. Her claim being uncontested, a general order of default was issued, and the court proceeded to examine her evidence. Subsequently, she was declared, by judgment, the owner of the land. Before the final issuance of the decree of registration, however, respondent unlawfully entered the premises. Petitioner prayed for the issuance of the writ of possession against respondent Poras on the ground that the latter was in unlawful possession of the lot. The court denied petitioner the issuance of a writ of possession, holding that since respondent Poras entered possession of the premises after judgment granting registration but before the final issuance of the decree, a writ of possession could not be issued. *Held*, it is true that a person presently in possession of a lot adjudicated to him in registration proceedings has no need of a writ of possession, but in the present case, petitioner should be granted one because at the time when petitioner presented her evidence of ownership and possession in 1951, she was in fact then in possession, but that thereafter, and at the time of the issuance of the decree sometime in 1953, she was no longer in possession because respondent Poras had unlawfully entered the land. The issuance of the degree of registration is part of the registration proceedings. In fact, it is supposed to end the said proceedings. Consequently, any person adversely and unlawfully occupying said land at any time up to the issuance of the final decree may be subject to judicial ejectment by means of a writ of possession, and it is the duty of the registration court to issue said writ when asked for by the registered owner. DEMORAR *v.* IBAÑEZ, G.R. No. L-7595, May 21, 1955.

LAND REGISTRATION — RECONSTITUTION — IN THE RECONSTITUTION OF A CERTIFICATE OF TITLE TO REGISTERED LAND, ONLY SUCH LIENS AND ENCUMBRANCES

AS WERE THEN NOTED ON THE ORIGINAL THEREOF BEFORE ITS LOSS OR DESTRUCTION MAY BE ANNOTATED ON THE RECONSTITUTED TITLE — The lot in question was originally owned by one Martir, whose niece mortgaged the same to another, Jalandoni. This mortgage was properly annotated on the certificate of title to the land. Jalandoni later foreclosed the mortgage, and the lot was subsequently sold at public auction. Petitioner was declared the highest bidder. For some reason, the original as well as the owner's duplicate of the transfer certificate of title was lost. Petitioner sought to reconstitute the title. The court granted the reconstitution of the title, but it inserted the provision that all liens and encumbrances affecting the property which appear recorded in the Office of the Register of Deeds to be existing at the time of the loss or destruction of the certificates of title shall be noted on the reconstituted title. Petitioner contents the insertion of this proviso. *Held*, the petitioner has good reasons to object to the proviso inserted by the court. For one thing, the purpose was to reconstitute the title as it was when lost. The evidence shows that the only encumbrance annotated thereon was the mortgage in favor of one Soledad Jalandoni. Other encumbrances recorded in the Office of the Register of Deeds, but not transcribed on the original title before it was lost, are naturally beyond the scope of the proceedings. ASICO *v.* TRINIDAD, G.R. No. L-7488, May 27, 1955.

LAND REGISTRATION — DAY BOOK OF REGISTER OF DEEDS — UNDER § 56 OF THE LAND REGISTRATION ACT, THE SIMPLE ENTRY OF A DEED OF SALE IN THE DAY BOOK OF THE REGISTER OF DEEDS IS SUFFICIENT REGISTRATION FOR ALL LEGAL INTENTS AND PURPOSES — Potenciano, by virtue of a deed of sale, bought the lot and house in question from one Alcabao. This deed of sale was subsequently presented for registration in the Registry of Deeds, and in fact, such entry was made in the day book after payment of the corresponding registration fees. The clerk who made the entry, however, committed an error in copying the number of the certificate of title. The deed of sale and pertinent papers of the sale were lost or destroyed during the bombing of Manila. Subsequently, in a separate controversy between Alcabao and Dineros, Alcabao became a judgment-debtor for damages, and on account of which judgment, the lot and house in question, believed to belong to Alcabao, were attached, sold at public auction and bought by Dineros as the highest bidder. Potenciano contested the sale on the ground the Alcabao had no more rights over the property, a fact evidenced by an entry in the day book of the Register of Deeds. Dineros argues that such an entry was not equivalent to a registration, sufficient to charge him with notice and affect his rights acquired by virtue of a public sale. *Held*, first of all, a purchaser of real property at an execution sale is only entitled to the rights of the judgment-debtor. Dineros, having acquired the property from Alcabao when the latter was no longer the owner of the same, has no rights as against Potenciano. The entry of a deed in the day book is sufficient registration for § 56 of the Land Registration Act says that deeds relating to registered land shall, upon payment of the filing fee, be entered in the entry book with notation of the year, month, day, hour and minute of their reception and that they shall be regarded as registered from the moment of such notation. POTENCIANO *v.* DINEROS, G.R. No. L-7614, May 31, 1955.

LAND REGISTRATION — CHATTEL MORTGAGE — WHERE THE OBJECT OF A CHATTEL MORTGAGE IS NOT DELIVERED TO THE MORTGAGEE, AND THE CONTRACT OF CHATTEL MORTGAGE IS NOT REGISTERED IN THE REGISTRY OF DEEDS, SUCH CHATTEL MORTGAGE IS VALID ONLY AS AGAINST THE MORTGAGOR AND HIS PRIVIES, BUT NOT BINDING UPON THIRD PERSONS — Pursuant to a compromise agreement between plaintiff and defendant in a previous civil action, the trial court issued a writ of execution against the properties of the defendant. The sheriff accordingly levied upon the properties and issued a notice that the same would be sold at public auction on April 22, 1954 at 10:00 A.M. At about thirty minutes before the time scheduled for the auction sale, petitioner herein, filed with the sheriff a verified third-party claim, alleging that said properties were subject to a chattel mortgage constituted in his favor by the defendant, in evidence of which the mortgage deed was attached. This instrument was dated December 12, 1952 and registered with the office of the register of deeds only on April 22, 1954 at 9:00 A.M., or one hour immediately before the scheduled sale at public auction, and nine days after the levy made by the sheriff. The trial court dismissed the third party claim. *Held*, inasmuch as at the time of the levy, and on the day of the auction sale, the mortgagee was not in the possession of the property in question, and the deed of mortgage was not registered in the manner provided for by law, it is obvious that petitioner's chattel mortgage is not valid against either judgment-creditor or the court pursuant to § 4 of Act No. 1508. LARA *v.* BAYONA, G.R. No. L-7920, May 10, 1955.

LAND REGISTRATION — PUBLIC LAND LAW — A CONTRACT OF SALE OF HOMESTEAD LAND EXECUTED IN VIOLATION OF THE HOMESTEAD LAW IS NULL AND VOID, AND ANY ACTION OR DEFENSE BASED ON SUCH NULLITY DOES NOT PRESCRIBE — On November 1, 1927, a homestead patent was issued in favor of Teodoro Eugenio. On March 12, 1932, Eugenio sold the same and delivered possession thereof to defendants. On May 4, 1949, the children of Teodoro Eugenio sought to recover the land alleging that the contract entered into between defendants and their father was a mere mortgage of real property, and that despite their efforts to pay the principal consideration of the mortgage, the defendants refused to accept payment. Defendants set up defenses based on several legal points, among which is prescription. *Held*, The defense of prescription is untenable. The contract of sale, having been executed in violation of the Homestead Law, is null and void, and an action or defense invoking the nullity of such an act does not prescribe. Besides, the patent having been recorded in the Registry of Deeds, the homestead is considered registered land within the meaning of the Land Registration Act and titles issued under said Act do not prescribe. EUGENIO *v.* PERLINO, G.R. No. L-7083, May 19, 1955.

LAND REGISTRATION — PUBLIC LAND LAW — THE FIVE-YEAR PERIOD GRANTED TO HOLDERS OF HOMESTEAD LAND TO REDEEM SUCH LAND FROM A VENDEE A RETRO, COMMENCES TO RUN FROM THE DATE OF THE CONTRACT OF THE VALID SALE, AND NOT FROM THE DATE OF THE REGISTRATION OF THE CONTRACT — In 1938, Jose Lagon obtained a homestead patent over two parcels of land. In 1944 he sold said parcels to the defendant Austria with the right to repurchase. The deed evidencing this sale was not registered until 1947. Plaintiff, widow of Jose Lagon, contests the validity of the sale by her husband, contending that it was made without her knowledge and consent. The trial court dismissed plaintiff's complaint, but held that the right to redeem the property from the defendants can still be enforced inasmuch as the five-year period of redemption

granted to homestead landholders begins to run from the date the sale was registered. Defendants appealed from this decision, arguing that the five-year period of redemption should be counted not from the date of the registration of the sale, but from the date of the sale itself. *Held*, the period of redemption granted by the law should be counted from the date of the actual sale. As between the parties to a contract of sale, registration is not necessary to charge one party with notice, because actual notice is equivalent to registration. It can be seen, therefore, that insofar as the owner of the homestead, the deceased Lagon, was concerned the date of the conveyance mentioned in § 119 of the Public Land Law is the actual date of the sale, and not the date of the registration of the deed of conveyance. As far as the wife and children are concerned, they cannot be considered third parties to the contract because as to the wife, the sale was executed by the husband in his capacity as administrator of the conjugal partnership, and as such the sale made by him is binding upon the conjugal partnership. As to the children, they can only succeed to whatever rights their father had, and whatever is valid and binding as to him must also be valid and binding as to them. CALASINAO *v.* AUSTRIA, G.R. No. L-7918, May 25, 1955.

LAND REGISTRATION — PUBLIC LAND LAW — CONVEYANCE OF LAND ACQUIRED BY PURCHASE UNDER THE PUBLIC LAND ACT, PROVIDED THAT THE REQUIREMENTS OF THE LAW HAVE BEEN COMPLIED WITH, IS VALID AND BINDING EVEN IF SUCH CONVEYANCE WAS MADE BEFORE THE ACTUAL ISSUANCE OF THE PATENT THEREFOR — In 1932, upon due application, and after having complied with the requirements of the law, as well as the rules and regulations promulgated pursuant to the Public Land Act, respondent corporation was awarded the sale of certain parcels of land. After respondent corporation's compliance with the cultivation requirements, the Dir. of Lands entered an order for the issuance of the patent. Subsequently, before the actual patent was issued, petitioner, claiming to represent 250 prejudiced families, brought this action contesting the ownership of respondent, stating that the corporation had already abandoned the lands, and that petitioner had occupied the same, and had cultivated it for the last ten years on the belief that said lands were not owned by anyone else. After due investigation, the Bureau of Lands upheld the ownership of the corporation but found that it had leased certain portions of these lands. This decision was accordingly upheld by the Sec. of Agriculture and Natural Resources. An action was then brought by petitioner in the CFI, which court also upheld the validity of the corporation's title. However, upon petitioner's motion for reconsideration, the trial court reversed its decision, holding that respondent's acts in entering into contracts of lease of these lands in 1949 without the required approval of the government voided its title to the lands. Thus, while application for purchase of public land is still pending consideration and the rights of the applicant have not yet been determined, it cannot make any transfers thereof that may affect the land without the approval of the government. Such approval is necessary in order to protect the interests of the state. But such approval becomes unnecessary in the case at bar because the purchaser has already complied with all the requirements of the law, although the patent has not yet been actually issued. In this case, the rights of the corporation are already deemed vested, the issuance of the patent being a mere ceremony. The alleged contracts of lease were entered into in 1949, one year after the order for the issuance of the patent, and are therefore valid. Thus they cannot forfeit the rights acquired to the land by respondent. JUAN AMERICAN LAND COMMERCIAL CO., G.R. No. L-7459, June 23, 1955.

LEGAL ETHICS — SUBSTITUTION OF COUNSEL — UNLESS THE REQUIRED FORMALITIES FOR THE SUBSTITUTION OF COUNSEL ARE COMPLIED WITH, NO SUBSTITUTION SHALL BE PERMITTED; THE ATTORNEY WHO APPEARED LAST IN THE CASE BEFORE SUCH FORMAL APPLICATION FOR SUBSTITUTION SHALL BE REGARDED AS THE ATTORNEY OF RECORD, AND SHALL BE RESPONSIBLE FOR THE CONDUCT OF THE CASE, AS WELL AS ALL THE INCIDENTS THEREOF — In a certain controversy over real property between plaintiff and defendants, the latter were represented by Atty. San Diego. During the course of the trial, Atty. Navarro filed his appearance as counsel for the defendants without however stating that such appearance was in substitution of Atty. San Diego. The defendants neither informed the court that they had terminated the services of Atty. San Diego nor asked the latter to formally withdrawn his appearance. After the hearing of the controversy, decision was rendered in favor of the plaintiff, a copy of which was sent to Atty. San Diego on Aug. 18, 1951. On Dec. 10, 1951, defendants filed a petition for relief under Rule 38. The trial court, holding that the petition was filed out of time denied the same. Defendants appealed stating that the notice to Atty. San Diego of the decision in favor of the plaintiff did not constitute a notice to them because San Diego had been substituted by another counsel. Thus, for the purpose of Rule 38, they claimed that the period should run from the date of their actual notice of the decision. *Held*, in previous decisions, see U.S. v. Borromeo, 20 Phil. 189 and Ulanday v. Manila Railroad, 45 Phil. 542, it has been held that "no substitution of attorneys will be allowed unless the following requisites concur: (1) There must always be filed a written application for substitution; (2) There must always be filed a written consent of the client to the substitution; (3) There must be filed the written consent of the attorney substituted, if such consent can be obtained, and (4) in case such written consent cannot be procured, there must be filed with the application for substitution, proof of the service of notice of such application in the manner required by the Rules to the attorney to be substituted." The record of the case fails to show that the defendants have dispensed with the services of Atty. San Diego, nor have they proven that he had withdrawn his appearance, or that Atty. Navarro had validly assumed exclusive control over the case, and substituted himself in the place of Atty. San Diego, nor has the latter been notified of said substitution. OLIVARES *v.* COLEGIO DE SAN JOSE, G.R. No. L-6156, June 30, 1955.

POLITICAL LAW — CONSTITUTIONAL LAW — ACT NO. 271 OF THE PHILIPPINE COMMISSION MUST BE DEEMED REPEALED IN VIEW OF THE ABSOLUTE TERMS OF § 5, ART. 13 OF THE CONSTITUTION; A RELIGIOUS ORGANIZATION WHOSE TRUSTEES ARE FOREIGN NATIONALS CANNOT, THEREFORE, ACQUIRE LANDS IN THE PHILIPPINES; SINCE THE ACQUISITION OF LANDS IS NOT INDISPENSABLE TO THE FREE EXERCISE AND ENJOYMENT OF RELIGION, SUCH PROHIBITION DOES NOT IMPAIR THE CONSTITUTIONAL PROVISION WITH RESPECT TO "FREEDOM OF RELIGION" — The Register of Deeds refused to accept for record a deed of donation executed by Dy, a Filipino citizen, in favor of an unregistered religious organization whose trustees are all of Chinese nationality, on the ground that its acceptance would constitute a violation of §1 and § 5, Art. 13 of the Constitution which limits the acquisition of lands in the Philippines to its citizens or corporations or associations, at least sixty per centum of the capital stock of which is owned by such citizens. The CFI sustained the Register of Deeds in his refusal, and the donee now brings this appeal, citing Act 271 of the old Philippine Commission which allowed the holding of lands in the Philippines by religious asso-

ciations of whatever sect and contending that the refusal of the Register of Deeds constitutes a violation of the "freedom of religion" clause of the Constitution. *Held*, Act 271 of the old Philippine Commission must be deemed repealed in view of the absolute terms § 5, Art. 13 of the Constitution. The Constitution makes no exception in favor of religious associations. There could be no violation of the "freedom of religion" clause of the Constitution because the acquisition of land is not indispensable to the free exercise and enjoyment of religious profession and worship. REGISTER OF DEEDS *v.* UNG SIU-SI TEMPLE, G.R. No. L-6776, May 21, 1955.

POLITICAL LAW — TAXATION — THE IMPOSITION OF A LICENSE TAX UPON THE BUSINESS OR OCCUPATION OF A PERSON, WHOSE PROPERTY HAD PREVIOUSLY BEEN SUBJECTED TO PROPERTY TAX, DOES NOT AMOUNT TO DOUBLE TAXATION — A municipal ordinance was passed, provided among others an occupational tax on all owners of fishponds. Defendants, having been convicted of a violation of said ordinance in the JP court, appealed to the CFI contesting the validity of the occupational tax. They claimed that since the land on which the fishponds are situated have already been subject to land tax, it would be unfair and discriminatory to levy another tax on the owner of such fishponds, since that would be equivalent to double taxation. The CFI sustained the contention of defendants. The fiscal appealed. *Held*, the lower court erred in sustaining the contention of the defendants. It is well settled that a license tax may be levied upon a business or occupation although the land or property used therein is already subject to property tax. The imposition of this kind of tax is not double taxation, and municipal councils have the power to impose an occupation tax on owners of fishponds pursuant to the provisions of C.A. No. 472. The ordinance in question need not be approved by the Secretary of Agriculture as the rule requiring his approval applies only to fishponds operated within municipal waters, and the fishponds in question are operated on private lands. PEOPLE *v.* MENDAROS, G.R. No. L-6975, May 27, 1955.

POLITICAL LAW — TAXATION — THOSE "FEES" COLLECTED NOT ONLY TO COVER THE COSTS OF REGULATION AND INSPECTION BUT ALSO TO OBTAIN REVENUE ARE ACTUALLY TAXES; SUCH "FEES" MAY THEREFORE BE PAID WITH BACKPAY CERTIFICATES IN ACCORDANCE WITH THE BACKPAY LAW — This action was commenced to compel the respondent Secretary of Public Works and the Chief of the MVO to authorize the acceptance of payment of petitioner's motor vehicle registration "fees" with a backpay certificate. The respondents contend that the "fees" are not taxes, and, hence, can be paid with such certificates. *Held*, it is true that the charges prescribed by the Revised Motor Vehicle Law for the registration of motor vehicles are called "fees" by the law. However, it is not the appellation but the object of the charge which determines whether a charge is a tax or only a fee. Generally speaking, taxes are for revenue, while as fees are exactions for purposes of regulation and inspection and are for that reason limited in amount to what is necessary to cover the cost of service rendered in that connection. The Motor Vehicle Law itself provides that the "fees" in question shall accrue to the funds for the construction and maintenance of public roads, streets and bridges. It is obvious that the fees are not collected for regulatory purposes but for the express object of obtaining revenue with which the government may discharge one of its principal functions. Hence, the registration "fees" are in reality taxes and may therefore be payed with backpay certificates in accordance wth the backpay law. CALALANG *v.* LORENZO, G.R. No. L-6961, June 17, 1955.

POLITICAL LAW — TAXATION — ESTATE & INHERITANCE TAXES CANNOT BE IMPOSED ON INTANGIBLE PERSONAL PROPERTY BELONGING TO AN ALIEN IN THE PHILIPPINES, WHEN SUCH ALIEN'S NATIONAL LAW DOES NOT IMPOSE THE SAME TAXES ON THE SAME KIND OF PROPERTY BELONGING TO FILIPINO CITIZENS IN THE ALIEN'S COUNTRY — Kiene, a German citizen, died while a resident of Liechtenstein, Europe. On the day of his death, he had intangible personal property in the Philippines consisting of shares of stock in a domestic corporation, the same having been acquired during his marriage with herein petitioner. The respondent Collector of Internal Revenue assessed estate and inheritance taxes on the property in question, but the petitioner resisted payment of the assessment, contending that such property was exempt from such taxes. *Held*, the property is not subject to estate and inheritance taxes inasmuch as the laws of Liechtenstein, of which the decedent was a resident at the time of his death, do not impose such kinds of taxes on intangible personal property of Filipino citizens residing in that country. This exemption is provided for under § 22 of the National Internal Revenue Code. KIENE *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-5974, July 30, 1955.

POLITICAL LAW — TAXATION — THE DONEE'S GIFT TAX SHOULD BE COMPUTED ON THE BALANCE OF THE DONATION AFTER DEDUCTING THE DONOR'S TAX — The Collector of Internal Revenue assessed donor's gift tax and donee's gift tax on the donation by the petitioner to her children. Petitioner contends that if the tax is payable at all, the donor's tax should be deducted from the gift tax in computing the donee's tax. The Collector maintains that whereas, by express direction of the Internal Revenue Code, the "estate" tax is deductible from the net estate before computing the inheritance tax, no such deduction of the donor's tax is directed by the statute when the donee's tax is assessed. *Held*, the donee's gift tax should be computed from the balance of the donation after deducting the donor's gift tax. The reason for the different treatment of the "estate" tax and the donor's "gift tax" is that the estate tax must necessarily be paid from the estate, thereby reducing it, whereas the donor's tax is, or may be, paid by or collected from the donor, who must be presumed to have reserved unto himself sufficient property. Hence, the gift received by the donee is not necessarily diminished by the payment of the donor's tax. KIENE *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-5974, July 30, 1955.

POLITICAL LAW — TAXATION — SALES TAX IS LEVIED ON THE TRANSACTION OF THE SALE ITSELF, NOT ON THE GOODS WHICH ARE THE OBJECT THEREOF; WHERE THE CONTRACTS CONSISTS IN THE DELIVERY OF THE SUBJECT MATTER U.S. TITLE TO SUCH SUBJECT MATTER PASSES FROM VENDOR TO VENDEE UPON DELIVERY AT THE WHARF OR PIER, EXCEPT WHEN THE PARTIES INTEND OTHERWISE — In 1947, pursuant to an agreement with the U.S. Government whereby petitioner undertook to rehabilitate the Veterans Administration Building, petitioner was able to acquire surplus goods from the Foreign Liquidation Commission. Part of these surplus goods consisted of tractors which were stored

in the petitioner's yards known as the Sta. Mesa Yard and the Pieco Yard located in Manila. The United Africa Co., through its representative Mr. Gibson, contracted to buy tractors from the petitioner to be delivered f.a.s., Manila, in good working condition. One Mr. Taylor, a tractor expert, employed by United Africa Co. to select, inspect and test the tractors before delivery accordingly made his selections and gave petitioner his selected list of serial numbers. Petitioner in turn secured from the Foreign Liquidation Commission the purchase invoices and other documents for the immediate release of the tractors. These tractors were removed from the Foreign Liquidation Commission and brought to petitioner's Pieco Yard where Mr. Taylor tested them and signed the invoices of those which he approved in good condition. Upon Mr. Taylor's approval of these invoices, the bill was presented for payment to Phil. Refining Co., which agreed to pay the same for the United Africa Co. The tractors were then delivered to the pier in Manila by means of barges. On Aug. 26, 1947, fifty seven tractors were so acquired from petitioner and shipped from Manila to United Africa Co. in East Africa. Respondent Collector levied sales tax upon petitioner's gross sales of these tractors, contending that petitioner imported them from the Army Bases, and that they were subsequently sold to a foreign buyer within the Philippines and that title to the tractors passed to the buyer upon delivery of the same to the carrier, f.a.s., Manila. Petitioner argues, however, that it did not import the tractors from the Army Bases of the Foreign Liquidation Commission because title to them passed to the foreign buyer while the tractors were still at the Foreign Liquidation Commission, and that they passed Philippine territory merely in transit to the pier, Manila, where they were delivered f.a.s. Hence, their sale was not a domestic sale, and therefore not liable for the payment of the sales tax. *Held*, the rule is that where the contract is to deliver f.a.s., the title to the property passes on delivery at the wharf of the dock. While this rule may yield to evidence of a contrary intent between the parties, there is here no proof to show that the petitioner and the foreign buyer intended otherwise. On the contrary, in its letter addressed to the respondent on July 16, 1949, petitioner itself admits that Mr. Taylor, whom petitioner alleges accepted the delivery of the tractors, had no power or authority whatsoever to do so. Even Mr. Gibson had no authority to accept delivery of these tractors. Hence, from their removal from the Foreign Liquidation Commission until their delivery at the wharf, title to the tractors was in the seller. Petitioner's argument that the tractors did not acquire a taxable situs in the Philippines because they merely passed Philippine territory in transit, and that they were not intended for local use but for exportation to a foreign country is irrelevant, since the tax in dispute is one that is levied on transactions or sales, and not a tax on the property sold. The sale was consummated in the Philippines, title passing to the buyer at the pier in Manila. Hence, the situs of the sale is the Philippines and is taxable in this country. SORIANO Y CIA. *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-5986, Aug. 31, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — THE OFFENSES FOR WHICH A MUNICIPAL MAYOR MAY BE SUSPENDED, PENDING INVESTIGATION, ARE LIMITED TO THOSE RELATED TO THE PERFORMANCE OF HIS OFFICIAL DUTIES, VIZ., THOSE SPECIFIED IN § 2188 OF THE REVISED ADMINISTRATIVE CODE. — Petitioner is a duly elected and qualified mayor. Upon the filing of a complaint for oppression and concubinage against him, the assistant executive secretary endorsed said complaint to the respondent provincial governor for immediate investigation.

The governor thereupon suspended the petitioner from office, and together with the provincial board, proceeded to conduct an investigation of the charges. This petition is for a writ of prohibition with preliminary injunction to enjoin the respondents from further proceeding with the investigation of the administrative case against him, and for a declaration that the order of suspension issued by respondent governor is illegal and therefore without effect. *Held*, the charges preferred against the petitioner are not malfeasance or any of those enumerated and specified in § 2188 of the Rev. Adm. Code, because rape and concubinage have nothing to do with the performance of the duties of a mayor, nor do they constitute or involve neglect of duty, oppression, corruption or any other form of maladministration of office. True, they may involve moral turpitude, but before the provincial governor may act and proceed in accordance with the Rev. Adm. Code referred to, a conviction by final judgment must precede the filing by the provincial governor of charges and trial by the provincial board. Consequently, the suspension and investigation being undertaken by the provincial board are without authority of law. MONDANO *v.* SILVOSA, G.R. No. L-7708, May 30, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — THE ADDITION OF A NICKNAME OR APPELLATION TO THE NAME OR SURNAME OF A CANDIDATE, FOR THE PURPOSE OF IDENTIFYING THE VOTER, ANNULS NOT ONLY THE VOTE CAST FOR SAID CANDIDATE BUT ALSO THE ENTIRE BALLOT — In the elections of 1951, the municipal board of canvassers declared Orbiso elected for the office of vice-mayor. Tumakay, who garnered the second highest number of votes, protested in due time before the CFI. The court, found ,upon re-canvass, that 186 ballots carrying votes for Orbiso were invalid, and accordingly declared Tumakay as the one duly elected. On the ballots in question, the court found that the name of a certain Tumayao, a candidate for councilor was accompanied by different Christian names, nicknames and other appellations which tended to identify the persons who cast them. Orbiso contends that since only Tumayao's name was accompanied by identifying names and marks, only the votes cast for him should be invalidating, without affecting the other votes therein. *Held*, a voter who marks his ballot forfeits his right to vote. His vote becomes null and void not only for the one whose name has been marked or identified, but for all the candidates voted for in his ballot. A careful scrutiny of the provisions of § 149 of the Revised Election Code, as compared with the other paragraphs, gives the reason why in said paragraph, the word "vote" is used instead of "ballot", to wit, that in said paragraph, the identifying mark is written on the name of the candidate, whereas in other cases, the mark or irregularity committed on the ballot itself. Moreover, the general provisions of § 149 should yield to the specific provisions of § 146 which provides that the board of inspectors shall "determine whether there are any marked ballots, and if they be found, they shall be placed in a package... and shall not be counted." The philosophy underlying this provision is undoubtedly to protect and maintain the secrecy of the ballot. To achieve this purpose, Congress has taken special care to punish criminally any person who puts on the ballot any distinctive mark or who makes use of any other means to identify the vote. TUMAKAY *v.* ORBISO, G.R. No. L-8354, Aug. 22, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — THE COURT CANNOT DECLARE A MOVANT IN DISMISSAL IN DEFAULT FOR FAILURE TO FILE HIS ANSWER, WITHOUT FIRST

RESOLVING THE MOTION; IN CASES ENDORSED BY THE JP TO THE CIR, APPEARANCES AND PLEADINGS NEED NOT BE REFILED — In a forcible entry and detainer case, respondent Leyco was plaintiff and petitioner Epang was defendant. Upon receipt of the complaint, Epang moved to dismiss, but the JP court, without resolving said motion, endorsed the case to the CIR as properly belonging to the latter's jurisdiction. Petitioner failed to appear or file an answer in the CIR. The CIR, without again resolving Epang's motion to dismiss, declared him in default and rendered judgment in favor of Leyco. Epang now contests the validity of the default order against him. *Held*, the petitioner, having filed a motion to dismiss, was entitled to have the motion resolved before being required to file an answer since a motion to dismiss interrupts the time to plead. It follows, therefore, that the petitioner was incorrectly declared in default and the holding of the trial in his absence, without notice to him of the day of the hearing, constitutes a denial of due process. Furthermore, the case was merely endorsed to the CIR by the JP court where the parties had already appeared and filed their pleadings. The proceedings in the CIR, therefore, were but a continuation of the JP case; hence, it was not necessary for the petitioner to refile his appearance and pleadings in the CIR. EPANG *v.* LEYCO, G.R. No. L-7574, May 17, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — THE SUBJECT-MATTER OF A CASE IS DETERMINED IN THE FIRST INSTANCE BY THE NATURE AND CHARACTER OF THE PLEADINGS AND THE ISSUES SUBMITTED TO THE COURT — The son of the plaintiff was killed while employed as a conductor in one of defendant's cars. Plaintiff brought this action to recover damages under the New Civil Code. Before the hearing, a partial stipulation of facts was entered into wherein both parties agreed that plaintiff's son was killed as a result of the derailment of one of defendant's cars. Thereafter, plaintiff presented her evidence. Defendant moved to dismiss the complaint on the ground that the court had no jurisdiction over the case. The motion was granted by the court, holding that under the facts gathered, the action should have been one for compensation under the Workmen's Compensation Act, and not for damages under the Civil Code. *Held*, the trial court's opinion as to the action which the plaintiff is entitled to bring under the facts proven in the course of the trial, does not control or determine the nature or character of the case under trial, for it is the pleadings and the issues submitted to the court that do so. The court should have acted on the matter in issue as developed in the pleadings. If it was of the opinion that the plaintiff was not entitled to damages claimed in the complaint because the death was accidental, it should have made a finding to this effect and accordingly dismissed the action, and absolved the defendant therefrom. It could not, under the pleadings, simply declare that it had no jurisdiction over the subject-matter. BELANDRES *v.* LOPEZ SUGAR CENTRAL, G.R. No. L-6869, May 27, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — UNDER THE LAW NOW, AS PREVIOUSLY, THE JURISDICTION OF A COURT IS MADE TO DEPEND, NOT UPON THE VALUE OF THE DEMAND IN EACH SINGLE CAUSE OF ACTION CONTAINED IN THE COMPLAINT, BUT UPON THE TOTALITY OF THE DEMAND IN ALL THE CAUSES OF ACTION CONTAINED THEREIN — Plaintiff brought this action in the CFI to recover from defendant ₱300 on the first cause of action, ₱700 on the second cause of action, both causes of action being based on promissory notes executed by defendant

₱3,000 on the third cause of action as usual domages and ₱600 for attorney's fees. After hearing, the court rendered judgment in favor of plaintiff for the sums of ₱300 and ₱700 demanded in the first and second causes of action. The ₱3,000 and ₱600 demands on the third and fourth causes of action were dismissed for insufficiency of evidence. Upon defendant's motion for reconsideration, it is claimed that the court had no jurisdiction over the subject matter of the first, second and fourth causes of action. This motion was denied, and hence this appeal. *Held*, in this jurisdiction, from the time the judicial system was established under the American regime, the jurisdiction of the court has always been based on the "amount of the demand," that is, the totality of the demand in all the causes of action, not upon the value or demand in each single cause of action contained in the complaint. In Gutierrez v. Ruiz, 50 O.G. 2480, it was held that the aggregate amount of the demand brought the action under the jurisdiction of the CFI. The practice has always been to attend to the total amount demanded in the complaint, especially in the prayer, as determinative of the jurisdiction of the court. With respect to the third cause of action, the dismissal was based not on the ground that the demand was fictitious, as defendant claims, but because there was no sufficient evidence presented to support it. SORIANO *v.* OMILA, G.R. No. L-7112, May 21, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — OPPOSING PARTIES IN A LITIGATION ARE NOT DUTY BOUND, UNDER ART. 1339 OF THE NEW CIVIL CODE, TO DISCLOSE THE REAL FACTS, BECAUSE THEIR RELATIONS, FAR FROM BEING FRIENDLY OR CONFIDENTIAL, ARE OPENLY ANTAGONISTIC; FAILURE, THEREFORE, OF A WINNING PARTY TO REVEAL THE TRUE FACTS IN COURT DOES NOT CONSTITUTE FRAUD WHICH WOULD PREVENT THE APPLICATION OF THE RULE OF RES JUDICATA — In a previous civil action between the Flores heirs as plaintiffs and the Escuderos as defendants, the trial court rendered judgment in favor of plaintiffs. The Escuderos subsequently sought to annul this judgment on the ground that the same was obtained through fraud, alleging that the Flores heirs, cognizant of the true facts, concealed them from the court and the Escuderos. This action to annul the judgment was dismissed. On appeal, the Escuderos claim that in the trial of the previous civil case, the Flores heirs concealed the fact that at the time of the litigation the mother of the Flores heirs had already received her share of the properties acquired from their grandparents. Under art. 1339 of the New Civil Code, they claim that this concealment constitutes fraud. *Held*, no reason is given how the duty to disclose came to rest upon the Flores heirs. On the contrary, in a litigation, there could be no such obligation between opponents, since their relations are far from being friendly or confidential. If the alleged failure of the winning party to reveal the true facts could be an excuse for the presentation of such true facts in a subsequent litigation over the same issue, then the doctrine of res judicata would become utterly useless, because the losing party in one case may always renew the controversy by simply asserting, in a second complaint, concealment of the true facts, and thereby start all over again. Anyway, the deception of the Flores heirs, if any, was intrinsic, being in the same category as presentation of perjured testimony or false evidence. Such fraud does not prevent the application of the doctrine of res judicata. Repeated decisions have consistently declared that only extrinsic fraud, not intrinsic, in procuring a judgment is a ground to nullify it. ESCUDERO *v.* FLORES, G.R. No. L-7401, June 25, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — THE PROVISIONS ON JOINT TRIALS RE-

FER TO CASES BEFORE THE SAME COURT OR JUDGE; CONSOLIDATION IS DISCRETIONARY WITH THE COURT AND IS NOT A MANDATORY DUTY EVEN IF COMMON QUESTIONS OF LAW OR FACT ARE INVOLVED IN SEVERAL CASES BEFORE IT — Petitioners, PAL and FEATI, are defendants in civil case No. 1865, pending before Branch II of the CFI, presided over by respondent judge. The case was instituted by the Capitol Subdivision against petitioners to recover the ownership of a portion of land being used by petitioners, and to recover compensation for petitioner's occupation thereof. It appears that another civil case, No. 597, was also filed in Branch III of the CFI of the same province by a certain Menchaca against petitioners, for the recovery of the ownership of certain portions of land occupied by petitioners and also for the recovery of compensation. Petitioners filed a motion with the respondent judge asking that the two cases be jointly tried, pointing out that common questions of law and fact were involved. The motion having been denied, petitioners pray for mandamus to compel the respondent judge to effect the transfer of case No. 597 from Branch III to his sala and to hold a joint trial. *Held*, § 1, Rule 32, provides — "When actions involving common questions of law or fact are pending before the court it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Admittedly, this provision grants discretion, but does not impose a clear legal duty which may be the object of mandamus. Besides, the provision should be understood to refer only to consolidation of the hearing of two or more cases which are before the same judge, and not when the cases are pending before different branches and different judges of the same court. In the latter contingency, none of the judges involved has control over the case or cases pending before the other court or judge. Neither of them may impose upon the other judge or court the duty to hear and decide a case pending before the latter jointly with the case originally belonging to the former. PAL *v.* TEODORO, G.R. No. L-6698, Aug. 30, 1955.

REMEDIAL LAW — CIVIL PROCEDURE —AN ORDER RECOGNIZING AN AGREEMENT ENTERED INTO BY PARTIES, AND MODIFYING A COMPROMISE JUDGMENT PREVIOUSLY SECURED BY THEM, IS VALID — Petitioner leased two parcels of land to Vicente Uy under a contract whereby Uy was to pay a monthly rental, construct on the land at his expense a permanent semi-concrete building, the building to become the property of the petitioner after the expiration of ten years, and finally, to pay the premiums for the insurance of said building and indorse the policy to petitioner. Petitioner, on the other hand, bound himself to pay the real estate taxes on the building. For the alleged failure of Uy to comply with these obligations, petitioner brought this action to rescind the lease contract. A compromise agreement, however, was reached by the parties, providing among others, that Uy promised to pay all back rentals, back taxes and other overdue accounts, and a special provision to the effect that upon default in any of these obligations, the building shall become the property of petitioner, without right of reimbursement. The court approved the compromise agreement and rendered judgment in accordance therewith. Subsequently, petitioner brought another action against Uy for failure to comply with the compromise agreement, and prayed for the issuance of a writ of execution on the lot and building. Uy, in his answer, explained that subsequent to the compromise agreement, petitioner had agreed that Uy shall pay all his outstanding obligations outlined in the compromise agreement by monthly installments of ₱500.00

gether with the payment of all monthly rentals as they fall due, and that he has faithfully complied with such subsequent agreement. In support of this, Uy submitted an affidavit stating that such subsequent agreement was in truth entered into between them and that petitioner's insistence to enforce the compromise agreement was caused by Uy's refusal to sign another amended compromise agreement under the provisions of which the building erected by Uy would automatically become petitioner's property after December 1953. Upon these facts, respondent judge at first issued an order giving Uy one week to comply wtih the compromise agreement. Subsequently, respondent judge issued an order sentencing Uy to pay within five days all back taxes and all taxes due on the lot and building in accordance with the compromise agreement and to pay all the premiums due on the insurance of the building. Petitioner now seeks to compel the respondent judge to issue a writ of execution in accordance with the compromise agreement. *Held*, it is reasonable to conclude that the respondent judge acted in accordance with the principle enunciated in the case of *De la Costa v. Cleofas*, 67 Phil. 686. In view of the facts and circumstances which transpired after the judgment, the respondent judge issued the above order so as to harmonize the judgment with justice and the facts. These circumstances consisted in the dealings and agreements of the parties subsequent to the judgment, curing the slight deviations made by Uy from the literal terms of the original agreement which would have led to the loss of his building. It should be noted that the questioned order of July 7, 1953, commences with the words "After mutual explanations of the counsels for the parties, etc." It appears that the orders are in accordance with the principles of the *De la Costa* case. OCAMPO *v.* SANCHEZ, G.R. No. L-6933, Aug. 30, 1955.

REMEDIAL LAW — PROVISIONAL REMEDIES — ALTHOUGH THE TRIAL COURT'S DECISION ON A CASE HAS BEEN APPEALED, IT MAY BE REGARDED AS YET PENDING IN THE SAME COURT FOR THE PURPOSE OF AN APPLICATION FOR A RECEIVER; THE COURT WHICH RENDERED THE APPEALED DECISION IS COMPETENT TO HEAR AND DETERMINE SUCH APPLICATION — In a previous civil case in which the herein petitioner was one of the defendants and the herein respondent was plaintiff, a writ of preliminary attachment was issued against the property of the former upon petition of the latter. Herein petitioner appealed from the judgment in the civil case, which appeal is now pending in the CA. In the meantime, the court, upon petition of the respondent, appointed a receiver for the property of the petitioner. Petitioner, citing § 1, Rule 61, argues that the trial court had no jurisdiction to appoint the receiver because only that court "in which the action is pending" may appoint a receiver. *Held*, although the case has been appealed, it may still be regarded as yet pending in the trial court for the purpose of an application for a receiver and the court that rendered the appealed decision is the proper court to hear and determine such an application. The office of a receiver is manifestly to aid, by the preservation of the property in making effective the court's decree. If occurences arise after decree which threaten the effectivity thereof, the court has the power then to make the appointment. The question raised on the appointment of a receiver does not involve any matter litigated by the appeal. Besides, the question of receivership is better taken up in the court of origin because the upper court is not provided with adequate resources and machinery for dealing with the situation presented by the appointment of a receiver and all the details connected therewith. JOCSON *v.* PRESBITERIO, G.R. No. L-7684, May 10, 1955.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — WHERE THE PARTY WHOSE PROPERTY IS SOUGHT TO BE EXPROPRIATED HAS FILED A MOTION TO DISMISS, NO ORDER OF CONDEMNATION CAN BE ENTERED UNTIL SUCH MOTION IS PASSED UPON OR OVERRULED, AND NO ASSESSMENT SHOULD BE UNDERTAKEN BY A COMMISSIONER UNTIL THE ORDER FOR CONDEMNATION IS ENTERED — The municipality of Meycauayan sought to expropriate the land of the petitioner for a market site. Petitioner contested the proceedings and filed a motion to dismiss on the ground that the expropriation of his land is unreasonable, inconvenient and not beneficial to the public market interest. He further argued that the approval of the expropriation of his land by the municipal council was obtained through misrepresentation of the facts and conditions of his land's suitability for a market site. Petitioner accordingly submitted his evidence, but the court, without making any ruling on his motion to dismiss, proceeded immediately to the appointment of a commissioner to determine the value of the property. Petitioner filed this appeal for certiorari and prays for an order to compel respondent to consider his motion to dismiss. *Held*, a cursory reading of §§ 4, 5, and 6, Rule 69, discloses the steps to be followed, one after another, in condemnation proceedings from the time of its institution. The first step is the presentation by defendants of their objections and defenses to the right of the plaintiff to take the property for the use specified, which objections may be set forth in a single motion to dismiss. The second step is the hearing on the motion to dismiss and the resolution thereof by the court. The order of condemnation may be made only if the motion to dismiss is overruled, or if no motion to dismiss is presented. The second step includes the order of condemnation, which may be embodied in the same resolution overruling the motion to dismiss. The third step is the appointment of commissioners to assess the just compensation for the property. Therefore, no order of condemnation may be entered until the motion to dismiss has been passed upon or overruled and no assessment may be undertaken until the order of condemnation is entered. NIETO *v.* YSIP, G. R. No. L-7894, May 17, 1955.

REMEDIAL LAW — SPECIAL PROCEEDINGS — A JUDGEMENT AWARDING THE INHERITANCE TO AN HEIR CAN ONLY BE ANNULLED OR MODIFIED WITHIN TWO YEARS FROM ITS PROMULGATION; TO ATTACK SUCH JUDGEMENT DIRECTLY, EXTRINSIC FRAUD MUST BE ALLEGED AND PROVED — In 1947, by special proceedings for the summary settlement of the state of the deceased Amario Cortez, the court decreed that Guillerma Abarquez, mother of the deceased, was the only legitimate heir entitled to the properties. It appearing that Guillerma Abarquez was then married to a Japanese, the court ordered that a copy of the decree be given to the Enemy Property Custodian of the U.S. Government in Davao. In 1948, the Philippine Alien Property Administration (PAPA) issued Vesting Order No. P-644 declaring that said property, being owned by a national of Japan, thereby became vested in the Philippine Alien Property Administrator for the use and benefit of the U.S. Government. In 1951, petitioner sought to annul both the court's decree and the vesting order with respect to one-half of the property, alleging that he was the husband of Guillerma Abarquez and father of the deceased, and as such was entitled to one-half of the property. He contends that the court decree was void because it had been obtained through false and fraudulent representations, inasmuch as the lawyer who filed the petition asserted that the only heir of Cortez was the mother, when he knew well that the deceased's father was alive. The trial court found no fraud in the procurement of the court decree inasmuch as the lawyer found out

Cortez's father was alive, only after the decree had been promulgated. Nevertheless, the court granted the relief demanded by petitioner following its opinion that Atty. Gonzales, the lawyer, as an employee of the PAPA "should have prevented the vesting of the properties by said office when he received information that Cortez's father was still alive". *Held*, according to the Rules, the court order of 1947 awarding the property to Abarquez could be annulled or modified to give other heirs their share within two years from the date of the judgment. When petitioner brought this proceeding in 1951, more than two years had elapsed, he knew that he had no chance, so he elected to take a direct attack on the ground of fraud. The lower court believed Gonzales' testimony that he came to know of the father's existence only after the decree had been promulgated, and yet it stated that by such knowledge, he should have prevented the issuance of the vesting order. It is not shown how Gonzales could have prevented the issuance of the vesting order. He was just an attorney in the office of the PAPA. No relation existed between the father and Atty. Gonzales imposing upon the latter the active duty to protect the former's interest. Even if there was such a duty, how could his neglect nullify the judicial order? Granting that Gonzales knew of the father's existence in 1946, his simple refusal to believe that such father was alive by reason of other positive information given him from reliable sources does not constitute *per se* extrinsic or collateral fraud sufficient to annul the judgment, because his fault, at most, was the unintentional presentation of false testimony that Cortez's father was dead. CORTEZ *v.* BROWNELL, G.R. No. L-7554, Aug. 31, 1955.

REMEDIAL LAW — SPECIAL PROCEEDINGS — JP AND MUNICIPAL COURTS HAVE JURISDICTION, UNDER § 90 OF THE JUDICIARY ACT (AS AMENDED BY R.A. No. 643), IN GUARDIANSHIP PROCEEDINGS INVOLVING THE CUSTODY OF THE PERSONS OF MINORS — Petitioner is the mother of seven children, had by her with one San Jose. San Jose's mother instituted special proceedings in the municipal court for the guardianship of all the children. Petitioner moved for the dismissal of the case. The motion having been denied, petitioner now brings this petition for certiorari, alleging that the municipal court has no jurisdiction to hear the case. She claims that the jurisdiction of JP and municipal courts in guardianship proceedings is limited to cases where property in an amount within their jurisdiction is involved; hence, she concludes, where no property or funds are involved, the municipal and JP courts have no jurisdiction. *Held*, under 1 of R.A. No. 643 amending 90 of the Judiciary Act, it is provided that JP and municipal courts shall have concurrent jurisdiction with the CFI to appoint guardians *ad litem* for persons who are incapacitated because of minority, or mental incapacity, in matters within their respective jurisdiction. Under 2 of the same act, the JP also has concurrent jurisdiction with the CFI in cases where the value of the property of such minor or incompetent falls within the jurisdiction of the JP courts. The only inference that may be drawn from these circumstances is that the grant in 1 of R.A. No. 643 is as to persons only, not as to property of wards as in 2 or the same Act. JP and municipal courts, therefore, have jurisdiction over guardianship proceedings which do not involve any property or funds, but which are limited only to the custody of the persons of the minors. MORALES *v.* MAIQUEZ, G.R. No. L-7462, May 27, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE COURT OF APPEALS MAY NOT, MOTU PROPRIO, DISMISS AN APPEAL IN A CRIMINAL CASE FOR THE SIM-

PLE REASON THAT THE APPELLANT FAILED TO PRESENT HIS BRIEF; BEFORE SUCH DISMISSAL, THE COURT SHOULD HAVE ORDERED THE APPELLANT OR COUNSEL TO APPEAR BEFORE IT AND SHOW CAUSE WHY THE APPEAL SHOULD NOT BE DISMISSED — The accused was convicted and sentenced to imprisonment, from which conviction he appealed. On Aug. 10, 1953, counsel for the accused was notified by the clerk of the CA that he should present his brief within thirty days from the date of notification. On Sept. 7, counsel presented a motion requesting the court to grant defendant-appellant an extension of thirty days from Sept. 9, and that he be allowed to file a typewritten or mimeographed brief, considering that the accused is a pauper. This motion was granted with the warning that no further extension will be granted. On Oct. 1, the counsel again presented an urgent motion asking that he be permitted to present only a typewritten brief on or before Oct. 9, giving as a reason the extreme poverty of the accused. This motion was denied on Oct. 16, or seven days after the brief should have been presented. On Oct. 22, counsel presented a motion for reconsideration, but the CA denied the same, considered the appeal abandoned, dismissed the same, and remanded the record to the trial court. *Held*, the CA erred in considering the appeal abandoned and in dismissing the same. § 8, Rule 120, provides that the CA may on motion of the appellee, or through its own initiative, and through notification to the appellant, dimiss the appeal if the counsel fails to submit his brief within the time prescribed in said rule, except in the case where the accused is represented by a lawyer *de oficio*. The court should have ordered the accused or counsel to appear before it and show cause, if any, why the appeal should not be dismissed. By the dismissal of the appeal, the sentence automatically takes effect, unduly depriving the accused of his right to be heard before sentence. TAYLO *v.* CA, G.R. No. L-8045, May 12, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE RECANTATION OF TESTIMONY, ON WHICH A JUDGMENT OF CONVICTION IS EXCLUSIVELY BASED, CONSTITUTES NEWLY-DISCOVERED EVIDENCE FOR THE PURPOSES OF NEW TRIAL — In a criminal case, Castelo was convicted and sentenced to death. Castelo moved for new trial on the ground that newly discovered evidence had been found since the trial, consisting in the recantation of the testimony of the principal witness for the prosecution. Respondent judge granted the motion and set the new trial for hearing. The prosecution, in this petition for certiorari, contends that the mere recantation of a material witness in a criminal case does not warrant the granting of a new trial. *Held*, it is true that in the case of *People v. Dacer*, 26 Phil. 507, it was held that a motion for new trial will not be granted when such motion is based on affidavit of recantation whose effect is to free the accused from participation in the commission of the crime charged. But it was also held in that case that there are exceptional cases, as where it was made to appear that there was no evidence supporting the judgment of conviction other than the testimony of the recanting witness. A new trial was granted in said case although the motion was based on mere affidavits of the main prosecution witness who recanted his testimony at the main trial. In the case at bar, respondent judge was not satisfied only with the affidavit of the recanting witness but set the motion for hearing, where both parties were given adequate time and opportunity to argue extensively in favor of, and against, the motion. In the absence of any other evidence, therefore, which would support the conviction of the accused, the testimony of a witness who recants his testimony at

the main trial would be sufficient evidence for the purpose of re-opening the case. PEOPLE *v.* BOCAR, G.R. No. L-9050, July 30, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — ALTHOUGH A SENTENCE OF DEATH AUTOMATICALLY ELEVATES THE CASE TO THE SUPREME COURT FOR REVIEW, THE TRIAL COURT IS NOT DIVESTED OF JURISDICTION TO ENTERTAIN AND GRANT A NEW TRIAL — The accused Castelo was convicted in the lower court and sentenced to death. Soon thereafter, the defense filed a motion for new trial on the ground of newly discovered evidence consisting in the recantation of the prosecution's principal witness. The motion having been granted, the prosecution petitions for certiorari, claiming that, as the death sentence automatically elevated the case to the Supreme Court for review, the court lost jurisdiction over the case upon the promulgation of the judgment and therefore the granting of new trial was without authority. *Held*, the automatic review by the Supreme Court of a decision imposing the death penalty is intended primarily for the protection of the defendant. An accused, sentenced to death, should and must be given at least the same rights, privileges and opportunities for acquittal or reduction of his sentence as those enjoyed by other defendants sentenced to lesser penalties. In an ordinary criminal case, the accused may be granted a new trial either by the lower court or by the appellate court, on appeal. To deny an accused sentenced to death an equal right would be incompatible with, and would run counter to, the purpose and intent of the law to favor a defendant sentenced to die. PEOPLE *v.* BOCAR, G.R. No. L-9050, July 30, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — ALTHOUGH THE COURT LOSES JURISDICTION OVER THE CRIMINAL PHASE OF THE PROCEEDING ONCE THE ACCUSED COMMENCES TO SERVE SENTENCE, IT RETAINS JURISDICTION OVER THE CIVIL PHASE AND MAY EVEN THEREAFTER ISSUE AN ORDER FIXING THE CIVIL LIABILITY OF THE ACCUSED — Defendant was found guilty of abduction with consent and sentenced to suffer the corresponding penalty. The accused immediately commenced to serve sentence. Three days later, the court, on complainant's motion, ordered the defendant to indemnify the complainant in the sum of P1,000.00 and issued a writ of execution. The accused moved for reconsideration. The court granted the motion, set aside its order, and dissolved the writ, holding that the order was issued after it had lost jurisdiction over the case by reason of the immediate service of sentence by the defendant. From this, the offended party appeals. The accused opposes the appeal on the ground that the judgment was already final. *Held*, if the accused has the right within fifteen days to appeal from the judgment of conviction, the offended party should also have the same right within the same period to appeal from so much of the judgment as may be prejudicial to her. It is true that the trial court lost jurisdiction over the criminal phase of the proceeding upon the defendant's service of sentence, but that does not deprive the court of jurisdiction over the civil phase nor preclude the offended party from recovering damages and enforcing the accused's civil liability arising from the offense. PEOPLE *v.* RODRIGUEZ, G.R. No. L-6582, July 29, 1955.

REMEDIAL LAW — EVIDENCE — FRAUD CANNOT BE PRESUMED; IT MUST BE ALLEGED AND PROVED, IF NOT CONCLUSIVELY, AT LEAST SATISFACTORILY, BY THE ONE WHO ALLEGES ITS EXISTENCE — In 1943, the late Justice Hilado exec-

uted a deed of sale of real property in favor of Salim Jacob Assad. This deed of sale contained the personal circumstances such as civil status, age, residence, and stated Salim Jacob Assad's citizenship as Filipino in accordance with his certificate of naturalization. The broker, one Umali, who negotiated the sale, signed the deed as witness. A certain Velazquez notarized the instrument. Plaintiff, widow of the late Justice Hilado, seeks now to annul the sale on the ground that respondent Assad, a Syrian, nephew of Salim Jacob Assad, was in truth and in fact the real vendee, the use of his uncle's name having been made only for the purpose of circumventing the law prohibiting non-Filipino citizens from acquiring lands in the Philippines. The trial court annulled the sale for the following reasons: (1) Justice Hilado is dead and his lips forever sealed; he has therefore been defrauded; (2) the property was paraphernal and was sold without the widow's consent; and (3) Jacob Assad, the nephew, is the real vendee, his uncle's name having been employed only as a dummy. *Held*, the trial court assumed that there must have been fraud because the vendor is dead and is now in no position to deny the fraud. But fraud is never presumed; it must be proved by satisfactory, if not conclusive, evidence. There could have been no personal reason why the deceased vendor wanted to sell the property to Jacob and not to his uncle. The testimonies of Jacob Assad himself and that of Umali, the broker, reveal that the deceased vendor never showed interest in finding out who the real purchaser was. It is certain, however, that once the sale was perfected, he received from Jacob Assad the naturalization papers of Salim Jacob Assad and copied therefrom on a piece of paper the data which he furnished the notary public who prepared the deed of sale. Jacob Assad testified that he informed Justice Hilado that he was buying the property for his uncle, who thereupon gave him the power of attorney and the naturalization papers. This testimony was corroborated by Umali and no evidence was submitted to contradict it. The trial court merely rejected them without cause or reason on the pure assumption that Jacob Assad was merely circumventing the law, and really wanted the property for himself. The presumption is that men act in good faith and intend the consequences of their acts. A violation of law is never presumed. HILADO *v.* ASSAD, G.R. No. L-6397, Aug. 30, 1955.

COURT OF APPEALS

CIVIL LAW — PERSONS — AN ATTEMPT BY ONE SPOUSE AGAINST THE LIFE OF THE OTHER, IN ORDER TO CONSTITUTE A GROUND FOR LEGAL SEPARATION, MUST SHOW AN INTENTION TO KILL — Plaintiff and Defendant were husband and wife. It seems that during their married life the couple had frequent quarrels, on which occasions the husband maltreated his wife by deeds, and because the latter was made to bear said punishments, they separated in 1947. Notwithstanding this separation of dwellings, they met each other in Manila and the wife claims that in December, 1950 and in September ————, she was again maltreated by her husband. This moved her to institute the present action for legal separation on the ground that Defendant had made several attempts on her life, thus compelling her to live separately and apart from him. *Held*, An attempt on the life of a person implies that the actor, in the attempt, is moved by an intention to kill the person against whom the attempt is made. Maltreatment by a husband his wife, like giving her fist blows on the face, boxing her in the abdomen, pulling her hair and twisting her neck, do not constitute attempts on the life of said spouse as provided in Art. 97 No. 2 of the New Civil Code. MUÑOZ *v.* BARRIO, (CA) G.R. No. 12506-R, April 15, 1955.

CIVIL LAW — CONTRACTS — FORCE MAJEURE, TO JUSTIFY NON-PERFORMANCE, SHOULD ARISE FROM CAUSES INDEPENDENT OF THE WILL OF THE OBLIGOR OR HIS EMPLOYEES — On Oct. 23, 1946, appellee National Rice and Corn Corporation and appellant Pan-Phil. Shipping entered into a contract of purchase and sale, whereunder the latter agreed to sell and deliver to the former 850 metric tons of Ecuadorian rice at $12.51 per pound. In accordance with one of the terms of the contract, the appellee applied to the Philippine National Bank for the opening of a letter of credit for the sum of $2,579,155.42 with Nicholas Graven & Sons of San Francisco, agent of appellant, as beneficiary. Acting upon said application, the P.N.B. on the same date of the contract, arranged with and transmitted an irrevocable letter of credit for the sum of $2,579,155.42 to the Anglo-California National Bank of San Francisco in favor of the appellant's agent, payable on sight against complete shipping document with certificate as to weight, quality and moisture content of the rice to be shipped. For the opening of said letter of credit, the P.N.B. charged appellee the amount of ₱12,907.77 for bank commission and miscellaneous charges and payment of this amount was debited to appellee's account with the Bank. Notwithstanding the opening of the letter of credit, appellant not only failed to ship the rice subject of the contract but also failed to pay the appellee the amount of ₱12,907.77 despite repeated demands. The appellant sought to excuse non-performance by the averment that non-shipment of the rice contracted for was due to causes beyond its control because its agent and beneficiary refused to use the letter of credit upon the ground that it did not conform with the condition of the sales contract. *Held*, The letter of credit is in strict accord with the terms of appellee's contract with appellant. Nothing more was left to be done by appellee. Accordingly, the mere refusal of the beneficiary to use said letter of credit cannot be *force majeure* within the meaning of the law. It is not an extra-ordinary circumstance or occurrence which could not be foreseen or, if foreseen, could not have been avoided. *Force majeure*, to justify non-performance, should arise from causes independent of the will of the obligor or his employees. It must be an act of God. Accordingly, appellant's liability to pay for bank commission and miscellaneous charges in connection with this contract, as provided therein, became inescapable. NATIONAL RICE *v.* PAN-PHIL. SHIPPING, (CA) G.R. No. 11302-R, May 7, 1955.

CIVIL LAW — CONTRACTS — IN A CONTRACT OF SALE WITH PACTO DE RETRO, THE RIGHT TO REPURCHASE, IN THE PRESENCE OF AN AGREEMENT, LASTS FOR A PERIOD OF TEN YEARS — By a public document executed on March 19, 1939, Plaintiff executed in favor of the Defendant, her elder brother, a deed of sale whereby she sold her one-seventh share of the fishpond located in Malabon, Rizal, in consideration of ₱2,000.00. Simultaneously, the Defendant executed in favor of the Plaintiff another public document giving her the right to repurchase the same during her lifetime. In Dec., 1951, the Plaintiff offered to redeem the property but the Defendant refused. *Held*, The attempt to repurchase the property came too late. Although the document gave her the right to repurchase during her lifetime, nevertheless, Art. 1508 of the old Civil Code (1606 New Civil Code) provides that the right to repurchase, in the absence of an express agree-