SUPREME COURT CASE DIGEST

CIVIL LAW—LEASE—COURTS HAVE NO AUTHORITY TO FIX THE RATES NOR THE DURATION OF THE LEASE OF PRIVATE LOTS. — The Plaintiffs were lessees of various lots in the City of Manila belonging to the defendants which formed part of what was formerly known as Hacienda de Sta. Mesa y Diliman. The lease contracts were for a definite period and expired on Dec. 31, 1953. As early as January of 1953, the defendants informed the plaintiffs of the expiration date and offered them a renewal with an increased yearly rental of 12% of the annual assessment value of the leased property. The plaintiffs ignored the proposed terms, and upon the expiration of the contract, not only refused to pay the new rentals but continued to occupy the premises. Fearing that the defendants would eject them, they filed an action with the CFI of Manila to "fix a reasonable rental and a reasonable duration for the lease of the lots." The CFI of Manila ruled that it had no authority to renew the contract that had already expired nor to fix the duration thereof as well as the amount of rentals that the defendants should pay on their respective lots. The plaintiff appealed. *Held*, the rule is settled that the owner of the land leased has the right not only to terminate the lease at the expiration of the term but also to demand a new rate of rent. BULAHAN *v.* TUASON, G. R. No. L-12020, Aug. 31, 1960.

CIVIL LAW—PERSONS—A MARRIAGE MAY BE ANNULLED ON THE GROUND OF FRAUD THOUGH THE PREGNANCY WAS ON ITS FIFTH MONTH AT THE TIME OF THE MARRIAGE. — Fernando Aquino filed a complaint for the annulment of his marriage to Conchita Delizo on the ground of fraud, it being alleged among other things that the defendant, at the date of her marriage to the plaintiff on Dec. 27, 1954, concealed from the latter the fact that she was pregnant by another man. Sometime in April 1955 or about 4 months after their marriage, she gave birth to a child. The trial court, affirmed by the Court of Appeals, dismissed the complaint finding unbelievable the plaintiff's claim that he did not notice or even suspect that the defendant was pregnant when he married her. *Held*, the decision is reversed. According to medical authorities, even on the fifth month of pregnancy, the enlargement of a woman's abdomen is still below the umbilicus, that is to say, the enlargement is limited to the lower part of the abdomen so that it is hardly noticeable, and may if noticed, be attributed only to fat formation on the lower part of the abdomen. AQUINO *v.* DELIZO, G. R. No. L-15853, July 27, 1960.

CIVIL LAW—PERSONS—THE LONE TESTIMONY OF THE HUSBAND ON HIS WIFE'S IMPOTENCE IS INSUFFICIENT TO ANNUL THE MARRIAGE. — In a complaint filed in the CFI of Zamboanga, the plaintiff

prayed for the annulment of his marriage to the defendant on the ground of physical incapacity. The latter did not answer the complaint, was absent during the hearing, and refused to submit to a medical examination. *Held*, the lone testimony of the husband that his wife is physically incapable of sexual intercourse is insufficient to tear asunder the ties that have bound them together as husband and wife. JIMENEZ *v.* CAÑIZARES, G. R. No. L-12790, Aug. 31, 1960.

CIVIL LAW—PRESCRIPTION—THE OBLIGATION TO DELIVER THE RENTALS, SUBJECT MATTER OF A SPECIFIC LEGACY, IS AN INDIVISIBLE OBLIGATION, THE PRESCRIPTIVE PERIOD OF WHICH IS TEN YEARS FROM THE TERMINATION OF THE TRUST ESTATE. — Soledad Robles and the other petitioners were legatees in a will executed by Benigno Diaz. The legacy consisted of the rentals derived from the lease of certain lands in Calle Rosario, Manila. In his will and codicil, the testator provided that said lands should be preserved as far as possible, but that after the lapse of ten years from his demise, they may be sold should the circumstances warrant it. However, the proceeds thereof should be invested in mortgages with interest, or in the purchase of other rental-bearing properties, with the herein petitioner-appellees entitled to 30% of the residuary estate. Pursuant to the provisions of the will and the codicil, the Bank of the Philippine Islands, as trustee, after the lapse of ten years, sold the properties located at Calle Rosario with consent of the court and of the legatees. It appeared that the herein petitioners were not able to collect their shares of the rentals of the Rosario property during the period from 1946-1949, for the recovery of which a motion was filed in April, 1955. To this claim, the appellants set up the defense of prescription alleging that the action should have been filed within four years, being a mere money claim. *Held*, from the testamentary provisions, it seems that the testator intended the legacies to continue even after the sale of the Rosario properties. The legacies should therefore be viewed as one, whole, continuing obligation, to be carried out by the trustee. The fact that the rentals were to be delivered monthly, did not make each delivery a separate, distinct prestation. Since the obligation terminated upon the sale of the property on March 18, 1955, the right to demand the complete delivery of the inheritance has not yet prescribed. Besides, the claim is based upon a specific legacy contained in a probated will. Hence, it is an obligation based upon a judgment for which the prescriptive period is ten years. ROBLES *v.* MANAHAN, G. R. No. L-1011, Aug. 31, 1960.

CIVIL LAW—PROPERTY—LAND REGISTERED UNDER THE TORRENS SYSTEM MAY BE ACQUIRED BY ALLUVION. IN THE ABSENCE OF EVIDENCE, THE ACCRETION IS PRESUMED TO HAVE TAKEN PLACE BY ALLUVION. — It appears that the land in dispute was formerly part of the Cadastral Survey of Jaro, Iloilo. This lot, acquired by the plaintiff from Salustiano Mirasol and subsequently registered in his name as evidenced by a Torrens Certificate of Title, was bound-

ed on the north by the Salog river. Adjoining that river on the other side was the property purchased by the defendant. After the resurvey of his land, the defendant applied for the registration of an additional area along the river bank, claiming accretion to have taken place. The plaintiff filed an action in CFI of Iloilo for the recovery of the possession of the additional portion of land granted the defendant by the Cadastral Court, alleging that said portion was abruptly separated from his lot by the current of the river. No evidence, however, was presented by the plaintiff to show that the change in the course of the river was sudden or that the accretion occurred through avulsion. *Held*, in the absence of such evidence, the presumption is that the change was gradual and caused by accretion and erosion. It clearly appearing that the land in question has become a part of the defendant's estate as a result of accretion, it follows that said land now belongs to him. The fact that the accretion to his land used to pertain to the plaintiff's estate, which is covered by a Torrens Certificate of Title, cannot preclude the defendant from acquiring ownership thereof. Registration does not protect the riparian owner against the diminution of the area of his land through gradual changes in the course of the adjoining stream. HODGES *v.* GARCIA, G. R. No. L-12730, Aug. 22, 1960.

CIVIL LAW—PROPERTY—THE EXISTENCE OF AN APPARENT SIGN OF EASEMENT BETWEEN TWO ESTATES, ESTABLISHED BY THE OWNER OF BOTH, SHALL BE CONSIDERED, SHOULD ONE OF THEM BE ALIENATED, AS A TITLE UNLESS THE CONTRARY BE PROVIDED IN THE TITLE OF CONVEYANCE OR THE SIGN SHOULD BE REVOKED BEFORE THE EXECUTION OF THE DEED.—Francisco Sanz subdivided his land into three parcels and then sold each portion to different persons. One portion with a house constructed thereon was sold to Tan Yanon. The doors and windows of the said house overlook the third portion which was acquired by Juan Gargantos. The latter applied for a permit to construct a residential house and a warehouse on his lot. This was opposed by Tan Yanon who sought to protect his easement of light and view. *Held*, the article applicable is art. 541 of the old Civil Code (Art. 624, NCC) which provides that the existence of an apparent sign of easement between two estates, established by the proprietor of both, shall be considered, if one of them is alienated, as a title so that the easement may continue actively or passively unless at the time the estates are conveyed, the contrary is stated in the deed of alienation of either of them, or the sign is to disappear before the instrument is executed. The existence of the doors and windows on the house is equivalent to a title, for the visible and permanent sign of an easement is the title that characterizes its existence. GARGANTOS *v.* TAN YANON, G. R. No. L-14652, June 30, 1960.

CIVIL LAW—PROPERTY—A BUILDING CONSTRUCTED WITH CONJUGAL FUNDS DURING THE PARTNERSHIP ON LAND BELONGING TO A THIRD PERSON FOLLOWS THE PRINCIPAL.—A building was erected at the expense of the conjugal partnership of Felisa Felias and her husband on land belonging to the former's parents. This piece of land was subsequently donated to Felisa on March 31, 1928. On March 26, 1941, a money judgment was rendered against Felisa's husband giving rise to the levy of the land described above. The land was subsequently sold at public auction to Caltex, (Phil.) Inc. to whom a final deed of sale was executed upon the expiration of the period of redemption. This action was brought by Felisa to have herself declared as the exclusive owner of the parcel of land on the ground that it was paraphernal property at the time of the levy. *Held*, at the time the building was constructed, the land still belonged to the parents of Felisa. Consequently, art. 1404, par. 2 of the old Civil Code providing for the conversion of paraphernal property into conjugal property effective on the date of liquidation upon the construction of a building with conjugal funds is not applicable. The familiar rule of the accessory (building) following the principal (land) must be applied. Therefore, the land, being paraphernal property, is not answerable for the judgment against her husband. CALTEX *v.* FELIAS, G. R. No. L-14309, June 30, 1960.

CIVIL LAW—PROPERTY—THE "FORMAL ACT" OF PROHIBITION REQUIRED BY THE OLD CIVIL CODE FOR THE ACQUISITION OF NEGATIVE EASEMENTS REFERS TO A WRITING EXECUTED IN DUE FORM AND/OR SOLEMNITY.—The respondents owned a building erected on their own lot. They claim to have acquired by prescription an enforceable easement of light and view over the adjoining lot belonging to the petitioner. The prescription claimed is based on an alleged verbal act to of prohibition made upon the petitioner's predecessor-in-interest as owner of the adjoining lot. Such alleged prohibition was avowedly made in 1913 or 1914. *Held*, applying article 538 of the Spanish Civil Code (the law applicable) which provides that "In order to acquire by prescription the easements referred to in the next preceding article, the time of possession shall be computed, x x x in negative easements, from the day on which the owner of the dominant estate has, *by a formal act*, forbidden the owner of the servient estate to perform any act which would be lawful without the easement." The law is explicit, requiring not any form of prohibition, but exacting, in parenthetical expression, for emphasis, the doing not only of a specific, particular act, but a *formal act*. Two definitions are pertinent: "Formal—pertaining to form, characterized by one due form or order, done in due form or with a solemnity regular; relating to matters of form" (C. J. S., Vol. 37 p. 115); "Act—in Civil law, a writing which states in legal form that a thing has been done, said or agreed" (I Bouvier's Law Dictionary p. 150, citing Marlin Report). From these definitions it would appear that the phrase "formal act" would require not merely any writing but one executed in due form and/or solemnity. That this is the intendment of the law although not expressed in exact language is the reason for the clarification made in article 621 of the New Civil Code which specifically requires the prohibition to be in a "an instrument acknowledged before a notary public." CID *v.* JAVIER, G. R. No L-14116, June 30, 1960.

CIVIL LAW—SALES—ARTICLE 1592 OF THE NEW CIVIL CODE DOES NOT APPLY TO CONTRACTS OF SALE WHERE TITLE REMAINS WITH THE VENDOR UNTIL THE FULFILLMENT OF THE CONDITION. — The facts as found by the lower court revealed that the plaintiff and the defendant had entered into a contract to sell a piece of land. Upon the failure of the plaintiff to pay the balance of the purchase price, the defendant rescinded the contract and made a subsequent sale of the said lot. Thereafter, the plaintiff sought to compel the defendant to execute a deed of sale of said lot in her favor and to receive the unpaid balance of the purchase price, on the ground that there was no right to cancel the contract, there having been no demand by suit or by notarial act as provided by Article 1592 of the New Civil Code. *Held,* the contention is without merit. Article 1592 of the N.C.C. requiring demand by suit or notarial act in case the vendor of realty should want to rescind does not apply to contracts to sell or promise to sell, where the title remains with the vendor until the fulfillment of a positive suspensive condition consisting of the full payment of the purchase price. MANUEL *v.* RODRIGUEZ, G.R. No. L—13435, July 27, 1960.

CIVIL LAW—SALES—AN AGREEMENT THAT THE BALANCE OF THE PURCHASE PRICE SHALL BE PAID UPON THE APPROVAL AND RELEASE OF A LOAN IS NOT A STIPULATION SUSPENDING THE TRANSFER OF OWNERSHIP. — The defendant was a lessee of four doors of an eight-door market building owned by the plaintiff. Subsequently, on January 8, 1955, they entered into a written contract whereby the plaintiff agreed to sell to the defendant the whole building for the sum of ₱6,000.00 subject to the express condition that a down payment of ₱2,000.00 would be made and the balance of ₱4,000.00 shall be payable in lump sum immediately upon the approval and release of the facility loan applied for by the defendant to the ACCFA. Fifteen days later, the plaintiff demanded the payment of the balance of the purchase price and not having obtained the same, he brought an action for the rescission of the contract and for the payment of debts accrued. The trial court gave the defendant a sixty-day period within which to pay the balance of the purchase price and ordered the defendant to pay the plaintiff ₱120.00 per month from January 8, 1955, the date of the sale, as rentals until the balance of ₱4,000.00 shall be completely paid. The defendant appealed, contending that his ownership commenced on January 8, 1955. *Held,* applying articles 1477, 1497 and 1498 of the New Civil Code, we find that the ownership was transferred at the time the contract was executed. While the law provides that parties may stipulate that the ownership of the thing shall not pass to the purchaser until he has fully paid the stipulated price, the agreement that the balance of the purchase price shall be paid upon the approval and release of the facility loan to be applied from the ACCFA does not evince an intention to suspend transfer of ownership. TAN BOON DIOK *v.* APARRI FACOMA, INC., G.R. No. L—14154, June 30, 1960.

CIVIL LAW—SALES—A JUDICIAL ORDER IS NOT NECESSARY FOR THE CONSOLIDATION OF TITLE OF THE VENDEE A RETRO IN A

CONTRACT OF SALE EXECUTED BEFORE THE EFFECTIVITY OF THE NEW CIVIL CODE. — On August 14, 1951, the spouses Augusto Manalang and Victoria Dabu executed a deed of chattel mortgage over a two-story building in favor of the plaintiff to secure the payment of a loan. Upon failure to pay the loan, the mortgage was foreclosed with the building sold at public auction to the plaintiff. When the latter attempted to take possession of the premises, he found the defendants Jose Sy and Julio Cuba occupying the building as tenants of defendant Luis Manalang. Luis Manalang established during the trial that the building in question was sold to him by the spouses on Sept. 24, 1949; that vendors failed to redeem the property; that the property had been assessed for taxation purposes in his name. The lower court dismissed the complaint and from this the plaintiff appealed contending that as the expiration of the period of redemption under appellees contract of sale with the former owners Manalang and Dabu occurred after the effectivity of the New Civil Code, the consolidation of his title over the building should be governed by Art. 1607 thereof which requires judicial order. *Held,* the contention is untenable. Art. 1607 cannot apply to the contract of sale con pacto de retro between the appellee and the spouses because said contract was executed before the New Civil Code came into effect. The nature of a sale with the right of redemption is such that ownership over the thing sold is transferred to the vendee upon the execution of the contract, subject only to the resolutory condition that the vendor exercises his right of repurchase within the period agreed upon. Consequently, this contract should be governed by Art. 2255 of the New Civil Code, providing that "the former laws shall regulate....contracts with a condition or period which were executed before the effectivity of this Code, even though the condition or period may still be pending at the time this body of laws goes into effect." Under Art. 1509 of the old Code the vendee irrevocably acquires ownership over the thing sold upon failure of the vendor or redeem, i.e., ownership is consolidated in the vendee by *operation of law.* To impose upon the vendee the additional conditions found in Art. 1607 would impair and diminish the rights already vested in him under the old code. MANALANSAN *v.* MANALANG, G.R. No. L-13646, July 26, 1960.

CIVIL LAW—SALES—THE RULE THAT THE EXECUTION OF A PUBLIC DOCUMENT IS EQUIVALENT TO DELIVERY HOLDS TRUE ONLY WHEN THERE IS NO IMPEDIMENT TO PREVENT THE PASSING OF THE PROPERTY FROM THE VENDOR TO THE VENDEE. — Alejandria Bugarin sought to rescind the contract of sale executed between her and the defendant for failure of the latter to place her in the actual possession of the lands which she bought from the defendant. According to the stipulation of facts, the sale was made on Jan. 18, 1949 but the plaintiff was prevented from taking actual physical possession of the lands by one Martin Deloso who claimed to be the owner of the land. The defendant argued that possession had been transferred, the sale having been embodied in a public document. *Held,* although it is postulated in the law that the execution of a public instrument is equivalent to delivery, this legal fiction only holds true when there is no impediment that may prevent the passing of the property from the hands of the vendor into those of the vendee. BUGARIN *v.* LESACA, G.R. No. L-15385, June 30, 1960.

CIVIL LAW—SALES—THE REGISTRATION OF LAND IN THE NAME OF THE VENDOR SUBSEQUENT TO THE SALE ACCRUES TO THE BENEFIT OF THE VENDEE BY OPERATION OF LAW. — The plaintiff Inquimboy, a registered owner of land located in Nueva Ecija, sold the disputed lot for ₱4,000.00 to Cenon Albea. The latter after making a down payment, promised to pay the balance in two installments. Subsequently, on Dec. 20, 1943, Albea sold the land to Pedro Cruz. The registration of the disputed land was refused because the land was still in Inquimboy's name, Albea, having failed to register the land. However, on Feb. 18, 1944, Inquimboy filed against Albea in the CFI of Nueva Ecija a civil case asking for the recovery of the balance of the installments. On Oct. 11, 1957 Inquimboy instituted in the CFI of Nueva Ecija the present action seeking the annulment of the transfer certificate of title in Cruz' name and the issuance of a new one in his name. The lower court dismissed the complaint. A reversal of the court's decision is sought on the ground that Cruz was not a buyer in good faith. *Held*, Cruz was a buyer in good faith. While Albea may not have been the registered owner at the time he executed the deed of sale in favor of Cruz, he nevertheless subsequently acquired valid title in his own name which title he later transferred to Cruz. When a person who is not the owner of a thing sells and delivers it and later, the seller acquires title thereto, such title passes by operation of law to the buyer (art. 1434 N.C.C.). INQUIMBOY *v.* CRUZ, G.R. No. L-12953, July 26, 1960.

CIVIL LAW—SALES—A STIPULATION FOR INTEREST UPON THE PURCHASE PRICE SHOWS A CONTRACT TO BE AN EQUITABLE MORTGAGE.—On Aug. 8, 1938, the spouses Perfecto Adrid and Carmen Silangcruz executed a document entitled "Sale with Right of Repurchase", purporting to sell a piece of land in favor of Morga for ₱2,000.00 with the right to repurchase the same within two years for the same amount plus 12% interest per annum. The vendors never repurchased the land, but in 1956, Adrid and his son brought an action against the administratix of the deceased Morga to recover the land. They offered to pay the ₱2,000.00, but asked for an accounting of the products of the land since 1939, on the ground that the original contract was converted into antichresis by the acts of the parties. *Held*, an examination of the document entitled "Sale with Right of Repurchase" and the acts of the parties thereto subsequent to its execution show that the intention of the parties was merely for the spouses to borrow the sum of ₱2,000.00 from Morga with the land as security. We have here a clear case of equitable mortgage. Otherwise, there would be no reason for the agreement regarding the payment of 12% interest per annum. The contract was never converted into antichresis, there being nothing in the document nor in the acts of the parties to show that the parties entered into such a contract. ADRID *v.* MORGA, G.R. No. L-13299, July 25, 1960.

CIVIL LAW—SUCCESSION—IN ORDER THAT A WILL MAY BE PROBATED, IT MUST BE SIGNED BY THE TESTATOR OR HIS NAME MUST BE WRITTEN BY SOME OTHER PERSON IN HIS PRESENCE AND BY HIS EXPRESS DIRECTION. — It appears that the will, which is sought to be probated, consists of two typewritten pages. The first page is signed by Juan Bello and under his name appears typewritten "por la testadora Anacleta Abellana, x x x." The same is signed by the three instrumental witnesses. On the second and last page, also appear the signatures of the three witnesses, and the signature of Juan Bello under whose name appears handwritten "por la Testadora Anacleta Abellana." The will is duly acknowledged before a notary public. *Held*, the old law (Sec. 618 of the Code of Civil Procedure) as well as the new (Art. 805, New Civil Code) require that the testator himself sign the will, or if he cannot do so, that the testator's name be written by some other person in his presence and by his express direction (see also Guison V. Concepcion, 5 Phil. 552). In the case at bar, the name of the testatrix, Anacleta Abellana, does not appear to be written under the will by said Abellana herself or by Dr. Juan Abello. There is, therefore, a failure to comply with the express requirement in the law. Hence, the will in question may not be admitted to probate. BALONAN *v.* ABELLANA, G.R. No. L-15153, Aug. 31, 1960.

CIVIL LAW—SUCCESSION—THE RULE OF ART. 811 REGARDING THE PRODUCTION OF WITNESSES TO HOLOGRAPHIC WILLS IS MERELY DIRECTORY. — On September 9, 1957, Fortunata S. Vda. de Yance died leaving a holographic will, which was submitted for probate by the petitioner. Only one witness was presented by the proponent of the will. Opposition to the probate of the will was presented for failure to present three witnesses who could declare the will and the signature to be in the handwriting of the testatrix, the will being contested. *Held* art. 811 of the New Civil Code cannot be interpreted to require the compulsory presentation of three witnesses in case the will is contested. This requirement can be considered mandatory only in the case of ordinary testaments, precisely because the presence of at least three witnesses at the execution of ordinary will is made by law essential to their validity. Where the will is holographic, no witness need be presented, and the rule requiring the production of three witnesses must be deemed merely permissive if absurd results are to be avoided. AZAELA *v.* SINGZON, G.R. No. L-14003, Aug. 5, 1960.

CIVIL LAW—TORTS—THE RIGHT TO ATTORNEY'S FEES BASED ON A RESCINDED CONTRACT MAY NOT BE ENFORCED. — The defendant bus company bought six truck from the plaintiff on installment basis. To guarantee the unpaid balance evidenced by several promissory notes, a chattel mortgage was executed in favor of the plaintiff under which the defendant undertook to pay attorney's fees in case of default. Upon the defendant's default, the plaintiff, instead of enforcing the payment of the unpaid balance and foreclosing the mortgage, elected to cancel the sale and recover the possession of the trucks. The lower court rendered a decision in favor of the plaintiff but denied the latter's claim for attorney's fees based on the mortgage agreement. *Held*, having chosen to rescind the contract of sale, the plaintiff thereby waived its right under the contracts

of sale and mortgage, and therefore may not demand attorney's fees in accordance with said contracts. However, it is entitled to a lesser fee under art. 2208 of the New Civil Code inasmuch as the defendant's default had caused it to litigate and incur expenses to protect its interests. LUNETA MOTOR COMPANY v. BAGUIO BUS COMPANY, G.R. No. L-15157, June 30, 1960.

CIVIL LAW—TORTS—THE AMOUNT OF DAMAGES AWARDED CANNOT BE FIXED ON A PURELY SPECULATIVE OR CONTINGENT BASIS. — Elena Pacio, a timber concessionaire, entered into a verbal contract with Miguel Kairuz, in accordance with which the latter delivered to the former a G.M.C. motor to be used for hauling logs with the understanding that whatever logs would be cut and hauled by Pacio would be sold to Kairuz. Monthly liquidations were made between the parties until May 21, 1951, when Pacio fully paid her debt of ₱1,552.95 to Kairuz representing the cost of the motor, spare parts, and the services of a mechanic. On June 28, 1951, Kairuz took back the possession of the motor upon learning that Pacio was selling her logs to third persons. Because of this, Pacio had to suspend logging operations for about four months until acquisition of a new motor. An action was filed for the recovery of the motor plus damages. On appeal, the Court of Appeals sentenced Kairuz to pay the respondent ₱7.00 per day for the use of the machine until the former should have returned the motor or reimbursed its value to Pacio. *Held*, there being no reliable basis for the amount of damages awarded, such award is highly speculative, contingent, arbitrary, and unjust. The most practical basis for assessing the damages would be the payment of legal interest on the value of the motor. KAIRUZ v. PACIO, G.R. No. L-14505, July 26, 1960.

CIVIL LAW—TORTS—A CLEARLY UNFOUNDED SUIT MAY JUSTIFY THE AWARD OF ATTORNEY'S FEES, BUT NOT THE RECOVERY OF MORAL DAMAGES. — The plaintiff sued the defendant spouses for the payment of a loan. The trial court found that the loan in question had already been liquidated as claimed by defendants. The lower court also found that the complaint was clearly unfounded, dismissed the same and sentenced the plaintiff to pay the defendants under their counterclaim compensatory and moral damages, and attorney's fees. *Held*, (1) as to attorney's fees, the award is proper. Article 2208 of the New Civil Code authorizes such recovery in case of a clearly unfounded civil action or proceeding against the plaintiff. This provision equally applies in favor of a defendant under a counterclaim for attorney's fees, considering that a counterclaim is a complaint by the defendant against the original plaintiff, wherein defendant is the plaintiff and original plaintiff is the defendant. (2) As to compensatory damages, assuming that they are recoverable, these cannot be presumed but must be clearly proved. (3) Finally, a clearly unfounded suit does not justify recovery of moral damages. MALONZO v. GALANG, G.R. No. L-13851, July 27, 1960

COMMERCIAL LAW—CENTRAL BANK ACT—PHILIPPINE PESO BILLS WHEN ATTEMPTED TO BE EXPORTED ARE CONSIDERED AS MERCHANDISE SUBJECT TO FORFEITURE. — 156 pieces of Philippine 50-peso bills, 17 pieces of U.S. 20-dollar bills and 1 piece of U.S. 10-dollar bill were found in the person of Caridad Capistrano when she was searched by an agent of the Bureau of Customs before the plane which she was to board took off for Hongkong. Her license from the Central Bank allowed her to carry only $200, broken down into $50 in cash and $150 in traveler's check. Consequently, the bills were seized and ordered forfeited in favor of the government for alleged violation of Central Bank Circular Nos. 42 and 55, in relation with sec. 1363 (f) of the Revised Administrative Code. The issue is whether or not Philippine peso bills come within the concept of "merchandise" as this term is used in sec. 1363 (f) of the Revised Administrative Code. *Held*, Philippine peso bills come within the concept of "merchandise" as this term is understood in sec. 1363 (f) of the Revised Administrative Code. As defined by the same code, merchandise, when used with reference to importations, includes goods, wares, and in general anything that may be the subject of importation or exportation (sec. 1419). In the same manner that in the Philippines, the U.S. dollar bills which have ceased to be legal tender are considered merchandise, the Philippine bills when attempted to be exported may be deemed to have been taken out of domestic circulation as legal tender and treated as commodity. Hence, they may be forfeited pursuant to C.B. Circular No. 37 in relation to sec. 1363 (f) of the Revised Administrative Code. COMMISSIONER OF CUSTOMS v. CAPISTRANO, G.R. No. L-11075, June 30, 1960

COMMERCIAL LAW—CENTRAL BANK ACT—DURING AN ECONOMIC CRISIS, THE MONETARY BOARD MAY SUBJECT ALL TRANSACTIONS IN GOLD AND FOREIGN EXCHANGE TO LICENSE BY THE CENTRAL BANK. — Citing section 73 of Rep. Act No. 265, which provides that the Central Bank may engage in foreign exchange transactions with the government and banking institutions therein enumerated, and section 74 of the same act, which authorizes the Monetary Board to temporarily suspend or restrict sales of exchange by the Central Bank, counsel for appellants argues that the Central Bank is not authorized by its charter to engage in foreign exchange transactions with the public or to license such transactions of private individuals. Counsel, therefore, contends that circular No. 20, in so far as it requires private individuals who received foreign exchange to sell it to the Central Bank or to its authorized agents, and prohibits the purchase, sale, or disposition of such foreign exchange by private persons except from or to designated agents of the Central Bank, is null and void. *Held*, the contention cannot be sustained. Section 74 of Rep. Act 265 expressly provides that during *an exchange crisis*, the Monetary Board may temporarily suspend or restrict sales of exchange by the Central Bank. The power is broad in its terms for it evidently covers all sales, and dispositions of foreign exchange, whether they be by the Central Bank itself or by the general public or private individuals. Section 73 of the Central Bank Act, relied upon by the counsel to support the appellant's theory that the Central Bank may engage in

foreign exchange transactions only with the entities enumerated therein is obviously the general rule for observance at normal times and is subject to the exception provided for in section 74 that during an economic crisis, such as when the crime in question is committed, the Monetary Board is expressly authorized to subject all transactions in gold and foreign exchange to license by the Central Bank. It is significant to note that circular No. 20 was reported to Congress as required by sec. 34 of Rep. Act 265 and Congress has ratified the same by enacting laws directly connected with the existing foreign exchange. PEOPLE *v.* TAN, G.R. No. L-9275, Aug. 31, 1960.

COMMERCIAL LAW—CODE OF COMMERCE—AN HEIR WHO MANIFESTS BY POSITIVE ACTS HER INTENTION TO BE BOUND BY A STIPULATION PROVIDING FOR THE CONTINUANCE OF A COMMERCIAL PARTNERSHIP DESPITE THE DEATH OF A PARTNER, BECOMES A GENERAL PARTNER WITH AUTHORITY TO BIND THE PARTNERSHIP. — Tan Sin An and Antonio C. Goquiolay entered into a commercial partnership for the purpose of dealing in real estate. The articles of partnership conferred upon Tan the exclusive management of the firm and provided for a term of ten years, and in the event of death of anyone of the partners within the term, for the substitution of the deceased partner by his heirs. In the course of the business, Tan purchased 3 parcels of land in Davao for the partnership. He also purchased another 46 parcels in his individual capacity. These deeds of sale with assumption of mortgages were later consolidated in a single instrument. On June 26, 1942, Tan died. His widow was appointed administratrix of his intestate estate. Upon application, the court authorized the administratrix to sell all the 49 parcels to settle the debts of the partnership and of Tan Sin An. Upon learning of the sale by the administratrix, the surviving partner filed a petition in the intestate proceedings to set aside the sale insofar as the three lots owned by the partnership were concerned. *Held,* consonant with the articles of partnership providing for the continuation of the firm notwithstanding the death of one of the partners, the heirs of the deceased, by never repudiating nor refusing to be bound by the said stipulation, became individual partners. Although ordinarily, the "new" members become no more than limited partners since their liability in the partnership is limited to the value of the share left by the deceased partner, and as such, they are disqualified from the management of the business under art. 148 of the Code of Commerce, this is not so with respect to the widow who manifested her intention to be bound as a general partner by her acts of managing and retaining possession of the partnership properties. Moreover, by allowing the widow to retain control of the firm's property from 1942 to 1949, the plaintiff has estopped himself from denying her authority to bind the partnership. GOQUIOLAY *v.* SYCIP, G.R. No. L-11840, July 26, 1960.

COMMERCIAL LAW—CORPORATION LAW—A MEMBER OF A MUTUAL BENEFIT SOCIETY HAS THE POWER TO CHANGE HIS BENEFICIARY AT WILL, PROVIDED THE STATUTES, AND THE RULES AND REGULATIONS OF THE SOCIETY DO NOT EXPRESSLY PROHIBIT SUCH CHANGE. — Sec. 25 of the by-laws of the defendant association of which the deceased Leoncio Pascua was a member, provides that "whenever any active member of the association dies, all the other members shall contribute the sum of ₱5.00 each and the amount thus collected shall be payable to the beneficiary named in the membership application papers of the deceased member." The deceased in his membership application papers designated his spouse, the plaintiff herein, as his beneficiary. Later, however, he made his son, born of the intervenor herein, a co-beneficiary with his wife. The plaintiff brought an action against the defendant association to compel the latter to deliver to her in full the fund benefits. *Held,* in mutual benefit societies like the defendant association, the rule is that a member has the power to change his beneficiary at will, so long as the statutes or the rules and regulations of the society do not expressly prohibit such change. In this jurisdiction, there is no law expressly prohibiting the change of beneficiary in mutual benefit associations. While the by-laws of the defendant association do not expressly authorize a member to change his beneficiaries, neither do they prohibit the making of such change. PASCUA *v.* THE EMPLOYEES' SAVINGS AND LOAN ASSN. OF THE MANILA WATER SYSTEM, G.R. No. L-14242, June 30, 1960.

COMMERCIAL LAW—TRADEMARKS—AN APPLICATION FOR THE REGISTRATION OF A TRADEMARK OR LABEL, WHICH IS ALMOST THE SAME OR VERY CLOSELY RESEMBLES ONE ALREADY USED AND REGISTERED BY ANOTHER, SHOULD BE REJECTED AND DISMISSED OUTRIGHT, EVEN WITHOUT ANY OPPOSITION. — Respondent Rosario Villapania applied for the registration of a trademark for a brand of soy sauce. The trademark sought to be registered used the name "Bangos Brand" and a fish representation which closely resembled a previously registered brand belonging to the petitioner named "Carp Brand" because of the use of the same distinctive style of lettering and a similar fish representation. Observing such close resemblance, the examiner of the Office of the Director of Patents directed the respondent to modify the trademark sought to be registered by eliminating portions thereof. The respondents complied with such directions and the trademark was published in the Official Gazette. The petitioner filed its opposition to respondent's application but the Director of Patents rendered a decision dismissing petitioner's opposition, which decision is now on appeal. *Held,* an application for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, not only to avoid confusion on the part of the public but also to protect an already used and registered trademark and an established goodwill. There should be no halfway measures, as in this case which produced the result that the amended and modified label is still confusing. CHUANCHOW SOY AND CANNING CO., *v.* DIR. OF PATENTS, G.R. No. L-13947, June 30, 1960.

CRIMINAL LAW—ESTAFA—THE FAILURE TO RETURN THE ADVANCE PAYMENT IN A CONTRACT OF SALE DOES NOT GIVE RISE TO CRIMINAL LIABILITY. — The herein accused, a copra merchant, used to supply copra not only to the complainant but to other copra exporters as well. The transaction involved was one of sale for future delivery. An advance payment was made by the complainant but the accused was not able to deliver the copra. He was prosecuted for estafa. The lower court found him guilty under paragraph 1 (b) of art. 315. The accused appealed to the Court of Appeals questioning the correctness of the judgment. The appellate court convicted him under paragraphs 3 (b) and 2 (a) of art. 315. *Held*, the responsibility of the herein appellant is only civil in nature. The language of the receipt upon the strength of which the prosecution mainly relies, together with the finding of the Court of Appeals that factually, the appellant used to supply copra not only to the complainant but to other exporters as well, clearly indicate the transaction to be one of sale of copra for future delivery. Obviously, an advance payment is subject to the disposal of the vendor. Should the transaction fail, the liability arising therefrom would be of a civil and not of a criminal nature. Accused acquitted. ESGUERRA *v.* PEOPLE, G.R. No. L-14313, July 26, 1960.

CRIMINAL LAW—EXEMPTING CIRCUMSTANCES—TO ESCAPE CRIMINAL LIABILITY, THERE MUST BE A CLEAR, SATISFACTORY PROOF OF INSANITY. — Accused was convicted in the CFI of Nueva Ecija of the crimes of parricide and frustrated murder. On appeal, he argued that he was insane, and deprived of reason and will at the time of the commission of the act in question. The following considerations were invoked by him: (1) Jacinto Cruz, father of the appellant, testified that one week before the killing, the appellant smashed a glass jar of sugar in his house in Sta. Rita, Pampanga, when he learned that his wife and daughter had left for Cabanatuan City; (2) A few minutes before the appellant hacked his wife, to death, he smashed plates, glasses and the like; and (3) The appellant attempted against the life of Anita Concepcion and turned against Daniel Cabunta, his sister-in-law and uncle respectively, without motive. *Held*, the contention is untenable. In order that insanity may be taken as an exempting circumstance, there must be complete deprivation of intelligence in the commission of the act. The accused must have acted without the least discernment. Breaking glasses and smashing dishes are simply demonstrations of an explosive temper, not clear satisfactory proof of insanity. PEOPLE *v.* CRUZ, G.R. No. L-13219, Aug. 31, 1960.

CRIMINAL LAW—EXTINCTION OF CRIMINAL LIABILITY—THE CRIMINAL LIABILITY FOR ESTAFA CANNOT BE EXTINGUISHED BY A COMPROMISE AGREEMENT. — Employed as a bill collector for Jose Cua, the defendant Bejamin Benitez made several collections amounting to ₱540.00 which he failed to turn over to his employer. To appease Cua, Benitez offered to work in the former's establishment in order to repay the amount misappropriated. The contract of employment was reduced to writing. After working for a few days, the accused stopped reporting for work. Consequently, a complaint for estafa was filed against him. The accused maintained that his agreement with his employer converted his criminal liability, if any, to a mere civil obligation. *Held*, the criminal liability for estafa is not affected by a compromise or by a novation of contract, for it is a public offense which must be prosecuted and punished by the Government though complete reparation should have been made of the damage suffered by the offended party. A criminal offense is committed against the people and the offended may not waive or extinguish the criminal liability that the law imposes for the commission of the offense. PEOPLE *v*, BENITEZ, G.R. No. L-15923, June 30, 1960.

CRIMINAL LAW—HOMICIDE THROUGH RECKLESS IMPRUDENCE—THE CRIME OF HOMICIDE THROUGH RECKLESS IMPRUDENCE MAY BE COMMITTED IN THE PERFORMANCE OF AN UNLAWFUL ACT SUCH AS IN THE ILLEGAL PRACTICE OF MEDICINE. — The accused was charged with the crime of homicide through reckless imprudence for having diagnosed, prescribed and treated a sick person without being duly licensed to practice medicine and with reckless imprudence, as a consequence of which said person died. When the case was called for trial the assistant fiscal made a manifestation that the accused had also been charged with the crime of illegal practice of medicine before another sala of the same court. In view of this manifestation the trial court *motu proprio* dismissed the information on the ground that it was fatally defective inasmuch as the facts charged do not constitute the offense of homicide through reckless imprudence, which offense results from the performance of lawful acts without due care and diligence, and not from the performance of an act unlawful *per se* such as the illegal practice of medicine. The provincial fiscal appealed to this court, urging that the dismissal on such ground was erroneous. *Held*, the crime of illegal practice of medicine is a statutory offense wherein criminal intent is taken for granted. In fact, as defined by section 2678 of the Revised Administrative Code (the law then in force), the offense consists of the mere act of practicing medicine in violation of the Medical Law, even if no injury to another, much less death, results from such malpractice. When, therefore the patient dies, the illegal practitioner should be equally responsible for the death of his patient, an offense independent of and distinct from the illegal practice of medicine. The information sufficiently charges the crime of homicide through imprudence, since ordinary diligence counsels one not to temper with human life by trying to treat a sick man, knowing that he does not have the special skill, knowledge and competence required. PEOPLE *v.* GOMEZ, G.R. No. L-14160, June 30, 1960.

CRIMINAL LAW—PRESCRIPTION OF OFFENSES—THE FILING OF THE COMPLAINT WITH THE JUSTICE OF THE PEACE COURT INTERRUPTS THE RUNNING OF THE STATUTE OF LIMITATIONS AS REGARDS THE CRIME OF LIBEL. — On or about February 24, 1954, the defendant wrote certain libelous letters to Visitacion M. Meris. On Jan-

uary 7, 1956, Miss Meris lodged the corresponding charge of libel with the provincial fiscal. On the latter's advice, she filed with the justice of the peace court on February 22, 1956 a complaint for libel against the defendant, who waived her right to preliminary investigation. The justice of the peace court forwarded the case to the court of first instance, where the corresponding information was filed on July 3, 1956. The defendant moved to quash the information alleging the prescription of the offense. The defendant contended that for the purpose of suspending the running of the statute of limitations in libel, the complaint should be filed with the court of first instance, not with the justice of the peace court, because R. A. No. 1289, in amending article 360 of the Revised Penal Code, substituted the word "shall" in lieu of the term "may" appearing in the third paragraph of the original provision. This amendment, it is urged, divested the justice of the peace court of the authority to conduct preliminary investigations in criminal actions for libel. *Held*, the legislature did not intend to disturb the *status quo* as regards jurisdiction over criminal and civil actions for libel, except with respect to venue. This being the case, R. A. No. 1289 cannot be construed as depriving justices of the peace of their authority to conduct preliminary investigations for any offense alleged to have been committed within their respective municipalities, without regard to the limits of the imposable punishment. It follows that the filing of the complaint with the justice of the peace court interrupts the running of the statute of limitations as regards the crime of libel. PEOPLE *v.* OLARTE, G. R. No. L-13027, June 30, 1960.

CRIMINAL LAW—REP. ACT NO. 10 APPLIES ONLY TO MEMBERS OF SEDITIOUS ORGANIZATIONS.—To fill up the vacancy created by the maternity leave of one Magdalena P. Echavez, Josita Diotay and defendant Dionisio Lidres filed their respective applications as substitute teachers. Diotay was recommended by the supervising teacher to fill up the position. However, the latter requested Diotay to sign an agreement wherein both Diotay and defendant agreed that the period of the maternity leave would be equally divided between them. Thereafter, Diotay began teaching on January 4, 1954. On February 12, 1954 apparently on the strength of the agreement, defendant appeared at the school, armed with a prepared letter of resignation for the signature of Diotay. Diotay refused to resign. So on February 22, 1954, defendant went to the classroom where Diotay was conducting her classes, and against the latter's will took over the class. On May 31, 1954, defendant was prosecuted and convicted of usurpation of official functions as defined and penalized in Republic Act No. 10. *Held*, an examination of the discussion of House Bill No. 126, which became Republic Act 10, discloses indisputably that said Act was really intended as an emergency measure, to cope with seditious organizations at the time of its passage in September 1946. Hence, the elimination of the element of pretense of official position required under Art. 177 of the Revised Penal Code. Since it is neither alleged in the information nor proved during the trial that the defendant is a member of a seditious organization engaged in subversive activities, he cannot be held liable. PEOPLE *v.* LIDRES, G.R. No. L-12495, July 26, 1960.

LABOR LAW—AGRICULTURAL TENANCY ACT—THE CONVERSION OF RICELAND INTO A FISHPOND, WHERE SUCH CONVERSION WOULD YIELD A CONSIDERABLY GREATER INCOME, IS A GROUND FOR EJECTMENT OF TENANTS. — Lourdes Gaddi, one of the respondents, filed with the Court of Agrarian Relations a petition praying that she be authorized to convert a portion of her riceland into a fishpond. Some of her tenants opposed. At the trial it was established that the land in question has an area of 55 hectares; that before the war this land was a fishpond, the owner having spent ₱10,000.00 for the construction of the dikes; that it was once leased at ₱20,000.00 a year; that a fishpond with a smaller area adjoining the land yielded a gross income of ₱36,000.00 a year; that if the land is to be reconverted into a fishpond, the owner may realize an income of ₱40,000.00 a year; and that inspite of the claim of the said tenants that the land is good for rice, it was found to be better for fishpond by an expert of the Bureau of Fisheries in the ocular inspection made of the premises upon order of the court. The agrarian court granted the authority and also authorized the petitioner to eject the respondent-tenants therefrom. The latter appealed contending among others that the agrarian court erred in authorizing their ejectment from their landholding by reason of the authority granted to the landowner to convert the land into fishpond. *Held*, while the conversion of riceland into a fishpond is not one of the causes of dispossession of a tenant under sec. 50 of Rep. Act 1199, however, the order of the agrarian court authorizing the conversion justified the ejectment it appearing that by effecting said conversion, the landowner could obtain a greater yield or income. This is authorized by Sec. 25 of the same Act. LACAP *v.* DE GUZMAN, G.R. No. L-12597, Aug. 31, 1960.

LABOR LAW—WORKMEN'S COMPENSATION COMMISSION—AN APPEAL TO THE COMMISSION FROM A DECISION OF A REGIONAL OFFICE MUST COMPLY WITH THE REQUIREMENTS OF LAW AND THE RULES OF THE COMMISSION FOR THE LATTER TO ACQUIRE JURISDICTION. — Jaime Darlucio, Sr. while performing his duties as security guard in the establishment of the petitioner, was feloniously shot and killed by Jose Rites, whose entry into said establishment was blocked by the deceased in obedience to an order of the petitioner's personnel manager. Rites was accused and convicted of homicide. Within the time provided for by law, the widow and the minor children of Jaime Darlucio filed a claim with the Workmen's Compensation Commission. After appropriate proceedings, a hearing officer of its regional office rendered a decision from which the petitioner filed a petition with the Commission praying for the review of said decision. The petition, having been denied for its failure to comply with the law and the rules of the Commission in that it did not specify any particular error or objection to the decision of the hearing officer, the present petition for review by certiorari was filed. *Held*, the petition is devoid of merit. The decision of the hearing officer having become final and executory owing to the said failure to comply with the provisions of the law and the rules of the commission, the latter had no authority to entertain the petition for review of the said decision, regardless of the action taken by the regional office. KOPPEL (PHILIPPINES) INC. *v.* DARLUCIO, G.R. No. L-14903, Aug. 29, 1960.

LABOR LAW—CHECK-OFF—AN AUTHORIZATION FOR CHECK-OFF FOR UNION DUES, THOUGH IRREVOCABLE, IS VALID ONLY WHILE THE EMPLOYEE REMAINS A MEMBER OF THE UNION. — The petitioner-union agreed that the company would make payroll deductions of dues and assessment of members of the union. Thereafter, petitioner prepared a check-off authorization form, without any specification as to the amount to be deducted. Some of the employees refused to sign the form. When the petitioners presented the form to the company, the latter refused to entertain the same, claiming that the irrevocability clause contained therein was illegal. Meanwhile, many of those who signed revoked their authorization, and together with those who refused to sign, formed the respondent union. Because the Company refused to make the deductions, the petitioners filed an action for declaratory relief. The CIR declared itself without jurisdiction but the judge consented to arbitrate upon, agreement of the petitioner-union and S.M.B. In his supposed capacity as arbitrator Judge Guevarra issued an order holding that, notwithstanding the revocation of their authorization, said members were still bound by the check-off provision until the expiration of one year or the termination of the bargaining agreement, whichever occurs sooner. *Held,* assuming for a moment the validity of the irrevocability clause in the authorization for check-off for a period of one year, still it seems that said authorization is valid only as long as said laborers remain members of the union because the duty to pay union dues is co-extensive with membership in the union. PAGKAKAISA SAMAHANG MANGGAGAWA *v* ENRIQUEZ, G.R. No. L-12999, July 26, 1960.

LABOR LAW—INDUSTRIAL PEACE ACT—THE EXISTENCE OF A COLLECTIVE BARGAINING AGREEMENT WITH A REASONABLE TERM MAY BE A BAR TO A PETITION FOR CERTIFICATION ELECTION NOTWITHSTANDING SEC. 12 (c) OF REP. ACT NO. 875.—On July 29, 1949, Bogo-Medellin Milling Company and the Philippine Labor Federation entered into a collective bargaining and union shop agreement duly approved by the CIR. Before the expiration of the agreement, the same parties agreed to renew it for another period of three years to expire on July 28, 1955, again with the approval of the court. In the meantime, the petitioner union, PLASLU, filed a petition with the CIR seeking a certification election. However, the parties reached an amicable settlement whereby the PLASLU agreed to recognize the validity and to participate in the benefits of the collective bargaining and union shop agreement. This settlement was approved by the CIR on February 6, 1954. On July 25, 1955, the respondents without notice to the petitioner renewed the collective bargaining agreement for another three years again with court approval, but on August 26, 1955, the PLASLU filed another petition for the holding of a certification election which was turned down by the CIR. The PLASLU appealed contending that it was mandatory upon the CIR to order the holding of the certification election, the petition having been filed by at least 10% of the employees of the company. *Held,* sec. 12 (c) of Rep. Act 875 is not as absolute as it may appear at first glance. The statute itself recognizes one exception: when a certification election had occurred within one year prior to the petition. And the administrative agencies have found two other exceptions: (1) where there is an unexpired bargaining agreement not exceeding two years; and (2) where there is a pending charge of

company domination of one of the interested labor unions. However, a collective bargaining agreement may run for three or four years, but for the purpose of suspending certification elections, it is within the sound discretion of the CIR to decide, taking into consideration the conditions involved, particularly the terms and conditions of the bargaining agreement. Consequently, the CIR had the right to dismiss the petition, considering that the collective bargaining agreement was approved by the court without any objection on the part of PLASLU, for it was only on August 26, 1955 that it filed its petition, or 29 days too late. PLASLU *v* BOGO-MEDELLIN MILLING CO., G.R. No. L-11910, Aug. 31, 1960 (Reiterating GENERAL MARITIME STEVEDORE'S UNION *v.* SOUTH SEA SHIPPING LINE, G.R. No. L-14689, July 26, 1960).

LABOR LAW—INDUSTRIAL PEACE ACT—UNDER SEC. 10 OF REP. ACT NO. 875, THE CIR HAS JURISDICTION TO ORDER THE REINSTATEMENT OF WORKERS WHETHER ON STRIKE OR NOT, AND WHETHER PERMANENT OR SEASONAL, AS A CONDITION FOR THE SETTLEMENT OF A STRIKE.—On December 18, 1955, the Hind Labor Union presented a set of labor demands against the Hind Sugar Company. Upon failure of the company to accede to its demands, the union declared a strike. The labor dispute was certified to the CIR by the President. In making a settlement of the strike the CIR made several adjudications including the reinstatement of Alfonso Lalaquit (locomotive driver) and Bernardo Pesino (mill tender) with back wages. Both were not actually at work on the day of the strike because they were seasonal workers. The Hind Company questioned the jurisdiction of the CIR over these employees who were not actually working at the time of the strike. *Held,* sec. 10 of the Industrial Peace Act empowers the CIR, when a strike has been referred to it by the President, to issue an order "fixing the terms and conditions of employment.." This clause is broad enough to authorize the court to order the return to work not only of the actual workers but all the other regular workers of the company even though not actually working during the day of the strike, as a condition for the settlement of the strike. However, being mere seasonal workers, they should not receive pay during the period of time in which they did not actually work or render service to the company. HIND SUGAR COMPANY INC. *v.* CIR, G.R. No. L-13364, July 26, 1960.

LABOR LAW—JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS—THE COURT OF INDUSTRIAL RELATIONS MAY EXTEND THE BENEFITS OF AN AWARD TO ALL DEPARTMENTS OF THE SAME COMPANY SIMILARLY SITUATED. — Juan Aralar and sixty-nine others filed a petition with the CIR, seeking the execution of its decision in case no. 129-v, the dispositive part of which entitled them to be paid an increase of 10% of their salary. The industrial court in its decision now under review held the award to be extensive and applicable to all departments of the National Development Company under the theory of inter department functions. *Held,* the benefits of an award may be extended to workers and laborers in other departments of the same company who are similarly

situated. This is a complement of our ruling in other cases to the effect that the CIR is authorized to extend the benefits of an award even to workers and employees who were not parties to the case or who were not members of the labor union that prosecuted the case to a successful conclusion provided such workers are similarly situated and belong to more or less the same category. NDC *v.* ARALAR, G.R. No. L-14258, July 26, 1960.

LABOR LAW—JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS—A PETITION FOR THE ENFORCEMENT OF AN AWARD, NOT BEING A MERE MONEY CLAIM, IS COGNIZABLE BY THE CIR WHICH GRANTED SAID AWARD, PROVIDED THE PETITION IS BROUGHT WITHIN FIVE YEARS FROM THE DATE OF ENTRY OF SAID AWARD OR THE DATE OF LAST ENFORCEMENT.—Juan Aralar and sixty-nine others filed a petition with the CIR on April 22, 1957 alleging, that under the decision in case no 129-v rendered on November 5, 1948, they were entitled to be paid an increase of 10% of their salary. The NDC contended that the petition was for the recovery of a sum of money, and therefore not cognizable by the CIR, and that, at any rate, more than five years had already elapsed from the date of said award, and therefore said award could not be enforced by a mere motion. *Held,* the petition is not for a mere money claim but for the implementation of a decision already rendered, which has become final and executory. Therefore, it is within the court's jurisdiction. As to the propriety of enforcing the award despite the lapse of five years, the pertinent provisions are sec. 23 of C.A. No. 103 and sec. 6 of C.A. No. 559. These provide that the legal provisions, to the effect that decisions may be enforced only within five years from the date of entry, are applicable to decisions of the CIR which are sought to be enforced by a writ of execution or by any other remedy provided by law in the same way that orders and judgments of CFI are enforced. Consequently, it is necessary to make distinctions. If the award made in 1948 has never been executed as regards all petitioners, then the present petition must be denied. A new action would be necessary to enforce the award. However, if the 1948 award has heretofore been executed or enforced as to some or all of the petitioners, and from the date of the last enforcement, not more than five years have elapsed, then the present petition may be granted as to those petitioners not covered by the prohibition of sec. 6, rule 39, Rules of Court. NDC *v* ARALAR, G.R. No. L-14258, July 26, 1960.

LABOR LAW—WORKMEN'S COMPENSATION ACT—A WIDOW MAY RECOVER COMPENSATION FOR THE DEATH OF HER HUSBAND DUE TO AN OCCUPATIONAL DISEASE. — The claimant Marina Vda. de Ricar filed a claim for compensation under Act no. 3428, as amended, for the death of her husband who died aboard petitioner's boat while in the course of his employment. At the time he joined the company, the deceased was in perfect health, never having suffered from a heart disease or from diseases associated with the cause of his death. However, eight years of strenuous life aboard petitioner's boats took its toll. The deceased developed a heart defect which in due time resulted in his death. The petitioner contended that the

heart attack was due to a natural disease. *Held,* assuming without admitting that the heart attack or disease which caused the death was due to the natural disease, the claim, which was uncontroverted, alleges that said disease developed from the strenuous life that the deceased employee led on the boat for 8 years. Hence, the widow may recover compensation. GENERAL SHIPPING CO., INC., *v* WORKMEN'S COMPENSATION COMMISSION, G.R. No. L-14936, July 30, 1960.

LAND REGISTRATION—CADASTRAL ACT—COURTS OF FIRST INSTANCE, WHEN ACTING AS CADASTRAL COURTS, HAVE NO AUTHORITY TO PASS UPON THE VALIDITY OF INSTRUMENTS AFFECTING LAND. — In Cadastral case no. 15 of the CFI of Negros Oriental, Lot No. 3725 of the Cadastral Survey of Sibulan, Oriental Negros was adjudicated to Pilar Merecido who died intestate and without issue. Eleven years thereafter, after the said judgment had become final but with the corresponding decree of registration not yet issued, Francisco Merecido, a surviving brother of the deceased, for himself and in representation of his brothers, Julian, Fidel and Gerardo, filed a motion in the cadastral case praying for the amendment of the decision so as to adjudicate the lot in their favor as heirs of the deceased. The motion was opposed by the three brothers aforementioned, alleging that they had not authorized Francisco to file the motion for amendment in their behalf and that the lot belonged to Fidel by virtue of a deed of sale executed by Pilar in his favor. A separate petition was, likewise, filed by Fidel alone, asking that he be declared the sole adjudicatee of the property. This petition was, in turn, opposed by Francisco who alleged that the deceased never sold the property in question. After a hearing, the trial court ordered the amendment of the decision in accordance with Fidel's prayer. Hence this appeal, questioning the jurisdiction of the trial court, sitting as cadastral court, to pass upon the issue of whether or not the contract of sale in dispute really had been entered into *Held,* the cadastral court may order such decree of registration only when there is no serious controversy between the parties over the validity of the instrument affecting the land. This is so, because the Court of First Instance, acting as a cadastral court, has limited authority. It has no authority to adjudicate issues that should be ventilated in an ordinary action, such as the question of whether the contract of sale here in dispute was really entered into. Said rights, being contested, should be ventilated in an ordinary civil action. Decision of August 20, 1941 reinstated. DIRECTOR OF LANDS *v.* MERECIDO, G.R. No. L-11834, July 26, 1960.

LAND REGISTRATION—RECONSTITUTION OF TITLES—A TITLE JUDICIALLY RECONSTITUTED IS NOT SUBJECT TO THE STATUTORY RESERVATION THAT THE NEW TITLE "SHALL BE WITHOUT PREJUDICE TO ANY PARTY WHOSE RIGHT OR INTEREST IN THE PROPERTY WAS DULY NOTED IN THE ORIGINAL AT THE TIME IT WAS LOST OR DESTROYED."—Carlos Esteban, the judicial administrator of the estate of Jose de Vina, mortgaged a lot to the P.N.B. as security for a loan. Two weeks later, another real estate mortgage was executed in

favor of the PNB. All these were annotated at the back of the original certificates. When the originals were either lost or destroyed during the war, a petition for the reconstitution of said titles was filed in court. The new titles issued did not mention the subsisting mortgage liens in favor of the petitioner. On Aug. 11, 1953, these lots were sold to Juan Uriarte Zamacona. The PNB filed this petition to order the register of deeds to enter in its records the liens in favor of the bank relying on sec. 18 Rep. Act No. 26. *Held*, the trial court correctly denied the petition. Prior to the institution of these proceedings, there had already been a judicial reconstitution of the original certificates upon petition of the registered owner. Unlike the extra-judicial reconstitution of titles wherein there is a statutory reservation that the new title "shall be without prejudice to any party whose right or interest on the property was duly noted in the original at the time it was lost or destroyed," a judicially reconstituted title by express provision of the statute is not subject to such encumbrances (sec. 10 R.A. No. 26). P.N.B. *v.* DE LA VINA, G.R. No. L-14601, Aug. 31, 1960.

LAND REGISTRATION—REVIEW OF DECREE OF REGISTRATION—IN CASE OF ACTUAL FRAUD, THE DECREE OF REGISTRATION OF A LAND COVERED BY A FREE PATENT MAY BE IMPUGNED WITHIN ONE YEAR FROM ENTRY PROVIDED NO INNOCENT PURCHASER FOR VALUE HAS ACQUIRED AN INTEREST THEREIN.—On December 15, 1952, the plaintiff filed a complaint for "cancellation of Title and Reconveyance," alleging that they have been, since time immemorial, in actual possession as owners of the parcels of land in question, but that through actual fraud, the defendant Cecilia Nelayan succeeded in securing for herself a certificate of title over said land. After answering the complaint, the defendant filed a motion to dismiss the complaint on the grounds of lack of jurisdiction. *Held*, the rule is that once a patent is issued, the land acquires the character of registered property under sec. 122 of Act. 496. Therefore such land is deemed brought under the operation of the Land Registration Act and is to be accorded the same or similar remedies as are extended in ordinary registration proceedings after entry of the decree of confirmation or registration. One of such remedies is that in case of fraud, a petition for review may be filed within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. The fraud averred by the plaintiffs is actual, consisting in the alleged concealment from the plaintiff of the proceedings leading to the issuance to the defendant of the question free patent, notwithstanding her knowledge that the land covered under her application was being possessed by the appellants as owners thereof. This is fraud as contemplated under sec. 38 of Act 496. NELAYAN *v.* NELAYAN, G.R. No. L-14518, Aug. 29, 1960.

LAND REGISTRATION—TORRENS SYSTEM—WITH THE ENACTMENT OF REP. ACT NO. 117, THE APPLICANT MUST BEAR THE COST OF PUBLICATION OF THE INITIAL HEARING REGARDLESS OF THE VALUE OF THE LAND.—Applying for the registration of his land, Domingo L. Parras was required by the land Registration Commission to remit the sum of ₱57.00 as the estimated cost of publication in the Of-

ficial Gazette of the notice of the initial hearing of the case. Parras objected and subsequently filed a petition in the land registration court claiming exemption under sec. 114 of Act 496 as amended by Act 2866 because the value of his land was below ₱50,000.00. The Commissioner opposed the petition contending that this exemption in the case of land with a value of less than ₱50,000.00 has been eliminated with the re-amendment of the same sec. 114 by R.A. 117. *Held*, the suppression in the amendatory act of the provision exempting the applicant from the obligation to pay the cost of publication can mean only a withdrawal by the Legislature of such a privilege allowed in the previous law. Plainly, R.A. 117 is a re-enactment of the whole subject, entirely superseding the old law. It is clear, therefore, that after the enactment of R.A. 117, the cost of publication shall be borne by the applicant. PARRAS *v.* LAND REGISTRATION COMMISSON, G.R. No. L-16011, July 26, 1960.

LEGAL ETHICS—CONTEMPT OF COURT—THE WORDS "VAGUE, UNCALLED FOR, AND UNJUST", NOT BEING BLATANTLY OFFENSIVE, DO NOT CONSTITUTE CONTEMPT OF COURT.—In Civil Case No. 344 of the CFI of Surigao, the respondent judge issued an order requiring the petitioner to appear before the Court Nov. 5, 1958, at 8:00 o'clock in the morning "to show cause why he should not be declared in contempt of court for employing words derogatory to the dignity of the court in his pleading dated Oct. 30, 1958." In response to the order, the petitioner filed a "manifestation" requesting the court to pinpoint the derogatory words and phrases and likewise prayed for 3 days within which to answer. The respondent judge, without the attendance of the petitioner, issued an order of arrest which, later on, was verbally suspended because the petitioner was bed-ridden with influenza. *Held*, we are of the opinion that the order of arrest was not justified considering the length of the pleading, and the fact that the expressions used therein were not blatantly offensive, since petitioner's description of the court's action as "vague, uncalled for and unjust" amounted to no more than saying that the order was erroneous and unjustified. Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court; and it is not evident in this case.. MATUTINA *v.* BUSLON, G.R. No. L-14637, Aug. 24, 1960.

POLITICAL LAW—ADMINISTRATIVE LAW—WHILE A DEPARTMENT HEAD MAY TEMPORARILY TRANSFER HIS PERSONNEL WITHOUT FIRST OBTAINING THE EMPLOYEE'S CONSENT, SUCH CANNOT BE DONE WHEN THE TRANSFER IS WITH A VIEW TO THE LATTER'S REMOVAL.—Respondent Lejano was appointed chief of the Rizal Provincial Hospital. On Sept. 18, 1954, the respondent was relieved of his duties by petitioner Mayuga and directed to proceed to Bohol to assume the duties as chief of the hospital of said province, but on respondent's protest, the latter was given another assignment. Meanwhile, the petitioner's made representations with the office of the President for authority to detain the respondent outside of his station for more than the reglementary period. In an order issued by authority of the President, the further detail of the res-

pondent out of the Rizal Hospital was set to be not "beyond August 31, 1955," but in violation of this authority, the respondent was appointed as Acting Senior Medical Supervisor and Statistician of the Bureau of Hospitals. Declining this position, the respondent filed *quo warranto* proceedings alleging that he had been dismissed as chief of the Rizal Hospital without legal cause. On the other hand, the petitioners maintained that the Secretary of Health, as Department Head, has the power to appoint, remove, or transfer employees and subordinates in his department pursuant to sec. 79 (d) of the Rev. Adm. Code. *Held,* while temporary transfers or assignments may be made of the personnel of a bureau or department with out first obtaining the consent of the employee concerned within the scope of section 79(d) of the Revised Administrative Code which partly provides that "The Department Head also may, from time to time, in the interest of the service, change the distribution among the several bureaus and offices of his Department of the employees or subordinates authorized by law," such cannot be undertaken when the transfer of the employee is with a view to his removal and without his consent. And if the transfer is resorted to as a scheme to lure the employee away from his permanent position, such attitude is improper as it would in effect result in a circumvention of the prohibition which safeguards the tenure of office of those who are in the civil service. GARCIA *v.* LEJANO, G.R. No.. L-12220, Aug. 8, 1960.

POLITICAL LAW—ADMINISTRATIVE LAW—THE CHIEF OF POLICE OF MANILA MAY CHANGE THE ASSIGNMENT OF POLICEMEN, INCLUDING DETECTIVES, WITHOUT NEED OF THE PRIOR APPROVAL OF THE PRESIDENT.—The plaintiffs are detectives in the Manila Police Department. The Chief of police, upon indorsement of the city mayor in view of the exigencies of the service, assigned the plaintiffs and several other members of the Detective Bureau to the Traffic Bureau. More than four months after reporting for duty in the Traffic Bureau, the plaintiffs filed the present action assailing the legality of their transfer. The plaintiffs contended that the transfer of police officers in Manila should be made only upon prior approval of the President of the Philippines whose office took over the functions of the defunct Department of Interior, in accordance with section 11 (e) of the City's charter, R.A. 409. The defendant Mayor, on the other hand maintained that the said section does not apply to policemen and detectives because the organization and disposition of the city police and detective bureau is specifically governed by section 34 of R.A. No 409. *Held,* the plaintiffs' transfer from the Detective to the Traffic Bureau in the same police department is not illegal. Section 11 (e) of R.A. No. 409 refers to the general duties and powers of the mayor, while section 34 is specific in nature in that it applies only to the Manila Police Department. It is apparent that, within the scope and meaning of the latter provision, the chief of police may transfer or change the assignment of the city police force, including detectives, if such is necessary in the interest of the service, without need of the approval of the President. TRINIDAD *v.*. LACSON, G.R. No. L-12362, Aug. 5, 1960.

POLITICAL LAW—ADMINISTRATIVE LAW—A COUNCILOR DESIGNATED AS ACTING MAYOR IN VIOLATION OF THE REVISED ADMINISTRATIVE CODE, NOT BEING AN OFFICER DE JURE, MAY NOT LEGALLY APPOINT A CHIEF OF POLICE.—In the general election of 1951, Fortunato Villalon was elected mayor of the municipality of Ronda, Cebu. The candidate who obtained the highest number of votes for the office of councilor was Lucio Ortiz. The councilor who received the next highest number of votes was Lourdes V. Deama. On Dec. 16, 1955, Councilor Toribio Chiong took over the office of mayor upon designation made by ex-mayor Fortunato Villalon. In this capacity, Chiong signed the appoinment of petitioner as chief of police. The latter now seeks to compel the incumbent mayor, Lucio Ortiz, to approve and sign his pay-roll for a certain period. *Held,* petition denied. The designation made by Fortunato Villalon of Councilor Toribio Chiong who was fifth in point of number of votes in the general election of 1951 was contrary to the provisions of the Revised Administrative Code. Such being the case, his designation as mayor was illegal. Not being a *de jure* officer, he could not appoint the petitioner as chief of police the municipality. MARIBAO *v.* ORTIZ, G.R. No. L-13760, July 30, 1960.

POLITICAL LAW—CONSTITUTIONAL LAW—IN ORDER THAT THE SALE OF OTHER PROPERTIES MAY BE CONSIDERED AS A BASIS IN COMPUTING THE MARKET VALUE OF AN EXPROPRIATED PROPERTY, THE FORMER MUST ADJOIN OR AT LEAST BE WITHIN THE ZONE OF COMMERCIAL ACTIVITY OF THE LATTER.—On Sept. 15, 1948 the Republic of the Philippines, through the Rural Progress Administration (later succeeded by the Land Tenure Administration) instituted condemnation proceedings to expropriate, for subdivision and sale at cost to the tenants-occupants thereof, the properties of Francisco Yaptinchay et al. As the landowners offered no objection to the expropriation of their properties the court appointed the Clerk of Court Martinez as chairman, Laurito (at the suggestion of the tenants) and Baretto (at the suggestion of the landowners) as members of the committee that would determine the actual market value of the properties, subject of the proceedings. Chairman Martinez expressed the opinion that the compensation should be based on the market value of the properties during the period when the tenants took possession of the lands from the landowners. Member Baretto made separate recommendations. On June 28, 1956 the court, disregarding the recommendations of the commissioners, fixed the compensation due the landowners. The plaintiff in its appeal claimed that the court *a quo* erred in fixing the amounts of compensation for the reason that they are higher than those demanded by the owners and even more than those recommended by Commissioner Baretto. *Held,* we find reason to sustain the plaintiff-appellant's contention. The valuation arrived at by the court was based on two decisions: 1) ALEJO *v.* PROV. GOV'T. OF CAVITE (54 Phil 304) and 2) MUNICIPALITY OF BACOOR *v.* CUENCA decided by the court in 1951. The valuations arrived at in these cases can hardly be considered as evidentiary facts of the prices of land elsewhere. In order that previous purchases and sales of properties may be considered competent proof of the market value of an expropriated property, the former must be shown to be adjoining the

latter or at least to be within the zone of commercial activity of the condemned property. This is not true in the instant case. REPUBLIC *v.* YAPTINCHAY, G.R. No. L-13684, July 26, 1960.

POLITICAL LAW—ELECTION LAW—BY EXPENSES IN ELECTION CONTESTS IS MEANT ACTUAL EXPENSES CONNECTED WITH THE TRIAL, NOT EXPENSES WHICH ATTORNEYS AND CLIENTS MAY HAVE INCURRED IN PREPARING FOR TRIAL AND DEFENDING THEIR SIDE.—In the elections of 1955, Montero and Guerrero were candidates for Lieutenant Governor of the subprovince of Quezon. Guerrero's proclamation was protested by Montero in the CFI of Quezon for alleged fraud and irregularities. Guerrero filed an answer with counter-protest. Subsequently Guerrero withdrew his counterprotest. Montero also filed a petition for the dismissal of the case. The court ordered the dismissal of the case "with costs to the protestant," Montero. Guerrero filed a "bill of expenses and costs" which included attorney's fees, traveling expenses and subsistence for employing counsel. The court approved the bill over Montero's objections. *Held,* expenses for transportation and subsistence in employing counsel are not taxable as costs or expenses under section 180 of the Revised Election Code. Expenses in election contests should mean actual expenses connected with the trial and not expenses that attorneys and their clients may have incurred in preparing for trial and in defending their side of the case. MONTERO *v.* GUERRERO, G.R. No. L-12579, June 30, 1960.

POLITICAL LAW—NATURALIZATION ACT—THE MONTHLY SALARY OF ₱200.00 OF A MARRIED EMPLOYEE WITH THREE CHILDREN IS NOT A LUCRATIVE EMPLOYMENT.—This is an appeal by the Solicitor-General from a decision of the Sulu Court of First Instance granting the petition to be admitted as a naturalized citizen. It is admitted that Swee Din Tan, with a wife and three children, is a mere employee receiving ₱200.00 a month only. *Held,* petitioner may have an employment, but not a "lucrative" employment. With the low purchasing power of our currency, a married man with three children to support can hardly make both ends meet, if he makes ₱200.00 a month only *Swee Din Tan v. Republic of the Philippines,* G. R. No. L-13177, August 31, 1960.

POLITICAL LAW—TAXATION—THAT WHICH IS DONE AS A MERE INCIDENT TO OR AS A NECESSARY CONSEQUENCE OF THE PRINCIPAL BUSINESS CANNOT ORDINARILY BE TAXED AS AN INDEPENDENT BUSINESS.—Fortune Enterprises Inc. is a corporation engaged in the repair of automobiles. In this connection, it procures the needed spare parts and other materials from different automobile spare parts dealers around the city at the customers' preference. The plaintiff City of Manila now seeks to recover license fees, mayor's permit fees and surcharges for the business of auto supplies, battery charging and upholstery. The lower court denied recovery. *Held,* the appellee cannot be considered as having gone into the business of retailing auto supplies, battery charging and upholstery. It does not appear that the appellee carries or keeps in stock auto spare parts and other supplies for sale, or as part of its regular business. Hence it is not liable for the license fees, mayor's permit fees and surcharges. CITY OF MANILA *v.* FORTUNE ENTERPRISES, INC., G.R. No. L-14096, July 26, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—A LEVY AND SALE WHICH HAS NOT COMPLIED STRICTLY WITH ALL THE REQUISITES OF SEC. 7 (a) OF RULE 59, IS VOID. — The CFI of Zamboanga del Norte rendered a decision ordering the respondent, Filemon Lucasan, to deliver to Siari Valley Estates, Inc. the cattle inside the former's pasture or pay its value. The decision was affirmed by the Supreme Court and a writ of execution was issued. The sheriff then proceeded to levy on certain parcels of land belonging to the defendant, including parcel one, a registered land. The notice of levy erroneously described this property as unregistered land and the same was registered under Act. 3344. Neither did the notice contain any reference to the number of its certificate of title and the volume and page in the registry book where the title was registered. In the notice of sale, the property was merely described according to its boundaries and area appearing in the tax declarations and not according to what appears in the certificate of title. *Held,* the rule provides that real property shall "be levied on in like manner and with like effect as under an order of attachment. (sec. 14, rule 39)." The provisions on attachment referred to (sec. 7 (a), rule 59) should be strictly construed. Since the notice of levy made by the sheriff as regards parcel 1, which is registered land, contained no reference to the number of its certificate of title, and the volume and page in the registry book where the title is recorded, it follows that said notice is legally ineffective. Consequently, the sale is void. SIARI VALLEY ESTATES INC. *v.* LUCASAN, G. R. No. L-1328, Aug. 31, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—ACTIONS TO RECOVER UNDER-PAYMENT OF WAGES OR TO RECOVER WAGES OWING TO AN EMPLOYEE UNDER THE MINIMUM WAGE LAW, NOT BEING ACTIONS TO RESTRAIN VIOLATIONS OF SAID LAW, ARE GOVERNED BY THE JUDICIARY ACT. — On April 25, 1955, 33 crew members of the M. S. "Alex", a vessel of Philippine registry belonging to the estate of the deceased Jovito Co., brought suit in the Court of First Instance of Iloilo against the administratrix of said estate, for the recovery of certain amounts allegedly deducted by the defendant from their salaries for the value of the lodging furnished them on board the aforesaid vessel. The administratrix moved to dismiss the case on the ground that the individual claim of each plaintiff not being more than ₱600.00, the trial court did not have jurisdiction over the case. The plaintiffs claim that this case is not one merely for the recovery of sums of money, but that it involves as well a violation of the Minimum Wage Law and that since section 16 of said law provides that the courts of first instance have the jurisdiction to restrain violations thereof, this case was properly brought before the lower court because only that court could declare illegal and

restrain the deductions made by the defendant from the plaintiffs' salaries. *Held,* the argument is untenable, because the provision of section 16 of the Minimum Wage Law refers exclusively to actions to restrain violations of said law. Upon the other hand, the same section 16, as well as section 15 (c) of the Act, provides that actions to recover underpayment of wages or to recover wages owing to an employee under said Act may be brought "in any competent court," which means either inferior court or the court of first instance which ever court has the jurisdiction under the general law over the amounts claimed (Morabe, Minimum Wage Law, pp. 336-337). It should be noted that no claim is made that the plaintiffs are actually receiving less than the corresponding wage. CAJILIG *v.* FLORA ROBERSON Co., G. R. No. L-12800, August 5, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—AN ACTION FOR SUPPORT FALLS WITHIN THE ORIGINAL JURISDICTION OF COURTS OF FIRST INSTANCE. — The plaintiff brought an action for support in the CFI of Samar which dismissed her complaint on the ground of lack of jurisdiction, the amount demanded being only ₱720. On appeal, the plaintiff contended that regardless of the amount claimed jurisdiction is vested exclusively in Courts of First Instance, because an action for support is not capable of pecuniary estimation. The husband, on the other hand, maintained that the claim being not more than ₱2000 (now ₱5,000.00) the justice of the Peace or municipal court has jurisdiction over the case. *Held,* an action for support does not only involve the determination of the amount to be given as support, but also the relation of the parties, the right to support created by the relation, the needs of the claimant, the financial resources of the person from whom support is sought, all of which are not capable of pecuniary estimation. For this reason, an action for support falls within the original jurisdiction of the Courts of First Instance under sec. 44 (a) of Rep. Act No. 296, as amended by R. A. No. 2613. BAITO *v.* SARMIENTO, G. R. No. L-13105, Aug. 25, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—THE DECISION OF THE LOWER COURT AGAINST A DEFAULTING DEFENDANT SHALL REMAIN UNDISTURBED EVEN IN CASE OF APPEAL BY THE OTHER DEFENDANTS. — The plaintiff filed a complaint against Johnlo Trading Company and Lipsett Pacific Corporation, seeking to recover from the former, the sum of ₱14,304.19 representing unpaid charges for the loading, hauling and stevedoring services allegedly rendered by the plaintiff for said defendant and to annul the assignment made by Johnlo Trading Co. of all its properties to Lipsett Pacific Corporation. The defendant Lipsett Pacific Corporation timely filed an answer denying the allegations in the complaint, but the defendant Johnlo Trading Company, having failed to file an answer, was declared in default. Said defendant's motion for relief from the order of default was denied. The lower court rendered judgment against both the defendant corporations. Both the defendant corporations filed notice to appeal the decision to the Court of Appeals, but the latter disapproved Johnlo Trading Company's appeal. In considering the appeal interposed by the defendant Lipsett Pacific Corporation, the Court of Appeals ruled that the evidence showing the plaintiff to have been underpaid by the defendant Johnlo Trading Company should have been excluded for being hearsay, and consequently modified the appealed decision by holding Johnlo Trading Company liable only for the sum of ₱3,108.74 instead of ₱14,304.19. The plaintiff claimed that the Court of Appeals erred in modifying the judgment of the trial court insofar as said judgment affected and bound a defendant who did not appeal and who was barred from interposing an appeal by reason of its default. *Held,* the rule is well-settled that a defendant who has been declared in default loses not only his right to be heard in court, but also the right to appeal from the judgment on the merits. Thus, since the defaulting defendant cannot appeal from the decision, upon expiration of the period within which an appeal may be instituted, the decision as to him shall become final and executory and, even in case of appeal by the other defendants, shall remain undisturbed. M. B. FLORENTINO & Co., LTD. *v.* JOHNLO TRADING Co., G. R. No. L-8388, June 30, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—A JUDGMENT FOR ALIMONY MAY BE EXECUTED ON MOTION DESPITE THE LAPSE OF FIVE YEARS FROM THE DATE OF ENTRY. — The Manila Court of First Instance rendered a decision on Aug. 12, 1954 ordering the petitioner to pay Julita A. Foz a monthly support of ₱300.00. The decision became final and executory for lack of appeal. Upon petition, the court issued a writ of execution despite the lapse of more than 5 years from the time the decision was rendered, notwithstanding the provisions of sec. 5, rule 39 of the Rules of Court. *Held,* the contention is untenable. Considering that the judgment sought to be executed is one for alimony and not one rendered in an ordinary action, it is clear that a writ of execution may still be issued even if the period of 5 years had elapsed since it was rendered. SAN PEDRO *v.* LOPEZ, G. R. No. L-16655, July 26, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—A PRELIMINARY INVESTIGATION CAN ONLY BE CONDUCTED BY THE JP IN THE MUNICIPALITY WHERE THE CRIME WAS ALLEGEDLY COMMITTED AND NOT IN ANOTHER MUNICIPALITY WHERE HE IS ALSO A CONCURRENT JP. — On June 11, 1955, four informations were filed in the CFI of Lanao—two for the crime of murder in connection with the death of Engracio Angcos and Apolinario Pepito, one for the frustrated murder of Sulpicio Mahipos and another for the frustrated murder of Diego Palomares. The CFI directed the JP of Dansalan City to conduct the preliminary investigation. The latter after a hearing ordered the case dismissed. On Oct. 13, six informations were filed in the JP of Tubod by the special prosecutor of the Dept. of Justice based on the same charges and two additional informations, one for the frustrated murder of Constancio Marcos and another for the frustrated murder of Lorenzo Padilla. The preliminary investigations were conducted in the Municipality of Baroy where the JP of Tubod was also then a concurrent JP. Finding that the crimes

had been committed, the JP of Tubod issued a warrant for the arrest of the petitioners. The accused filed a petition for *habeas corpus*, alleging that since the crimes were supposedly committed in the municipality of Tubod, the preliminary investigation could not be conducted in the municipality of Baroy. *Held*, the court *a quo* nonetheless validly granted the petition for *habeas corpus* on the ground that the JP of Tubod erred in conducting, over the objections of the accused, the preliminary investigation in the adjacent municipality of Baroy, where he was then also concurrent justice of the peace. The fact that the same officer discharged the duties of the JP of both municipalities did not merge the two offices into one single court with expanded territorial jurisdiction. There was no executive order or circular merging the jurisdiction of the JP of Tubod and Baroy. Venue in criminal cases, being jurisdictional, and considering that the preliminary investigation which is the basis of the petitioner's detention was invalidly conducted, the remedy by the writ of *habeas corpus* was not improper. RAGPALA *v.* JUSTICE OF THE PEACE, R. R. No. L-15375, Aug. 31, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—THE MERE FACT THAT THE DISCHARGED DEFENDANT HAD PLEADED GUILTY DOES NOT VIOLATE THE RULE THAT THE LATTER MUST NOT "APPEAR TO BE THE *MOST* GUILTY." — It appears from the evidence submittted at the trial that the herein appellant Mallare, in conspiracy with the other accused, entered the house of Victoriano Natividad, with the intention to rob, and in the course thereof, seriously wounded the latter and Braulio Ventura, even as they shot and killed Alejo Natividad, the seventeen-year old son of Victoriano. One of the defendants, Ismael Lastimosa, was discharged, and he testified for the prosecution. It is argued that it was an error to discharge Ismael Lastimosa and to allow him to testify inasmuch as he had pleaded guilty to the crime. *Held*, the mere fact that Lastimosa pleaded guilty does not violate the rule that the discharged defendant must not "appear to be the *most* guilty" as provided in sec. 9 (d) of rule 115 of the Rules of Court. PEOPLE *v.* DE LEON, G. R. No. L-13384, June 30, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—TESTIMONIAL PROOF TO SHOW MOTIVE IS NECESSARY EVIDENCE WITHIN THE MEANING OF RULE 115, SEC. 9. — It appears from the evidence submitted at the trial that the herein appellant Mallare, in conspiracy with other accused, entered the house of Victoriano Natividad, with the intention to rob, and in the course thereof, seriously wounded the latter and Braulio Ventura, even as they shot and killed Alejo Natividad, the seventeen-year old son of Victoriano. The evidence consisted principally of the testimony of Ismael Lastimosa, a defendant who was discharged to testify for the prosecution, those of the Natividad spouses and of Braulio Ventura. Certain guns found in Mallare's possession and shown to be the ones from which some of the shells found in the scene of the crime were fired were also offered in evidence. It is argued on appeal that the discharge of Ismael Lastimosa and the allowance of his testimony was erroneous on the ground that this testimony was not necessary, there being other direct evidence to support the prosecution's case, alluding to rule 115, sec. (b) of the Rules of Court. *Held*, the testimony was necessary because Lastimosa was *the only one* who could declare as to the vicious motives of the defendants in proceeding to the abode of Victoriano Natividad. At any rate, we have time and again held that even if the witness should lack some of the qualifications enumerated in sec. 9 of rule 115, his testimony will not, for that reason alone, be discarded or disregarded. PEOPLE *v.* DE LEON, G. R. No. L-13384, June 30, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—AN ACTION FOR THE ANNULMENT OF A SECOND MARRIAGE IS A PREJUDICIAL QUESTION TO A CHARGE OF BIGAMY. — The petitioner Merced, previously married to Eufrocina Tan, filed a complaint for the annulment of his second marriage with Elizabeth Caesar. The complaint alleged that Elizabeth and her relatives forced, threatened, and intimidated the petitioner into entering the marriage. Elizabeth in turn filed a criminal complaint for bigamy against Merced. The petitioners presented a motion to suspend the criminal proceedings until the final termination of the civil case for annulment. The court denied the motion. Hence, this petition for certiorari with prohibition to restrain the respondent judge from proceeding further in the criminal case for bigamy until after the final termination of the civil case for annulment of the petitioner's second marriage. *Held*, in order that a person may be found guilty of bigamy, the second subsequent marriage must appear to contain all the essential requisites of a valid marriage, were it not for the existence of the first. Since the validity of the second marriage cannot be determined in the criminal case, a decision in the civil case to the effect that the second marriage appears to contain all the elements of a valid marriage must first be secured. Consequently, the action for annulment of marriage is a prejudicial question which must precede the criminal action for bigamy. MERCED *v.* DIEZ, G. R. No. L-153155, Aug. 26, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—THE FAILURE OF THE ACCUSED TO FILE A BRIEF AND RAISE THE QUESTION OF DOUBLE JEOPARDY IN AN APPEAL DOES NOT MEAN THAT SECTION 2, RULE 118 PROVIDING THAT THE PEOPLE CANNOT APPEAL IF THE DEFENDANT WOULD BE PLACED IN DOUBLE JEOPARDY, WOULD NO LONGER APPLY. — The provincial fiscal filed an information against the accused charging her with the crime of homicide through reckless imprudence. The accused pleaded not guilty to the information. When the case was called for trial, the assistant fiscal made a manifestation that the accused had also been charged with the crime of illegal practice of medicine before another sala of the same court. In view of this manifestation, the trial court *motu propio* dismissed the information for being fatally defective, without prejudice to the filing of the proper information against the same accused. The provincial fiscal appealed to this court, urging that the dismissal was erroneous. The question now is whether the appeal

can be sustained without the bar of double jeopardy, considering the defendant's failure to interpose the defense. *Held,* although we agree that the dismissal was erroneous, however, we cannot sustain this appeal for the reason that would place the accused in double jeopardy. The present information being valid and sufficient in form and substance to sustain a conviction, the dismissal thereof by the court after the accused had pleaded not guilty to the charge and without his consent, constitutes jeopardy as to bar further proceedings upon the case. The failure of the accused to file a brief and raise the question of double jeopardy in his appeal does not mean that section 2, rule 118, of the Rules of Court providing that the people cannot appeal if the defendant would be placed in double jeopardy, would no longer apply. PEOPLE *v.* VDA. DE GOMEZ, G. R. No. L-14160, June 30, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—SECTION 9 OF RULE 115 HAS NO BEARING ON THE ADMISSIBILITY OR COMPETENCY OF TESTIMONY—The defendants including Joseph Ebrada were charged with the crime of frustrated robbery in band with homicide. On motion of the provincial fiscal, the court ordered Ebrada discharged from the information so that he could be utilized as a state witness. The defendant claimed that Ebrada's discharge violates the provisions of section 9, rule 115, Rules of Court, more particularly paragraph 5 thereof, because he has been twice convicted of robbery. *Held,* whether or not he was improperly discharged is of no moment in determining his credibility. The provisions of section 9, Rule 115, are aimed at preventing the unnecessary or arbitrary exclusion from the information of persons guilty of the crime charged, but have no bearing on the admissibility of their testimony nor on their competency as witnesses. The rule merely lays down the requisites which should control the court in the exercise of its discretion in discharging accused persons in order that they may be used as witnesses against their co-accused. PEOPLE *v.* DAGUNDONG, G. R. No. L-10398, June 30, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—RETRACTIONS OF WITNESSES CANNOT BE MADE THE BASIS FOR A NEW TRIAL, UNLESS THE CONVICTION OF THE ACCUSED RESTS SOLELY ON THE TESTIMONIES OF THE RETRACTING WITNESSES.—The defendants including Joseph Ebrada were charged with the crime of frustrated robbery in band with homicide. On motion of the provincial fiscal, the court ordered Ebrada discharged from the information so that he could be utilized as a state witness. After judgment of conviction was promulgated, a motion for new trial was presented based on the alleged retraction of Joseph Ebrada. *Held,* retractions of witnesses cannot be made the basis of a new trial, unless conviction of the accused rests solely on the testimony of the retracting witnesses. Consequently, the motion cannot be granted because the appellants' conviction is supported by other evidence on record. PEOPLE *v.* DAGUNDONG, G. R. No. L-10398, June 30, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—TO SUSTAIN A CONVICTION UNDER ART. 321, PAR. 1, THE INFORMATION MUST ALLEGE THAT THE ACCUSED KNEW THE HOUSE TO BE INHABITED. —In the house of Zosimo Taghoy, a violent quarrel arose between Valentin Ilo and Restituto Bona. The latter subsequently filed a criminal charge against Ilo. In this connection, Taghoy was warned by the defendant Ilo not to testify in favor of Bona but the former failed to heed the advice. On Dec. 4, 1950, a group of 8 men headed by Ilo burned Taghoy's house. The CFI found them guilty of arson under Art. 321, par. 5 of the Revised Penal Code because the information did not allege that the house burned was inhabited or that the accused knew it to be inhabited. But the Court of Appeals found the accused guilty under Art. 321, par. 1 because from the evidence presented, it could be deduced that they knew the house to be inhabited at the time it was burned. *Held,* the information must contain allegations to the effect that the accused had knowledge that the house was inhabited at the time of the commission of the crime in order to sustain a conviction under art. 321, par. 1. A substantive defect in the information cannot be cured by evidence, for that would jeopardize the right of the accused to be informed of the true nature of the offense charged. ILO *v.* COURT OF APPEALS, G.R. No. L-11241, July 26, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—AN ACCUSED IS NOT ENTITLED AS A MATTER OF RIGHT TO CROSS-EXAMINE THE WITNESSES PRESENTED AGAINST HIM IN THE PRELIMINARY INVESTIGATION PRIOR TO HIS ARREST. — Corazon A. Flordeliza filed a complaint for serious oral defamation against the petitioner in the JP court of Oas, Albay. The respondent Justice of the Peace conducted the first stage of the preliminary investigation, issued the warrant of arrest and admitted the petitioner to bail. Thereafter, the case was set for the second stage of the preliminary investigation, during which the petitioner's counsel asked for permission to cross-examine the prosecution's witnesses who had testified prior to the petitioner's arrest. The respondent judge denied this on the ground that the preliminary investigation was then already on its second stage. Thereafter, the petitioner started presenting evidence by testifying for himself. After her testimony, the respondent justice of the peace allowed the prosecution to cross-examine her and her witnesses despite the petitioner's objections. The accused then filed a petition for certiorari alleging that the respondent JP acted without or in excess of its jurisdiction in allowing the prosecution to cross-examine her and her witnesses. *Held,* an accused is not entitled to cross-examine the witnesses presented against him in the preliminary investigation before his arrest, this being a matter that depends on the sound discretion of the judge or investigating officer concerned. Petitioner-appellant's attempt to draw a parallel between the refusal of the judge to allow her to cross-examine the prosecution witnesses, with the permission granted to the latter as against the defense witnesses, assumes the existence of a vested right of which petitioner-appellant has been deprived. In being denied confrontation of the prosecution witnesses, she

was not deprived of any right but was merely refused the exercise of a privilege. Perforce, there is no merit to her contention that the order of respondent judge denied her the equal protection of the laws granted by the constitution. ABRERA v. MUÑOZ, G. R. No. L-14743, July 26, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—AN ACCUSED CAN BE CONVICTED OF AN OFFENSE ONLY WHEN IT IS BOTH CHARGED AND PROVED. — In the information charging the petitioner with the crime of estafa, the first paragraph thereof specifically referred to paragraph 3 (b) of art. 315 of the Revised Penal Code as the provision under which the accused was being prosecuted. Subsequent portions of the information however implied that the felonies charged were those defined and penalized under paragraphs 2 (a) and 1(b) of art. 315. In view of this ambiguity, the accused filed a motion to quash. At the hearing of the motion, the fiscal stated that there was a clerical error and assured both the court and the accused that the latter was being charged with par. 1 (b) of art. 315. The trial court admitted the correction and the trial proceeded. The lower court found the accused guilty under par. 1 (b) and sentenced him accordingly. On appeal to the Court of Appeals, the court modified the trial court's decision and declared the accused guilty of estafa under pars. 3 (b) and 2(a). Appeal by certiorari. *Held*, an accused person, on appeal, cannot be convicted of an entirely different offense whose essential elements are distinct from those of the offense charged in the information. To convict him of the very offense which was deleted from the information upon motion of the fiscal would result not only in violating the appellant's constitutional right to be informed of the nature and cause of the accusation, but also in misleading him. ESGUERRA v. PEOPLE, G.R. No. L-14313, July 26, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—A JP OF ONE MUNICIPALITY MAY CONDUCT A SECOND PRELIMINARY INVESTIGATION OF THE SAME CHARGES THAT WERE THE SUBJECT MATTER OF A PRIOR PRELIMINARY INVESTIGATION BY THE JP OF ANOTHER MUNICIPALITY. — On June 11, 1955, four informations were filed in the CFI of Lanao—two for the crime of murder in connection with the death of Engracio Angcos and Apolinario Pepito, one for the frustrated murder of Sulpicio Mahipos, and another for the frustrated murder of Diego Palomares. The CFI directed the JP of Dansalan City to conduct the preliminary investigation, who, after a hearing, ordered the case dismissed. On Oct. 13, six informations were filed in the JP of Tubod by the special prosecutor of the Dept. of Justice based on the same charges and two additional informations, one for the frustrated murder of Constancio Marcos and another for the frustrated murder of Lorenzo Padilla. The accused objected, alleging that the JP of Tubod lacked jurisdiction to take cognizance of and conduct preliminary investigations on charges which had already been investigated and dismissed by the JP of Dansalan City. *Held*, appellants are correct in pointing out that under sec. 2 of Rule 108 of the Rules of Court, the JP of Tubod is not precluded from proceeding with the preliminary investigation. Nowhere in said

section does it appear that once a court takes cognizance of a case for purposes of preliminary investigation, it necessarily acquires thereby the exclusive authority to conduct all subsequent investigations. A subsequent preliminary investigation is not a continuation of the preceding one, but is and must proceed as an entirely separate and distinct proceeding by itself. RAGPALA v. JUSTICE OF THE PEACE, G.R. No. L-15375, Aug. 31, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—A JUDGMENT ACQUITTING A PERSON ON THE GROUND THAT THE CHARGE ALLEGED IN THE INFORMATION IS INSUFFICIENT TO CONSTITUTE AN OFFENSE IS NOT A BAR TO A SUBSEQUENT PROSECUTION FOR THE SAME OFFENSE. — Caridad Capistrano was convicted by the CFI of Rizal for the violation of circular No. 37 as implemented by circular No. 60 sec. 1 (b) of the Central Bank in relation with sec. 34 of R.A. 265. On appeal to the Supreme Court, she was acquitted on the ground that the charge alleged in the information was insufficient to constitute an offense because it was not alleged that she had taken or was about to take out of the Philippines, Philippine coins and notes without the necessary license issued by the Central Bank. After the decision became final and executory, the Provincial Fiscal of Rizal filed another information for the same offense but this time with an averment of the element previously omitted. On appeal after conviction on the second information the accused pleaded double jeopardy. *Held*, in order that a judgment may be a bar to a subsequent prosecution, it is necessary that said judgment (a) be rendered by a court of competent jurisdiction; (b) upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction; (c) after arraignment; and (d) that the second prosecution be for the offense charged or for any attempt to commit the same in the offense charged in the former complaint or information. It cannot be said that the offense charged in the case at bar is the same as the one charged in the former information or an attempt to commit the same or a frustration thereof, or includes or is included in the offense charged in the said information, *no offense whatsoever*, from a legal viewpoint, having been charged therein. PEOPLE v. CAPISTRANO, G.R. No. L-14363, Aug. 31, 1960.

REMEDIAL LAW—EVIDENCE—A STATEMENT MADE BY A CONSPIRATOR RELATING TO THE CONSPIRACY AND DURING ITS EXISTENCE, MAY BE GIVEN IN EVIDENCE AGAINST THE CO-CONSPIRATORS AFTER THE CONSPIRACY IS SHOWN BY EVIDENCE OTHER THAN SUCH STATEMENT. — Adriano Dagundong, Melchor Lao, Federico Bulaon, Ricardo Serrano and Joseph Ebrada were charged with the crime of frustrated robbery in band with homicide. Before the filing of the information, Lao made a verified statement to Lt. Ver and in the presence of the provincial fiscal wherein he admitted his participation in the robbery. On motion of the provincial fiscal, the court ordered Ebrada discharged from the information in order that he could be utilized as a state witness. Ebrada testified that two days prior to the commission of the crime,

he, Lao, Dagundong and Serrano agreed on committing the robbery and that on the very day thereof, the four of them, joined this time by Bulaon, carried into execution their criminal plot. The trial court found the accused guilty. It is contended that Lao's extrajudicial confession is admissible only against himself but not against the appellants herein. *Held*, the rule is that a statement made by a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirators after the conspiracy is shown by evidence other than such statement (section 12, rule 123). The conspiracy having been proved by the testimony of Ebrada, the extrajudicial confession of Lao is admissible in evidence as against the appellants. PEOPLE *v.* DAGUNDONG, G.R. No. L-10398, June 30, 1960.

REMEDIAL LAW—EVIDENCE—EXTRAJUDICIAL STATEMENTS OF AN ACCUSED IMPLICATING A CO-ACCUSED ARE INADMISSIBLE AGAINST THE LATTER UNLESS REPEATED IN OPEN COURT. — Francisco Fraga, Esteban Mullot and Julian Martinez were convicted of robbery with homicide. Among the circumstances that the lower court considered in convicting the accused was a conversation that took place under the house of one Renato Gonzales while Fraga and others were working on a fish corral. Gonzales reported that while thus working, he heard the accused Fraga say to the other accused Esteban Mullot: "You, compadre Teban, you struck Delfin de Jesus who died on the road"; to which Esteban Mullot replied: "Do not impute to me what you have done". Francisco Fraga answered back: "No, compadre, it was Julian Martinez who struck him, and ₱7.00 was found in his pocket." This conversation was carried on in a light vein, according to another witness, both Fraga and Mullot apparently being tipsy at that time. This evidence was objected to by the defense. *Held*, there is nothing much, if anything, in said conversation which may be held against any of the accused, who denied its truth. As against Julian Martinez, said statements may be disregarded, they being extrajudicial declarations of a co-accused not made in his presence. Extrajudicial statements of a co-accused implicating a co-accused may not be utilized against the latter unless repeated in open court. While the statements of Fraga may be used against himself, such statements, however, do not amount to a confession, they being mere assertions pointing to another as the author of the crime, and at best may be considered only as a fact to be weighed in connection with the other circumstances on record. PEOPLE *v.* FRAGA, G.R. No. L-12005, Aug. 31, 1960.

REMEDIAL LAW—SPECIAL PROCEEDINGS—A COURT OR JUDGE TO WHOM A WRIT OF HABEAS CORPUS IS MADE RETURNABLE TAKES THE CASE FOR DETERMINATION ON THE MERITS, AND ITS FINDINGS, IF NOT APPEALED ON TIME, BECOME FINAL. — In G.R. No. L-14819, a petition for habeas corpus was filed before this court by the petitioner. This court issued a writ ordering respondent Pelagio Cruz, as the Commanding General of the Philippine Constabulary, to submit within five days from notice, an answer returnable to the Court of First

Instance of Manila. The case was submitted to the lower court for decision solely on the facts appearing in petitioner's pleadings and admitted by respondent. Thereafter, the court rendered a decision denying the petition for habeas corpus. This decision was appealed but the notice of appeal was filed out of time. However, the petitioner argued that since the case for habeas corpus was heard by the lower court not by virtue of its original jurisdiction but merely by delegation, this court should have a final say regarding the issues raised and only its decision, not that of the lower court should be regarded as operative. *Held*, while the petition was originally filed with this court, the only question that was immediately involved was the propriety of the issuance of a writ that would order the respondent to show cause why the detention of the person in whose favor the writ was asked for should not be considered illegal, and that, therefore, the petitioner be ordered discharged from custody. The Rules authorize that once the writ is issued, the same may be made returnable before a court of first instance (Sec. 2, Rule 102, Rules of Court), and not necessarily to this Court. The court designated does not thereby become merely a recommendatory body, whose findings and conclusions are devoid of effect unless this Court decides to act on the "recommendation." By filing a notice of appeal with the court below, the appellant impliedly admitted that the decision appealed was not merely recommendatory or fact-finding. The Court or the judge to whom the writ is made returnable takes the case for determination on the merits and its findings. either for the release of the detainee or for sustaining his continued custody, if not appealed on time, can become final just as it may in an ordinary case. Appeal dismissed. SAULO *v.* CRUZ, G.R. L-15474, Aug. 31, 1960.

REMEDIAL LAW—SPECIAL CIVIL ACTIONS—COURTS OF FIRST INSTANCE MAY TAKE COGNIZANCE OF COUNTERCLAIMS FOR UNLAWFUL DETAINER TO AVOID MULTIPLICITY OF SUITS. — The plaintiffs were lessees of various lots in the city of Manila belonging to the defendants which formed part of what was formerly known as Hacienda Sta. Mesa y Diliman. The lease contracts were for a definite period and expired on Dec. 31, 1953. As early as January of 1953, the defendants informed the plaintiffs of the expiration date and offered them a renewal with an increased yearly rental of 12% of the annual assessment value of the leased property. The plaintiffs ignored the proposed terms, and upon the expiration of the contract, not only refused to pay the new rental but continued to occupy the premises. Fearing that the defendants would eject them, they filed an action with the CFI of Manila "to fix a reasonable rental and a reasonable duration for the lease of the lots." In their answer, the defendants alleged that the plaintiffs were possessors in bad faith, the contract of lease having expired, and accordingly prayed for damages and for possession of the land. *Held*, while it is true that the counterclaim for unlawful detainer was filed only more that two months from the termination of lease and therefore within the exclusive jurisdiction of the municipal courts, still it must be observed that the case was disposed of by the courts three years after the termination of the lease. Apparently, the relief prayed for in the counterclaim was grant-

ed by the courts to avoid multiplicity of suits and to administer practical and speedy justice, it appearing that there was a clear case for the defendants. BULAHAN v. TUASON, G.R. No. L-12020, Aug. 31, 1960.

REMEDIAL LAW—SPECIAL CIVIL ACTIONS—A MOTION FOR RECONSIDERATION IS NOT A CONDITION PRECEDENT FOR THE FILING OF A PETITION FOR CERTIORARI WHERE THE ISSUES BEFORE THE SUPREME COURT HAVE BEEN SQUARELY RAISED IN THE LOWER COURT. — The respondent Ago filed with the CFI of Agusan, a petition for certiorari, prohibition, and damages, with preliminary injunction alleging that the Director of Forestry, The Secretary of Agriculture and Natural Resources, and the Executive Secretary abused their discretion in rejecting his application for renewal of his timber licenses. The lower court decided in favor of Ago. From this order, the petitioners filed directly with the Supreme Court a petition for certiorari and prohibition. The respondent contended that the petitioners should have filed a motion for reconsideration of the order in question before coming to the Supreme Court. *Held*, it is only when the questions are raised for the first time before the Supreme Court in a certiorari proceeding, that the writ shall not issue unless the lower court had first been given opportunity to pass upon the same. In short, when the questions raised before this court are the same as those which have been squarely raised in and passed upon by the lower court, the filing of a motion for reconsideration in said court is no longer a prerequisite. The issues raised in this proceeding were all before the respondent judge, and consequently a motion for reconsideration is not required. PAJO v. AGO, G.R. No. L-15414, June 30, 1960.

BOOK NOTE

CRIMINAL PROCEDURE ANNOTATED. By Ruperto Kapunan, Jr. Manila: Rex Book Store, 1960. Pp. XLIV, 457.

This is a revised edition of an old book first published way back in 1954. Substantially, this third edition is written in the same style of presentation as the first and second editions. The author, however, has incorporated into this present volume new amendments to the law as well as new doctrines and principles enunciated by the Supreme Court.

This book merits particular attention not only because it is written by an authority on the subject but specially because it is replete with illustrations from decided cases. Unlike most authors, however, Judge Kapunan is not content with the mere citation of decisions of the Supreme Court. Rather, cases are presented in a manner enabling the reader to trace the development of certain doctrines held by our highest tribunal. In the matter of bail, for example, the author points out that pre-war cases uniformly held that a person convicted of a capital offense was not entitled to bail. However, post-war cases, while adhering to this general principle, have enunciated an exception, i.e., where the life or health of the convict is endangered by confinement pending his appeal, the court may in its discretion, grant the accused his provisional liberty on bail. The author, however, indicates that the Supreme Court seems to have reverted to the old doctrine, as was shown in the cases of Jose Nava, Governor Lacson of Negros Occidental and Oscar Castelo.

Likewise, decisions of the Court which seem to contradict each other are analyzed and studied in search for a possible reconciliation. Instances of such an attempt are plentiful in this work. But most important of all, however, the reader can find within the confines of this volume the latest decisions which have enriched our jurisprudence on the matter. Until recently, for example, it has been uniformly held that when a motion to quash has been sustained with the consent or upon motion of the defendant, a second prosecution will not place him in jeopardy for the second time. But this doctrine has been modified by the case of **People v. Hinaut** which held that if the dismissal is in pursuance of the right of the