CASE DIGEST

SUPREME COURT

CIVIL LAW — NATURALIZATION — A NATURALIZATION PROCEEDING IS NOT THE RIGHT ACTION TO CORRECT ERROR IN THE OFFICIAL RECORD OF BIRTHS. — The Solicitor General appealed from the judgment of the CFI of Manila, admitting petitioner to Philippine citizenship. The same argued that petitioner had not sufficiently proved that he was born in the Philippines and so was not exempt from filing a declaration of intention, since his alleged birth certificate stood in the name of one Ching Sui Keng, which was not petitioner's name. Petitioner, on the other hand, contended that he was really born at 719 Sto. Cristo, Manila, on Aug. 24, 1927; that the discrepancy in the name in said birth certificate was due only to a mistake on the part of the midwife who, in reporting petitioner's birth, gave the name of a girl, Ching Sui Keng, instead of petitioner's name Cheng Quioc Too, which is a name of a boy; that the date and place of birth appearing on the birth certificate were those of petitioner's; and that the names of the parents entered thereon were those of petitioner's parents, and petitioner was their only child. It was also claimed that petitioner discovered the mistake in the entry of his name in his birth certificate only in 1952, when he filed in the CFI of Manila a petition for the correction of said entry, but the decision directing the Local Civil Registrar to make the necessary correction on petitioner's birth certificate from the reported name of Ching Sui Keng to Cheng Quioc Too was pending in the Court of Appeals upon appeal by the Solicitor General. *Held*, the main obstacle to the grant now of the petition is that to admit petitioner to citizenship as a *Philippine born alien* would be completely at variance with official record of births. If it be true that there was error in said records, the petitioner should first take the proper steps to have that error corrected: a naturalization proceeding is not the right action to attain that result, since rectification of official records is an issue foreign to the purpose for which naturalization was established. If, as alleged, petitioner has already asked the Courts to order a correction of the entry in his record of birth, the final action on that petition should be awaited. CHENG QUIOC TOO *v.* REPUBLIC, G. R. No. L-9341, Dec. 14, 1956.

CIVIL LAW — NATURALIZATION — PETITIONER'S FAILURE TO REVEAL THE NAME OF HIS CHILD WHO DIED A FEW HOURS AFTER BIRTH IS A MISTAKE DONE IN GOOD FAITH. — In 1946 Go Chiao married Asilda Cesar, a citizen of the Philippines who bore him the following children: Manuel, Baby Go, Emilia, Felix and Betty. The child Baby Go was not mentioned both in the petition for naturalization and in the course of petitioner's testimony during the trial in the lower court. The Government maintains that this failure to reveal the birth of Baby Go is tainted with fraud, indicating that petitioner does not have a good moral character, which is one of the qualifications for naturaliza-

tion. It appeared, however, that Go Chiao's silence with respect to Baby Go was made in good faith, for this child died a few hours after birth, and he (Go Chiao) thought that he was required to mention only his living children. *Held*, the explanation of Go Chiao is logical and in accord with the ordinary course of events. He had no possible reason to wish to hide the birth of Baby Go. The revelation thereof could not have weakened the application of Go Chiao, as his position in connection therewith was not improved by his silence in relation thereto. IN RE PETITION OF GO CHIAO *v.* REPUBLIC, G. R. No. L-9001, March 29, 1957.

CIVIL LAW — NATURALIZATION — ONE WHO CAN SPEAK ENGLISH FAIRLY WELL MAY ALSO BE EXPECTED TO BE ABLE TO WRITE THE DIALECT THAT HE SPEAKS. — Applicant for naturalization, Carmen Go de Sero was born in 1899 in Dagupan, Pangasinan, of a Chinese father and a mestiza mother. After the death of her parents she came to live with her aunties in Manila where she resided for about twenty years, attending the public schools, reaching the third grade. She was married in 1924 to Yu Engkiat Sero, a chinese now dead, by whom she had two daughters, one a pharmacist, and the other, a third year college student. Upon the death of her husband, she was appointed as administratrix of the property consisting of commercial and residential lots from which she now derives a monthly income of ₱415. As found by the trial court, she can speak and write the English language fairly well. She can speak the Moro dialect, Chavacano, and Tagalog but when asked as to her ability to write any of those dialects, applicant ingeniously answered in the negative. *Held*, one who, like the applicant in this case, can speak and write English fairly well, may also be expected to be able to write the dialect that he speaks for the reason that the Philippine dialect uses the same English alphabet, and is much easier to write than English because it is phonetic. GO DE SERO *v.* REPUBLIC, G. R. No. L-5835, Feb. 8, 1957.

CIVIL LAW — PERSONS — AN ADULTEROUS CHILD MAY NOT BE ACKNOWLEGED LEGALLY. — Bibiana Olivete died intestate on March 30, 1911. She was survived by Rodrigo Olivete Mata, her only child and issue, begotten with Candido Mata in August, 1910. Candido Mata was married since the year 1898 to Basilisa Nanaliksa, who died in 1927. Candido Mata himself died in 1932. The other relatives of the intestate who survived her are her nephews Mariano Olivete and Antonio Olivete. Rodrigo Olivete Mata claimed to be a recognized natural child of the intestate, as a stipulation was entered into by and between the parties that he was the only child and issue of Bibiana Olivete. He introduced in evidence an instrument executed and sworn to before a notary public by Bibiana Olivete, in which she declared that she recognized Rodrigo Olivete to be her child begotten by her and the child's father, both being without any impediment to marry, but this instrument was denied admission at the trial as incompetent and immaterial. *Held*, as Candido Mata, the father of Rodrigo Olivete, was a married man at the time Rodrigo was conceived, the latter is an adulterous child, an illegitimate child who may not be acknowledged legally by her mother. In order that an illegitimate child may be legally acknowledged, his parents must be free to marry at the time of his conception. INTESTATE ESTATE OF BIBIANA OLIVETE *v.* MATA, G.R. No. L-8606, Dec. 27, 1956.

CIVIL LAW — HUSBAND AND WIFE — CONDONATION BY OFFENDED HUSBAND DEPRIVES HIM OF THE ACTION FOR LEGAL SEPARATION. — Benjamin Bugayong, a serviceman in the United States Navy, was married to defendant while on a furlough leave. Later, he left for the States after having agreed with his wife that the latter would stay with his sisters. After sometime, defendant left her sisters-in-law and went to stay with her mother. This she informed her husband by letter. Later plaintiff started receiving letters from one of his sisters and other anonymous letters informing him of alleged infidelities of his wife. He came to the Philippines and stayed with his wife, for 2 nights and 1 day in the house of plaintiff's cousin. In plaintiff's house, plaintiff and defendant again passed a night as husband and wife. It was then when plaintiff tried to find out the truth about the news he had received regarding his wife's infidelity. Plaintiff testified in court that when he did this, defendant said nothing but packed up her things and left him. He then tried to locate her but failed. *Held*, in this appeal, we have to consider plaintiff's line of conduct *under the assumption that he really believed his wife guilty of adultery*. Now, does the husband's attitude of sleeping with his wife for 2 nights despite his alleged belief that she was unfaithful to him, amount to a condonation of her previous and supposedly adulterous acts? We agree with the trial judge that the conduct of the plaintiff-husband above narrated despite his belief that his wife was unfaithful, deprives him, as alleged by offended spouse, of any action for legal separation against the offending wife, because his said conduct comes within the restriction of Art. 100 of the Civil Code. BUGAYONG *v.* GINEZ, G.R. No. L-10033, Dec. 28, 1956.

CIVIL LAW — SUCCESSION — RELATIVES AND EMPLOYEES ARE NOT BARRED FROM BECOMING WITNESSES IN A WILL. — Mariano Molo died in 1941 and by his will bequeathed all his estate to his wife. Juana, his widow died in 1950 leaving no forced heir. She left considerable property and to dispose of the same she was supposed to have executed on May 2, 1948 a document purporting to be her last will and testament, wherein she bequeathed the bulk of her properties to her two foster children Emiliana and Pilar. These two presented the will for probate which was opposed by Juana's collateral relatives on several grounds, among them that the same was not executed and attested in accordance with law as two of the attesting witnesses were employed as pharmacist and sales girl respectively in the drugstore of one of the beneficiaries. *Held*, the relation of employer and employee, or being a relative of the beneficiary in a will does not disqualify one to be a witness to the will. The main qualification of a witness in the attestation of wills, if other qualifications as to age, mental capacity and literacy are present, is that said witness must be credible, that is to say, his testimony may be entitled to credence. IN THE MATTER OF THE TESTATE ESTATE OF JUANA VDA. DE MOLO *v.* TANCHUCO, G.R. No. L-8774 Nov. 26, 1956.

CIVIL LAW — CONTRACTS — A CONTRACT ENTERED INTO BY A PARTY IS BINDING UPON HIS HEIRS ON HIS DEATH. — K. H. Hemady was a surety (solidary guarantor) in twenty different indemnity agreements or counterbonds each subscribed by a distinct principal and by said K. H. Hemady. These counterbonds were undertaken in favor of the Luzon Surety Co. Hemady died and the Luzon Surety Co. filed a claim against his estate based on the twenty

counterbonds. It prayed for allowance as a contingent claim and asked for judgment for the unpaid premiums and documentary stamps affixed to the bonds it has executed in consideration of the twenty counterbonds, with 12 per cent interest thereon. The administratrix of the estate of deceased Hemady contended that upon Hemady's death his liability as a guarantor terminated and, therefore, in the absence of a showing that a loss or damage was suffered, the claim cannot be considered; that whatever losses may occur after Hemady's death are not chargeable to his estate, because upon Hemady's death he ceased to be guarantor. *Held*, a party's contractual rights and obligations are transmissible to his successors. The contracts of suretyship entered into by K. H. Hemady in favor of Luzon Surety Co., not being rendered intransmissible due to the nature of the undertaking, nor by stipulations of the contracts themselves, nor by provision of law, his eventual liability thereunder necessarily passed upon his death to his heirs. The contracts, therefore, can give rise to contingent claims provable against his estate under Section 5, Rule 87. ESTATE OF K. H. HEMADY *v.* LUZON SURETY CO., INC., G.R. No. L-8437, Nov. 28, 1956.

CIVIL LAW — PROPERTY — A POSSESSOR IN BAD FAITH IS NOT ENTITLED TO THE POSSESSION OF THE LAND AND REIMBURSEMENT FOR THE IMPROVEMENT INTRODUCED BY HIM THEREON. — Llanos during the occupation entered a portion of the homestead owned by Simborio and when the latter tried to drive him away, Llanos refused to vacate same, alleging that he was there only as an evacuee, but later on, he claimed some little or interest on the land in question. The lower court then ordered Llanos to vacate the property which was affirmed by the Court of Appeals. Llanos filed a motion for reconsideration for reception of further evidence to show his prior possession and existing improvements and for reimbursement of the latter. The Court of Appeals denied the same except that of reimbursement. *Held*, a possessor in bad faith is not entitled to the possession of the land and the reimbursement for the improvements introduced by him thereon. Where, however as in the case at bar, the owner of the land failed to appeal from the decision of the Court finding both owner and possessor to have acted in bad faith and consequently their rights must be determined as if both acted in good faith in accordance with article 364 of the Civil Code, and the decision has become final, the possessor in bad faith may be regarded as a possessor in good faith as to the improvements and so, may hold the land until he receives reimbursement for their value from the owner of the land. LLANOS *v.* SIMBORIO AND CENIGA, G.R. No. L-9704, Jan. 18, 1957.

CIVIL LAW — PROPERTY — ALLUVIAL LANDS BELONG TO THE RIPARIAN OWNER, SUBJECT TO LEGAL EASEMENTS AS PROVIDED FOR BY LAW. — Petitioner Nazareno and respondent Juan del Rosario were adjacent owners of two parcels of land. They had on the west as their common boundary the Cagayan River which, by work of nature, receded westward. The action of the Cagayan River left alluvial lands increasing the land of respondent. Petitioner applied for registration of his land. The plan he submitted, however, included the portions of land left by the Cagayan River. The Director of Lands objected to the application on the ground that certain parcels of land included in petitioner's application were part of the public domain. Respondent del Rosario

entered his objection with respect to the same parcels of land, claiming they were his. The court granted petitioner's application with respect to the first parcel of land applied for but denied his application for registration of the other parcels of land. The court dismissed the objection of the Director of Lands and sustained the objection of respondent del Rosario. On appeal, the Court of Appeals affirmed the decision of the trial court. Petitioner appealed to the Supreme Court by certiorari. *Held*, the parcels of land in question are alluvial lands which belong to Juan del Rosario, the riparian owner, subject to legal easements as provided for by law. NARAG *v.* COURT OF APPEALS, G.R. No. L-8065, Feb. 25, 1957.

CIVIL LAW — PROPERTY — REVOCATION OF A DONATION CAN BE EFFECTED ONLY BY A COURT JUDGMENT OR CONSENT OF THE DONEE. — Gorgonia Ongsiako donated her shares on hacienda Esperanza to her children by an act inter-vivos. Emilia one of the children violated the conditions of the donation. The donor executed a notarial deed for revocation which was till her death, not brought under court action or with the consent of the donee. Upon the donor's death Caridad, Emilia's sister, brought the action for revocation of the donation to the latter due to her violation of the conditions and by virtue of the notarial deed as executed. *Held*, revocation of a donation can only be effected by court judgment or consent of the donee. ONGSIAKO ET AL., *v.* ONGSIAKO ET AL., G. R. No. L-7510, March 30, 1957.

CIVIL LAW — SALE — THE FACT THAT THE SALES OF TEXTILES WERE MADE TO SHIRT FACTORIES AND A KAPOC FACTORY WHICH EVIDENTLY CONSUMED AND USED THE TEXTILES PURCHASED BY THEM FOR CONVERSION AND MANUFACTURE INTO SHIRTS, SUITS, ETC., MAKES IT CLEAR THAT THE SALES MADE SHOULD BE REGARDED AS RETAIL AND NOT WHOLESALE. — Defendant was a corporation engaged in the importation of textiles and remnants for resale to the public both on wholesale and retail. Defendant made several sales for the years 1946-1950 and did not pay the license taxes therefor. Under a municipal ordinance of the City of Manila the said sales would be taxable if the same were retail. Defendant maintained said sales were wholesale and, therefore, not taxable. It was admitted, and stipulated, that said sales were made to shirt factories and a kapoc factory to be converted by them into shirt suits, pants, dresses, etc. in big quantities. The only question presented was whether the sales made to the shirt factories and the kapoc factory were retail or wholesale. Plaintiff sustained that the sales were retail, the use to which the goods sold were put determining the nature of the sales. Defendant, on the other hand, maintained that the same sales were wholesale, the quantity or bulk thereof determining the nature of the same. *Held*, the fact that said sales were made to shirt factories and a kapoc factory which evidently consumed and used the textiles purchased by them for conversion and manufacture into shirts, suits, etc., it is clear that the sales made by the defendant should be regarded as retail, and consequently, it should pay the license taxes due to the plaintiff CITY OF MANILA *v.* MANILA REMNANT CO., G.R. No. L-9195, Jan. 30, 1957.

CIVIL LAW — SALES — THERE IS DELIVERY UPON EXECUTION OF THE QUEDAN WHEN THE PARTIES INTENDED THAT THE GOODS SOLD WAS PLACED THERE

BY UNDER THE CONTROL OF THE BUYER. — On Oct. 14, 1941 a sale of 500 tons of copra was agreed thereby between the defendant and the Luzon Industrial Corporation, the predecessor in interest of the present defendant. Three days thereafter it was agreed that the purchaser would pay ₱50,000 and that the vendor would issue a "Quedan". The copra remained in the bodega of the defendant until confiscated by the Japanese. Plaintiff claimed that there was no delivery. *Held*, delivery was effected upon the execution of the quedan because the parties thereby intended that the copra sold was placed then and there under the control of the buyer. NORTH NEGROS SUGAR CO., INC. *v.* COMPANIA GENERAL DE TABACOS DE FILIPINAS, G.R. No. L-9277, March 29, 1957.

CIVIL LAW — LEASE — WHERE LAND AND BUILDINGS WHICH FORMED PART OF THE CAUSA OF THE LEASE CONTRACT CONSTITUTE AN INDIVISIBLE UNIT, THE DESTRUCTION OF THE BUILDING TERMINATES THE LEASE. — Lease contract was entered into between the predecessor — in interest of plaintiff and defendant over a piece of land and the buildings upon it. The buildings were destroyed during the liberation. Plaintiff now wanted to recover the rent but defendant refused to pay on the ground that the obligation was terminated due to destruction of the buildings. *Held*, where the buildings and the land which formed part of the causa of the lease contract constitute an indivisible unit, the destruction of the buildings extinguished the obligation or terminated the lease contract. SHOTWELL *v.* MANILA MOTOR CO., INC., G.R. No. L-7637, Dec. 29, 1956.

CIVIL LAW — LEASE — THE COURT CAN NOT FIX THE PERIOD OF THE LEASE IF ITS DURATION IS LEFT TO THE WILL OF THE LESSOR. — Plaintiff respondent in this case was the owner of a parcel of land with an area of 196.20 sq. meters, which was leased to petitioners and on which they built their residence valued at ₱10,000. There was no written contract of lease between them, but petitioners had been occupying the land since 1937 and paying a monthly rental of ₱19.62. The parties verbally agreed that the lessees would leave the premises as soon as the lessors would need the property. On June 1, 1950, the lessor sent a letter to the lessees ordering them to vacate the premises because she needed it for *her own exclusive use*. Petitioners refused to vacate the premises, so an ejectment case was filed against them. The lower court ordered them to vacate the land within one month. On appeal, the Court of Appeals, relying on the provision of Art. 1687 of the Civil Code extended the period within which to vacate said premises because they had been in possession of said land for more than one year. *Held*, Art. 1687 of the Civil Code only applies when there is no period stipulated in the contract of lease but not in this case when the duration of the period is left to the will of the lessor. LIM *v.* COURT OF APPEALS, G.R. No. L-9189, March 30, 1957.

CIVIL LAW — AGENCY — A HUSBAND WHO SECURED A LOAN AND DID NOT SECURE IT IN HIS CAPACITY AS ADMINISTRATOR OF THE CONJUGAL PARTNERSHIP AND DID NOT DISCLOSE THAT HE WAS MARRIED ASSUMES THE ROLE OF AN AGENT FOR AN UNDISCLOSED PRINCIPAL. — Apolinar Santos and Clara D. Palanca jointly and severally secured a loan of ₱7,000 from the plaintiff payable in

90 days on March 2, 1949. On March 14, 1953, the defendant's wife died and the latter was appointed administrator of her estate. On May 14, 1954 the bank brought an action to recover from appellant the sum of ₱2,900 the unpaid balance of the loan. Appellant admitted that he was indebted to the bank in the sum sought to be recovered but averred that as there was a special proceeding pending in the CFI of Rizal for the settlement of the estate of his deceased wife and hence for the liquidation of the conjugal partnership, and that as the indebtedness was chargeable to the conjugal partnership, he could not be sued, for the payment thereof, but that the bank should file its claim in the special proceeding. *Held*, although the conjugal partnership benefited from the proceeds of the loan, still the appellant did not secure it in his capacity as administrator of the conjugal partnership and did not disclose that he was married thereby assuming the role of an agent for an undisclosed principal and that, for that reason, the bank could sue on the obligation personally contracted by the defendant. The debt, may be chargeable to the conjugal partnership, but as far as the appellee bank is concerned, it may enforce its collection against the appellant who personally secured the loan or contracted the obligation, or may file a claim for its collection in the proceeding for the settlement of the estate of the deceased spouse. Acontrary rule would render difficult the granting of loans to persons who have good credit standing because of possible demise of their spouses. Another drawback for credit institutions and creditors in general would be to compel them to sever the collection of loans in case of joint and several obligors — a claim for the collection of the loan in the special proceeding for the settlement of the estate of the deceased spouse of one of the obligors and an action for the collection of the loan from the other co-obligor or co-obligors. THE PHILIPPINE BANK OF COMMERCE *v.* SANTOS, G.R. No. L-8315, March 18, 1957.

CIVIL LAW — MORTGAGES — A MORTGAGE OF A MOTOR VEHICLE IN ORDER TO AFFECT THIRD PERSONS SHOULD NOT ONLY BE REGISTERED IN THE CHATTEL MORTGAGE REGISTRY BUT THE SAME SHOULD ALSO BE RECORDED IN THE MOTOR VEHICLES OFFICE. — Aguinaldo purchased two cars from Fortune Enterprises, Inc. on installment secured by a chattel mortgage over said cars which was duly registered with the Register of Deeds of Manila. Subsequently Borlough acquired said car who registered the same with the Motor Vehicles Office. In the meantime, Aguinaldo defaulted, so that Fortune Enterprises brought an action for the recovery of the cars now in possession of Borlough. *Held*, a chattel mortgage over a car in order to affect third persons should not only be registered in the Chattel Mortgage Registry but the same should also be recorded in the Motor Vehicles Office as required by Sec. 5 (e) of the Revised Motor Vehicles Law. BOURLOUGH *v.* FORTUNE ENTERPRISES, INC., G.R. No. L-9451, March 29, 1957.

CIVIL LAW — GUARDIANSHIP — PURCHASE BY A GUARDIAN OF THE WARD'S PROPERTY ONE WEEK AFTER THE SAME WAS SOLD TO ANOTHER PERSON IS A VIOLATION OF ARTICLE 1459 OF THE CIVIL CODE. — Respondent Socorro Roldan, while appointed guardian of the property of Mariano L. Bernardo, a minor, sold 17 parcels of her ward's land to her brother in-law, one Fidel F. Ramos, for ₱14,700. One week later, and one day after judicial confirmation of the sale, said Socorro Roldan bought the same 17 parcels of land in her name from the said Fidel F. Ramos for ₱15,000. Socorro sold four of the parcels of land to Emilio Cruz for ₱3,000 with a right of repurchase. Subsequently, petitioner Philippine Trust Company became the guardian of the minor Mariano L. Bernardo's property. As such guardian, petitioner filed a complaint in Manila to annul the two contracts entered by Socorro Roldan as guardian of Bernardo and involving the minor's property. The complaint likewise sought to annul the conveyance of the four parcels of land made by Socorro to Emilio Cruz. The CFI, and on appeal, the Court of Appeals, held the contracts as good and valid. *Held*, remembering the general doctrine that guardianship is a trust of the highest order, and the trustee cannot be allowed to have any inducement to neglect his ward's interest and in line with the court's suspicion whenever the guardian acquires the ward's property, in the eyes of the law, Socorro Roldan took by purchase her ward's parcels through Dr. Ramos, and that Article 1459 of the Civil Code applies. PHILIPPINE TRUST COMPANY *v.* ROLDAN, ET AL., G.R. No. L-8477, May 31, 1956.

COMMERCIAL LAW — INSURANCE — ASSUMING THAT SECTION 9 OF REP. ACT NO. 728 AUTHORIZES THE BOARD OF TRUSTEES OF THE G.S.I.S. TO READJUST BENEFIT PAYABLE TO AN EMPLOYEE'S BENEFICIARY, ITS RESOLUTION NO. 365 ADOPTED ON SEPTEMBER 16, 1953, OR AFTER THE DEATH OF THE INSURED, SHOULD NOT BE MADE APPLICABLE TO LATTER'S POLICY, BECAUSE ITS BENEFIT HAD ALREADY ACCRUED. — Sayson was an employee of M.R.R. and was insured with G.S.I.S. until his death on July 21, 1952. After his death, his widow filed a claim for the policy, but was paid only 1/2 due to the resolution of the Board of Trustees No. 355 in pursuant to Rep. Act No. 728, Sec. 9 the M.R.R. failing to pay part of premium. Is the resolution applicable which took effect after death of insured? *Held*, even assuming that Sec. 9 of Rep. Act No. 728 authorizes the Board of Trustees of the G.S.I.S. to readjust benefits payable to an employee's beneficiary, its Resolution No. 365 adopted on September 16, 1953 or after the death of the insured should not be made applicable to the latter's policy because its benefits had already accrued upon the latter's death. It is but fair that the insured employee, unaware of and helpless in the failure of his employer to pay its share in the required premiums, should be made to understand and expect that his outstanding policy is in full force, unaffected by conditions imposed by the system subsequent to his death. G.S.I.S. *v.* SAYSON, G.R. No. L-8744, May 26, 1956.

COMMERCIAL LAW — TRANSPORTATION — THE FACT THAT A PROSPECTIVE PASSENGER ON A TRANSPORTATION LINE, ON A CERTAIN DAY AND HOUR, FAILS TO SECURE TRANSPORTATION CANNOT BE A VALID TEST THAT ADDITIONAL SERVICE ON THE LINE IS NEEDED. — The Laguna Tayabas Bus Company appealed from the Public Service Commission's decision granting the application of Felix Ragodon and overruling its opposition to the same. The decision of the Commission was based mainly on the testimony of witnesses, including applicant himself, presented by the latter. The reports and census made by appellant's own inspectors and census takers, on the other hand, were rejected. The line applied for ran between Atimonan and Lucena. Applicant's witnesses testified that, on certain days and hours, they failed to secure transportation in ap-

pellant's buses either because there were no buses passing or because they were already full. *Held*, the only question involved is the volume of traffic between the two points Lucena and Atimonan, Quezon Province, whether or not said traffic, considered with the present transportation service being rendered, is such that additional service is justified. The fact that a prospective passenger on a transportation line, on a certain day and hour fails to secure transportation, either because at the moment there was no bus passing, or if there was it was already full, cannot be a valid test of whethtr additional service on the line is needed. A person desiring transportation cannot expect, and has no right to expect available transportation every minute of the day for the reason that transportation companies are not required and are in no position to furnish said transportation. That is the reason why said companies, including railroad and shipping companies, have time schedules. A passenger has to adjust himself to said schedules. It may be that occasionally, a bus on which a traveller desires to secure transportation is already filled, thereby requiring him to wait for the next bus; but these may be ordinary and inevitable incidents in the transportation system over which common carriers have no control. LAGUNA TAYABAS BUS COMPANY *v.* REGODON, G.R. No. L-9586, Dec. 27, 1956.

COMMERCIAL LAW — TRANSPORTATION — BEFORE REVOKING AN ORDER PREVIOUSLY ISSUED BY IT THE PUBLIC SERVICE COMMISSION SHOULD GIVE APPLICANT THE CHANCE TO SHOW CAUSE WHY SAID ORDER SHOULD NOT BE VACATED, BUT WHATEVER DEFECTS THERE ARE IN SUCH REVOCATION ARE DEEMED WAIVED BY NON-OBJECTION ON THE PART OF APPLICANT TO THE SAME. — Petitioner Maclang owned and operated an ice plant originally located at rented premises in Plaridel, Bulacan with a right to sell his ice in Plaridel, Bustos, Angat, Baliuag, San Rafael, Malolos and Paombong, all within the province of Bulacan. He applied for authority to transfer the site of his ice plant from Plaridel to his own lot in Barrio Santisima Trinidad, Malolos, Bulacan, as well as to substitute his diesel power prime movers with electric motors. After due publication of the order for the hearing of the application and after the hearing thereof, the Public Service Commission on Nov. 8, 1954 granted petitioner's application giving him six months from the date of the order to transfer his ice plant from Plaridel to Barrio Santisima Trinidad. Later, on Jan. 21, 1955, respondent Genuino, Jr., owner and operator of an 8-ton ice plant located in Malolos, Bulacan, filed a motion with the PSC to vacate its order of Nov. 8, 1954 on the ground that he was never notified of the hearing of the petition and he would be greatly affected by the authorized transfer of petitioner's ice plant from Plaridel to Malolos. The PSC granted respondent's motion and vacated its aforementioned order on Jan. 24, 1955, setting the case for hearing anew on Feb. 8, 1955 and ordering petitioner to desist from the transfer of his ice plant from Plaridel to Malolos until further orders. Petitioner did not object to the Commission's order revoking its previous order of Nov. 8, 1954. Petitioner went to trial presenting additional evidence. When the PSC denied his application for transfer after the new hearing, petitioner appealed to the Supreme Court, alleging the arbitrariness of the Commission in revoking its order of Nov. 8, 1954. *Held*, while it is true that the proper procedure should have been for the Commission to give petitioner the chance to show cause why the order of Nov. 8, 1954 should not be vacated before it set said order aside, the records show, however, that petitioner neither complained nor asked for the reconsideration of the order in question, and instead went voluntarily to trial for the second time and introduced evidence anew in support of his application. Whatever defect there had been in the issuance of the Commission's order of Jan. 24, 1955 without notice to petitioner had been cured and waived by the latter when he agreed and submitted to a retrial of the case on the merits. MACLANG *v.* PUBLIC SERVICE COMMISSION G.R. No. L-9566, Feb. 4, 1957.

COMMERCIAL LAW — CREDIT TRANSACTIONS — THE CLAIM AGAINST THE SURETY UNDER ITS COUNTERBOND MUST BE FILED BEFORE THE TRIAL OR, IF FILED LATER, IT MUST BE FILED WITH THE CONSENT OF THE COURT AND BEFORE ENTRY OF FINAL JUDGMENT. — Fort Motors, Inc. obtained a judgment against defendant-appellee Raposas ordering the latter to pay the remaining amount for one sports sedan with interest at six per centum per annum. The sedan had been purchased from plaintiff by defendant and had been made subject of a chattel mortgage to secure its payment. After filing the complaint, plaintiff filed a bond for the immediate delivery of the car. But defendant successfully opposed the same with a counterbond in an amount double that placed by plaintiff. Defendant's counterbond was undertaken by Alto Surety and Insurance Co., Inc. Under its undertaking Alto Surety bound itself jointly and severally with defendant Raposas to deliver the car "if such delivery is adjudged, and for the payment of such sum to plaintiff as may be recovered against defendant and the costs of the action." Defendant Raposas failed to satisfy the judgment in favor of plaintiff. Plaintiff then asked for a writ of execution against the properties of defendant Raposas. The writ was issued and returned unsatisfied because no properties of defendant could be found. Plaintiff filed a motion to hold the surety liable under the terms of the bond it had undertaken for the sum stated in the judgment. The surety opposed the motion alleging that said judgment contained nothing enforceable against the bond, the judgment being only against defendant Felipe Raposas and the same mentioned nothing as regards the liability of the surety; and that the decision had already become final and executory. *Held*, the case at bar is covered by the provisions of Sec. 10, Rule 62, in connection with Sec. 20, Rule 59 of the Rules of Court. The provisions of Sec. 20 of Rule 59 are clear, unequivocal and couched in mandatory terms. It prescribes that application (for damages) must be filed before the trial and, if it has to be filed later, it must be with the consent of the court and before entry of final judgment, as such claim if proved shall be included in the final judgment. PORT MOTORS, INC. *v.* RAPOSAS, G.R. No. L-8645, January 23, 1957.

COMMERCIAL LAW — CREDIT TRANSACTIONS — CREDITORS SUING ON A SURETYSHIP BOND MAY RECOVER FROM THE SURETY AS PART OF THEIR DAMAGES INTEREST AT THE LEGAL RATE EVEN IF THE SURETY WOULD THEREBY BECOME LIABLE TO PAY MORE THAN THE TOTAL AMOUNT STIPULATED IN THE BOND. — San Jose and the Galang Machinery Co. entered into an agreement whereby the former bound himself to cut, deliver and sell to the latter 2,550,000 board feet of pealer and veneer logs to be delivered in three consecutive months beginning Jan., 1951, each delivery consisting of 850,000 board feet. To secure the performance of the obligation of San Jose, the Plaridel Surety & Insur-

ance Co., petitioner, put up a performance bond of ₱30,600, binding itself jointly and severally with the former as principal, for the faithful performance of the contract. San Jose failed to deliver the corresponding quantity of logs for Jan. and he asked for an extension of time whereby to complete the delivery of said quantity of logs. The request was verbally denied. San Jose again failed to deliver on Feb. He wrote petitioner that he was expecting to deposit with Plaridel ₱30,600 for his failure to comply with the terms of their agreement. Consequently, petitioner informed Plaridel of San Jose's failure to meet his obligations and demanded the payment of the amount of the performance bond. Plaridel refused. Petitioner objected to the payment of interest and attorney's fees because: (1) they were not mentioned in the bond; and (2) the surety would be liable for more than the amount stated in the contract of suretyship. *Held*, the objection has to be overruled. The creditors suing on a suretyship bond may recover from the surety as part of their damages interest at the legal rate even if the surety would thereby become liable to pay more than the total amount stipulated in the bond. The surety is made to pay interest, not by reason of the contract, but by reason of its failure to pay when demanded and for having compelled the plaintiff to resort to the courts to obtain payment. PLARIDEL SURETY & INSURANCE CO., INC. *v.* GALANG MACHINERY CO., INC. G.R. No. L-9542, Jan. 11, 1957.

COMMERCIAL LAW — CREDIT TRANSACTIONS — THE "EMERGENCY NOTES" ISSUED BY AUTHORITY OF PRES. QUEZON BEFORE HE LEFT THE PHILIPPINES IN 1942 IN THE AREAS STILL UNOCCUPIED BY THE JAPANESE WERE VALID AND LEGAL TENDER. — The Philippine National Bank instituted an action in the CFI of Negros Oriental for the recovery of two promissory notes of defendant Julian Teves in the aggregate sum of ₱3,130 plus attorney's fees and costs. Simultaneously, plaintiff filed a verified *ex-parte* motion for a writ of preliminary attachment, which was granted by the court the next day. In due course, defendant filed an answer alleging that the sum of money delivered to him by the plaintiff consisted of valueless notes, which were not legal tender; that the people in his place, for sometime, refused to receive said notes; that part of the same were destroyed when his house was consumed by fire. Defendant testified that the "notes" were the "emergency notes" which the officers of the Commonwealth in unoccupied areas were authorized to issue by Pres. Quezon before he left the Philippines in 1942 in the province of Oriental Negros and while Oriental Negros was still unoccupied by the Japanese. *Held*, said emergency notes were then valid and legal tender. Otherwise, the same would not have been accepted by the defendant. Obviously, the alleged refusal of some people to receive said emergency notes from the defendant and the alleged destruction thereof, while in his possession, by five, affects neither the validity of the promissory notes in question, nor plaintiff's right to demand payment thereof. PHILIPPINE NATIONAL BANK *v.* TEVES, G.R. No. L-8813, Dec. 14, 1956.

CRIMINAL LAW — BIGAMY — SUBSEQUENT MARRIAGE CONTRACTED BY ANY PERSON DURING THE LIFETIME OF HIS FIRST SPOUSE IS ILLEGAL AND VOID FROM ITS PERFORMANCE, AND NO JUDICIAL DECREE IS NECESSARY TO ESTABLISH ITS INVALIDITY. — On Sept. 28, 1925, accused contracted marriage with Maria

Gorrea in Cebu. While his marriage with Maria was subsisting, he contracted another marriage with Maria Faicol on Aug. 27, 1934 in Iloilo City. Accused was a traveling salesman and he maintained both wives at both cities, commuting from one to the other. When his first wife died, accused transferred Maria Faicol to Cebu City. The couple did not seem to have a happy marital life in Cebu. On Jan. 22, 1953 Maria Faicol went to Iloilo City for the purpose of undergoing treatment of her eyesight. During her absence accused married for the third time with Jesusa Maglasang in Sibonga, Cebu. The second wife, Maria Faicol, began the action. The CFI Cebu held that accused could not legally contract marriage with Maglasang without the dissolution of his marriage to Faicol, either by the death of the latter or by the judicial declaration of the nullity of such marriage, at the instance of Faicol. *Held*, a subsequent marriage contracted by a person during the lifetime of his first spouse is illegal and void from its performance, and no judicial decree is necessary to establish its invalidity, as distinguished from mere annullable marriages. The action was instituted upon complaint of the second wife, whose marriage with accused was not renewed after the death of the first wife and before the third marriage was entered into. Hence, the last marriage was a valid one and appellant's prosecution for contracting this marriage can not prosper. PEOPLE *v.* ARAGON, G.R. No. L-10016, February 28, 1957.

CRIMINAL LAW — CONSPIRACY — CONSPIRACY MAY BE DEDUCED FROM THE WAY THE DEFENDANTS CARRIED OUT THE ATTACK. — In the afternoon of July 20, 1954, the now deceased Antonio Insong met the defendant Bernardo Siaotong at the market place in barrio Bato, Plaridel, Occ. Misamis. Addressing himself to the said defendant, Insong asked: "Brod, why did you send a telegram to your father that we would bruise you when you did not quarrel?" The defendant Siaotong replied that he sent the telegram because he had heard that Insong meant to do just that. While Insong and Siaotong were thus talking to each other, the other three defendants approached, and two of them Lasañez and Orsega — stationed themselves behind Insong while the third — Sumagaysay — took his place beside Siaotong, facing Insong. With Insong thus practically surrounded the defendants began what appears to be a concerted attack. First, Sumagaysay took sand from his pocket and threw it into Insong's face. Then, as Insong proceeded to wipe his face, Orsega stabbed him on the back with a knife. Insong turned around to face Orsega, but as he did so he was stabbed in the back by Sumagaysay; and when he turned again to face Siaotong he was stabbed in the breast by the latter. With Insong already staggering, Losañez slashed him with a bolo and stabbed him with the same weapon even after he had fallen. *Held*, conspiracy is clearly deducible from the way the defendants carried out the attack, they must, therefore, all answer as principals for the crime that resulted. PEOPLE *v.* SIAOTONG, G.R. No. L-9242, March 29, 1957.

CRIMINAL LAW — MURDER — SUDDEN ATTACK CONSTITUTES TREACHERY. — After being prevented from harming Moro Amilhanja with whom appellee and Moro Matangon had a quarrel over the fish the former was selling, the latter left the market. When Moro Matangon and appellee were about 70 brazas from the market place, they met on the trail Moro Hadjerol, an old man of 80

years, who was going to the market, the appellee suddenly hacked Moro Hadjerol with his barong and as a result thereof Moro Hadjerol died on the spot a few moments after. Charged and convicted of murder qualified by treachery the appellee appealed contending that the crime at bar should be considered only a homicide instead of murder. *Held*, it is undisputable that a sudden attack constitutes treachery and in this particular case, the evidence conclusively shows that the herein appellant suddenly attacked the deceased Hadjerol without the slightest provocation on the part of the latter; hence, appellant was properly found guilty of murder. PEOPLE *v.* MORO JUMDATAL, G.R. No. L-8055, May 25, 1956.

CRIMINAL LAW — RETROACTIVITY — THE BENEFIT OF RETROACTIVITY AND LIBERAL CONSTRUCTION ACCRUES WHEN PENAL LAWS ARE REPEALED AND NOT WHEN THE SAME EXPIRES BY VIRTUE OF THEIR OWN FORCE. — Petitioners, both Chinese nationals, were prosecuted in and convicted by the CFI of Manila for violation of the Import Control Law. They were charged before the Deportation Board. Pending appeal of the criminal case in the Court of Appeals, the Import Control Law expired, in view of which, and with the conformity of the Solicitor General, petitioners' motion for dismissal was granted and they were ordered discharged. The Deportation Board, however, submitted to the President of the Philippines its findings in the Deportation case and recommended petitioners' deportation. The President issued the corresponding order of deportation. Petitioners filed with the CFI of Manila a petition for prohibition and certiorari, praying that the President's order of deportation be declared illegal and that they be released. They raised the issue that the order deporting them should be set aside because the law defining the crime of which they were convicted had already expired, the order of deportation being based on said conviction. Petitioners contended that the expiration of the Import Control Law should be considered favorable to them in the sense that it erased the stigma of their conviction. *Held*, there is no law upholding such proposition. The benefit of retroactivity and liberal construction accrues when penal laws are repealed. There is no subsequent repealing law that petitioners could mention. The law violated by them expired by virtue of its own force. ANG BENG, ET AL *v.* COMMISSIONER OF IMMIGRATION, G.R. No. L-9621, Jan. 30, 1957.

CRIMINAL LAW — ROBBERY WITH HOMICIDE — THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE IS NOT TO BE MULTIPLIED WITH THE NUMBER OF PERSONS KILLED. — One evening in 1949 an armed band raided the house of Andres Bantiles shooting dead three of its inmates and taking and carrying away their money, jewelry and other belongings. For this crime, seven men were arrested and prosecuted. Three pleaded guilty and three were found guilty after trial. One of the defendants was acquitted. Two of those convicted appealed. These appellants were sentenced to three life imprisonments each. *Held*, the crime committed was robbery in band with triple homicide. But it was error to sentence the appellants to three life imprisonments each as if three separate crimes had been committed. The complex crime of robbery with homicide is not to be multiplied with the number of persons killed. As was said by this Court in *People v. Madrid*, G.R. No. L-30231, January 3, 1951,

"the general concept of this crime does not limit the taking of human life to one single offense or offenses. All the homicides or murders are merged in the composite, integrated whole that is robbery with homicide so long as the killings were perpetrated by reason or on the occasion of the robbery". PEOPLE *v.* CABUENA, ET AL., G.R. No. L-6202, April 28, 1956.

CRIMINAL LAW — SELF DEFENSE — IN THE ABSENCE OF UNLAWFUL AGGRESSION ON THE PART OF THE OFFENDED PARTY, THE CLAIM OF SELF-DEFENSE CANNOT BE AVAILED OF. — Accused, Alfredo Cabrera had heated discussion with the deceased Dr. Luis M. Cruz inside the municipal building over the nature of the injuries sustained by one Rufo Saludares. In the course of their argument, Dr. Cruz remarked, "you don't know anything, you are ignorant about this matter." After this incident, accused left. Later that same afternoon Dr. Cruz sat on a bench outside the municipal building with Jose Orosa and Juan Silos. While Silos and Orosa were engaged in a conversation, appellant suddenly came from behind and attacked Dr. Cruz with a butcher's knife. Dr. Cruz sustained serious wounds and died minutes after. Appellant claimed self-defense because Dr. Cruz was reputed for his strength, courage, and knowledge of the art of self-defense. *Held*, since Dr. Cruz did not initially attack the accused, there was therefore an absence of unlawful aggression in which case, self-defense cannot be availed of. PEOPLE *v.* CABRERA, G.R. No. L-6173, March 18, 1957.

CRIMINAL LAW — TREASON — EVERY ACT, MOVEMENT, DEED AND WORD OF THE DEFENDANT CHARGED TO CONSTITUTE TREASON MUST BE SUPPORTED BY THE TESTIMONY OF TWO WITNESSES. — Yanzon was charged with treason and was found out by the lower court to have adhered to the enemy and with treasonable intent given them aid and comfort; (1) by guiding, joining and actively taking part in the raid of the Japanese, (2) by acting as interpreter, confidential agent and investigator of the Japanese and having denounced one Valenzuela as member of the USAFFE and maltreated him. He raised the issue of the two-witness rule. *Held*, every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of witnesses which, except No. 3 were all proven in the case at bar. PEOPLE OF THE PHILIPPINES *v.* YANZON, G.R. No. L-9535, March 29, 1957.

LABOR LAWS — COLLECTIVE BARGAINING — WHERE THE C.I.R. HOLDS HEARING, RECEIVES EVIDENCE, MAKES FINDINGS OF FACTS AND RENDERS A DECISION THE AGREEMENT BETWEEN THE PARTIES AS TO MATTER OF DISPUTE NEED NOT BE IN WRITING. — An oral agreement was entered into between the management and the labor union allowing the former to lay off some of the members of the union. Because of the losses suffered by the management as well as lack of materials and work for the laborers, the management laid off 123 of the members of the union. Is the agreement valid? *Held*, writing of the agreement if it is to be deemed a decision or award as where the dispute is amicably settled by mutual agreement and there is no need for rendition of a decision. But where the C.I.R. holds hearings, receives evidence, makes findings of facts and renders a decision, the agreement as to the whole or part of the

dispute need not be in writing. ARTE ESPAÑOL IRON WORKS LABOR UNION *v.* PEDRET, G.R. No. L-9471, March 18, 1957.

LABOR LAW — WORKMEN'S COMPENSATION ACT — WHEN A DECEASED EMPLOYEE WAS KILLED WHILE HE WAS IN THE STOCK ROOM TO GET "JABILLA" WHICH HE WOULD USED IN HIS WORK, REGARDLESS OF THE TIME, HE WAS IN THE PERFORMANCE OF HIS DUTIES. — Guanlao was an employee of petitioner. Jayme was also an employee of the same. During lunch time Guanlao entered petitioner's canteen where Jayme was then eating. Guanlao took Jayme's soup, creating an ill-feeling in the latter. Guanlao left the canteen and went to the stock room of petitioner to get "jabilla" which he intended to use in his work as a latheman. Jayme followed him into the stock room and there shot him to death with a Thompson gun. Petitioner argued that the accident resulting in the death of Guanlao did not arise out of and in the course of his employment, first, because the incident took place before one o'clock (employee's lunch time); secondly, because the accident had nothing to do with his work. Petitioner produced the time record of deceased Guanlao to show that the incident causing his death took place before one o'clock. The act of deceased in taking Jayme's soup which led the latter to kill the former was not in any way connected with deceased Guanlao's work, petitioner reasoned. *Held*, an injury sustained by an employee outside his regular working hours or during a temporary stoppage or cessation of work may, nevertheless, under some circumstances, be compensable as arising out of and in the course of the employment. Moreover, the point raised by petitioner would be immaterial, considering that the Commission found that the deceased had gone to the stock room to get some "jabilla" which he would use in his work, with the result that, regardless of the time, he was in the performance of his duties. LA MALLORCA TAXI *v.* GUANLAO, ET AL., G.R. No. L-8613, Jan. 30, 1957.

LABOR LAW — VACATION LEAVE WITH PAY — VACATION LEAVE WITH PAY IS NOT A STATUTORY RIGHT, THEREFORE, THE GRANT OF THE PRIVILEGE IS PROSPECTIVE. — Petitioner is a domestic corporation licensed to engage in business in the Philippines. Respondent National Labor Union is a duly registered labor union to which the employees of petitioner belonged. On May 16, 1949 respondent Union, on behalf of more than 30 of its members employed by the petitioner corporation, petitioned for sick leave and vacation leave with pay and other concessions. Upon denial of its demands, the Union filed a petition with the CIR for compulsory arbitration and decision. Judge Castillo of the CIR rendered a decision regarding vacation leave with pay "that the same should be made effective as of the date of the filing of the petition with the Court of Industrial Relations on June 6, 1949." A controversy as to the interpretation of this decision arose between petitioner corporation and the labor union. Petitioner claimed that the vacation leave with pay should be given prospective effect while the labor union maintained it should be retroactive. Judge Castillo, interpreting his own decision, ruled that the vacation leave with pay should be given retroactive effect so as to give those employees of petitioner who had completed 300 days of work on June 6, 1949 a vacation leave of 15 days with pay. *Held*, both the established practice in the Industrial Court as well as the spirit of the decision in the present case granting the demand for vacation leave with pay warrant the interpretation and conclusion that the grant should not be given retroactive effect. As correctly maintained by petitioner, there is no law granting vacation leave to laborers in a private establishment. The same is subject to bargaining agreement between employer and employee, and in a petition for vacation leave by employees, the right may, after hearing, be granted by the Industrial Court. EARNSHAW DOCKS *v.* COURT OF INDUSTRIAL RELATIONS. G.R. No. L-8896, Jan. 23, 1957.

LABOR LAW — MINIMUM WAGE LAW — THE SECRETARY OF LABOR IN CONSTITUTING A WAGE BOARD IS NOT REQUIRED BY LAW TO HEAR THE EMPLOYERS AFFECTED. — A report of the Acting Chief of the Wage Administration Service, dated October 3, 1953, called the attention of the then acting Secretary of Labor, Aurelio Quitoriano, to the circumstances that "a preliminary investigation of conditions and relevant labor matters in local oil firms in compliance with your instruction" revealed that "there are a total of four oil companies operating throughout the Philippines," with an aggregate of around 3,000 employees; that the "approximate living cost per family of 4.9 members in the Manila area", based on current price indexes, was estimated at 128 monthly or ₱5.03 per day; that the adequate diet recommended by the Institute of Nutrition for an average family "requires at least ₱5.00 daily", which, added to non-food necessity, gave a "minimum adequate standard of living" cost of between ₱6.00 an ₱7.00 per day; that the latest prevailing wage study of two of the oil firms showed that the employees received ₱6.40 or less per day, and that the reported minimum wage rate was ₱5.01. The report recommended the appointment of a wage board. Acting upon this report, the Secretary, as recommended, issued Administration Order No. WB-6 (a) setting up a Wage Board for the Oil Industry, pursuant to Sec. 4 (a) of the Minimum Wage Law. The petitioners contend that said Order WB-6 (a) is null and void, because the employers were not heard before the wage board was appointed. *Held*, the law contemplates no hearing or intervention of the employers affected in the investigation prior to the constitution of a Wage Board, because the protection of the employer's interests is assured by the fact that the Wage Board is to be composed of two representatives of the employers, two of the employees and a Chairman representing the public; and by the express provisions of sec. 6 (a) that the public hearings to be conducted by the Secretary of Labor on the Board's report "shall be consonant with due process of law" and upon notice to interested parties. (CALTEX INC. *v.* QUITORIANO, G.R. No. L-7152, March 21, 1957.

LABOR LAW — PICKETING — ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP DOES NOT MAKE PICKETING ILLEGAL. — Plaintiffs sought to recover damages and an injunctive relief in the CFI of Manila which was issued preliminarily upon compliance with the provisions of the rules on the matter. The reason advanced by plaintiffs is that the defendants, with the exception of the National Labor Union, Eulogio Lerum and Jose Hernandez, had been picketing the Dalisay Theater, owned by Narcisa B. de Leon and ran and operated by her co-plaintiffs, since the time it was reopened, the purpose of the picketing being to secure reinstatement to their respective jobs in the theater when it was run and operated by the Filipino Theatrical Enterprises, then a lessee of

the parcel of land owned by plaintiff De Leon on which the theater was erected. The lower court found that the acts of the defendants complained of in this case, which consisted only in walking slowly and peacefully back and forth on the public sidewalk in front of the premises of the Dalisay Theater and displaying placards publicizing the dispute between the theater management and the picketeers, were not such as to disturb the public peace at the place. The lower court also found that there was no clear and present danger of destruction to life or proprety. It was admitted that there was no relation of employer-employee between plaintiffs and defendants. *Held*, picketing peacefully carried out is not illegal even in the absence of employer-employee relationship for peaceful picketing is a part of the freedom of speech guaranteed by the Constitution. DE LEON ET. AL., *v.* NATIONAL LABOR UNION, ET. AL., G.R. No. L-7586, Jan. 30, 1957.

LABOR LAW — JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS OVER BACK-PAY CLAIMS — THE COURT OF INDUSTRIAL RELATIONS HAS JURISDICTION OVER BACK-PAY CLAIMS BY EMPLOYEES PROVIDED THERE EXISTS AN EMPLOYER-EMPLOYEE RELATION EVEN WITH RESPECT TO ONLY SOME OF THEM. — Petitioner averred that on April 7, 1951 an amended complaint was filed by 425 members of the Luzon Labor Union with the CIR alleging that at the outbreak of the Pacific war in December 1941, at the instance of the petitioner, they worked with the United States Army by hauling military equipment to Bataan; that some of them died during the war and were represented by their heirs; that sometime in 1945 the petitioner, on the promise to pay them four to five years back-pay, induced some thirty chauffeurs to testify, as they did in fact testify, before the United States military authorities that the petitioner had 400 trucks commandeered by the United States Army; and that according to their information the petitioner was paid by the War Damage Commission for its truck and other services related to the work of the claimants. They prayed that the petitioner be ordered to pay them back wages earned during the war in the respective amounts as computed by them. On May 5, 1955 the petitioner filed a motion to dismiss on the ground that as the claim was purely and exclusively for sums of money allegedly owing to certain persons, "most of whom have already severed their connection with the Company", petitioner herein, the CIR has no jurisdiction over the subject matter. *Held*, the petitioner admitted that some of the claimants for back-pay were still under its employ when it averred in its motion to dismiss filed in the Court of Industrial Relations "this case is purely and exclusively a claim for sums of money supposedly owing to certain persons, *most* of whom have long ago severed their connections with the Luzon Brokerage Company", thereby implying that some of them were still in its employ. And in its own memorandum filed in this Court the petitioner admits that "some of the claimants, not more than 60, have been employed anew by the petitioner." As there exists an employer-employee relation between the petition and the claimants for back-pay even with respect only to some of them, and their claim for back-pay is a potential source of dispute between management and labor, the respondent Court has jurisdiction to pass upon and decide the demand made by the respondents. LUZON BROKERAGE COMPANY *v.* COURT OF INDUSTRIAL RELATIONS, G.R. No. L-9446, Dec. 29, 1956.

LAND REGISTRATION — LEASE OF REGISTERED PROPERTY — THE COURT OF

FIRST INSTANCE CAN DIRECT THE LEASE TO BE REGISTERED AND COMPEL THE HOLDER OF TITLE TO PRODUCE IT FOR SUCH PURPOSE. — The respondents are the registered owners of 15 parcels of land in Tondo. They leased these parcels to the Laguna Tayabas Bus Co. and the Batangas Transportation Co. for five years renewable for another five years. The lessees subleased eight of the 15 parcels to one of the lessors, Prudencio Cruz. The owners and lessors of the 15 parcels of land and the sublessee, Prudencio Cruz subleased these eight parcels of land to Juanita Lirio for a period of 10 years. This last lease was signed by Cruz in his behalf and in behalf of the owners and lessors of the 15 parcels. The contracts of lease in favor of LTBCO and that of the eight parcels of land by the bus companies to Prudencio Cruz were not registered or noted on the torrens certificates of title for said parcels of land while the lease to Juanita Lirio was entered in the Day Book of the Register of Deeds of Manila. But due to her failure to produce the owner's duplicate certificates of title for the eight parcels of land leased to her, the registration of the lease contract was not accomplished. For this reason she filed with the Register of Deeds of Manila an adverse claim based on the lease contract. As the owners refused to surrender the duplicate certificates of title, the registrar reported the matter to the CFI of Manila which ordered the respondent owners of the eight parcels of land to surrender the duplicate certificates to the Register of Deeds in order that Juanita Lirio's adverse claim could be annotated thereon. Respondents appealed from this order. *Held*, sections 72 and 110 of the Land Registration Act vest the court with authority to direct an adverse claim registered and to compel the holder of certificate of title to produce it for the purpose of registration or annotation of the adverse claim. REGISTER OF DEEDS *v.* VDA. DE CRUZ, ET AL., G.R. No. L-6711, Sept. 20, 1954.

LAND REGISTRATON — SUBDIVISION PLAN — THE TRIAL JUDGE MAY HIMSELF APPROVE A SUBDIVISION PLAN FILED FOR THE PURPOSE OF PARTITIONING LAND OWNED IN COMMON. — Petitioners submitted to the CFI of Manila a subdivision plan of a parcel of land situated in the City of Manila for the purpose of partitioning the same among its co-owners. The Land Registration Commissioner and the Director of Lands recommended the approval of the same. The National Planning Commission intervened on the ground that petitioners had not submitted the subdivision plan to it for its consideration and its approval or disapproval. Petitioners agreed to submit the plan of partition to the National Planning Commission before proceeding with their case in the CFI. The plan was submitted as agreed upon and the Commission disapproved the same, because the plan did not conform to the Subdivision Regulations of said Commission. The petitioners proceeded with their case in court, the Solicitor General intervening for the Commission. In due course the trial judge approved the subdivision plan submitted by petitioners. Whereupon the intervenor brought the case on appeal, contending, among others, that the court should not have approved the plan by itself but it should have ordered appellant National Planning Commission to approve said subdivision plan. *Held*, this contention may have some weight. But the records show that petitioners submitted the subdivision plan in question to the National Planning Commission and that the latter refused to approved the same. Under these circumstances, the procedure followed by the trial judge may be accepted as it is in consonance with the provisions of Sec. 10, Rule 39 of the Rules of Court. Said

provisions authorize the court to direct at the cost of the disobedient party a person to perform any other specific act as directed in its judgment. And if the trial judge may direct approval of said subdivision by any other person, there is no reason why the court could not do it by itself. FRANCISCO ET AL., *v.* NATIONAL URBAN PLANNING COMMISSION, G.R. No. L-8465, Feb. 28, 1957.

LAND REGISTRATION — RECONSTITUTION — IF THE RECORD OF COURT IN A REGISTRATION PROCEEDING IS INCOMPLETE, THE ORIGINAL DECISION OR SUBDIVISION PLANS ARE NOT PRESENTED BUT ONLY THE DUPLICATE, THE PETITION IS FOR RECONSTITUTION. — Lots in question were adjudicated on February 24, 1934, but the records does not show to whom it was adjudicated. In December, 1934 a petition for subdivision was filed, but ruling in record shows the same was made. A new petition was filed for reconstitution of court record which was opposed. *Held*, where it appears that the record of the court in a registration case is incomplete in that neither the original decision nor the original subdivision plan appear therein and only the duplicate copies thereof are presented to serve as basis for the issuance of the corresponding decrees of registration, the petition is indeed one for reconstitution that comes within the purview of Sec. 29 of Act 3110. MAYOL & MAYOL *v.* PICCIO, G.R. No. L-8749, May 31, 1956.

LEGAL ETHICS — DISBARMENT — MORAL DELINQUENCY IS A GROUND FOR DISBARMENT. — Sometime in August 1952, Atty. Anacleto Aspiras, representing himself as single, courted and eventually won the affection of Josefina Mortel. On December 22, 1952 following his instruction, she came to Manila so they could get married, and she stayed with her sister at Espiritu, Pasay City. On and after December 31, 1952, upon being assured of marriage she allowed him to live with her as her husband. On Jan. 3, 1953, a marriage license was applied for with the son of the respondent, Cesar Aspiras as one of the applicants. Upon suggestions of respondent she was married to said Cesar Aspiras, although they never lived together, the ceremony being a mere formality performed at the indication of the respondent who was a married man and who used his knowledge and education to destroy her. On complaint of Josefina Mortel and after conducting the proper inquiry, the Solicitor General filed in accordance with the Rules a complaint against the respondent praying for his disbarment on the ground of immorality. Respondent in his defense alleged that the alleged conduct was not sufficient ground for disbarment. *Held*, supposing that respondent's conduct is not one of those mentioned in the Rules for which an attorney may be disbarred, still, in this jurisdiction, lawyers may be removed from office on grounds other than those enumerated by the statutes. Perhaps mere moral transgression not amounting to crime will not disbar a lawyer as some cases held, but on this we do not decide. But respondent's moral delinquency having been aggravated by a mockery of the inviolable social institution of marriage and by corruption of his minor son and destruction of the latter's honor, the court has agreed that he is unfit to continue exercising the privilege and responsibilities of being a member of the bar. MORTEL *v.* ASPIRAS, ADM. CASE No. 145, Dec. 28, 1956.

POLITICAL LAW — TAXATION — THE COURT OF TAX APPEALS MAY IN PROPER CASES ISSUE WRIT OF INJUNCTION TO RESTRAIN A DISTRAINT AND LEVY ORDERED BY INTERNAL REVENUE OFFICIALS TO COLLECT TAXES UNDER DISPUTE.—On June 9, 1954 Maria Castro complained before the Manila Court of First Instance against the Collector of Internal Revenue because in order to satisfy war profit taxes and surcharges allegedly due from her amounting to ₱3,593,950.78, the latter had cause the distraint and levy of certain lands and buildings registered in the name of Marvel Building Corporation, and was about to sell the same at public auction. Denying liability for said taxes, she affirmed that, supposing she was liable, her liability had already been discharged with the previous forfeiture to the Government of her other with the previous forfeiture to the Government of her other realties whose actual value was ₱3,715,827.80. Complainant, therefore, asked that defendant and his agents be ordered to release the properties seized, and that a preliminary injunction issue to restrain the impending sale. A preliminary injunction was issued on June 10, 1954. The Solicitor General, for the defendant, filed a motion to dismiss the complaint and to lift the injunction alleging, among other defenses: (b) lack of authority of the court to impede the collection of taxes. The court dismissed said complaint for lack of merit and dissolved the injunction. Plaintiff appealed contending that the court, instead of deciding the case, should have transfered it to the Court of Tax Appeals. *Held*, replying to appellant's contention on the point, the appellee argues here that the controversy could not be referred to the Court to Tax Appeals because it involved a petition for injunction to stay proceedings to collect taxes, which is beyond the competence of that court. The argument must be overruled. In *Zulueta v. Collector of Internal Revenue*, G.R. L-8840 decided Feb. 8, 1957 we held through Mr. Justice Felix, that the Court of Tax Appeals may in proper cases issue the writ of injunction to restrain a distraint and levy ordered by internal revenue officials to collect taxes under dispute. CASTRO *v.* ACTING COLLECTOR OF INTERNAL REVENUE, G.R. No. L-8429, Feb. 28, 1957.

POLITICAL LAW — TAXATION — AFTER THE LAPSE OF THREE YEARS FROM THE FILING OF THE INCOME TAX RETURNS, THE COLLECTOR OF INTERNAL REVENUE IS DIVESTED OF THE RIGHT TO EFFECT COLLECTION BY ADMINISTRATIVE METHOD. — Sambrano filed his income tax return not later than March 1, 1949. Because of his failure to pay said income tax, warrant of distraint was issued on Sept. 27, 1952, three years, 6 months 26 days thereafter. Will the action for distraint materialize. *Held*, after the lapse of three years from the filing of the income tax returns, the collector of internal revenue is divested to effect collection of the income tax liabilities by administrative methods and the only recourse left is to institute the corresponding civil action. SAMBRANO *v.* COURT OF TAX APPEALS AND COLLECTOR OF INTERNAL REVENUE, G.R. No. L-8652, March 30, 1957.

POLITICAL LAW — TAXATION — PAYMENT MADE BY A NON-PROFIT INSTITUTION FOR SERVICES RENDERED TO IT IS NOT DISTRIBUTION OF PROFIT — Vicente G. Sinco with other members of his immediate family incorporated a non-stock educational institution known as the Foundation College of Dumaguete. Beside being the founder and president of the college, Dean Sinco rendered services to the same as a teacher. The Community Publisher, Inc. rendered

certain services to the same college. Dean Sinco was also a principal stockholder in the Community Publishers, Inc. As such, the balance sheet for year 1951, 1952 and 1953 of the Foundation College of Dumaguete carried as Accounts Payable certain sums of money in favor of V. G. Sinco and the Community Publishers, Inc., Sinco for his accumulated salaries, and the Community Publishers, Inc. for services to Foundation College. Dean Sinco claimed for Foundation College exemption from income tax under Section 27 (e) of the National Internal Revenue Code as an institution organized and maintained exclusively for educational purposes as no part of the net income of Foundation College inured to the benefit of any private individual. On the other hand, the Collector of Internal Revenue maintained that part of the net income accumulated by the Foundation College inured to the benefit of V. G. Sinco, president and founder of the corporation. Therefore, the Foundation College, The Collector claimed, was not entitled to the exemption prescribed by law. *Held*, the authorities are clear to the effect that whatever payment is made to those who work for a school or college as a remuneration for their services is not considered as distribution of profit as would make the school one conducted for profit. COLLECTOR OF INTERNAL REVENUE *v.* SINCO EDUCATIONAL CORPORATION, G.R. No. L-9276, Oct. 23, 1956.

POLITICAL LAW — TAXATION — THE COURT OF APPEALS HAS JURISDICTION OVER CASES INVOLVING ASSESSMENTS OF LAND TAX. — Buslig Bay Lumber Co., a lumber concessionaire of a portion of public forest located in the provinces of Agusan and Surigao, constructed at its expense a road from the barrio of Mangagoy into the area of the concession in Surigao. The provincial assessor of Surigao assessed a tax in the amount of ₱669.33 upon the expenses in the construction of the road which the Company paid under protest. Later, the Company filed an action for its refund in the CFI of Manila alleging that the road is not subject to tax. In the meantime, Congress approved R.A. No. 1125 creating the Court of Tax Appeals, whereupon plaintiff moved that the case be forwarded to the latter court as required by said Act. This motion was denied and, after due trial, the court rendered decision ordering defendant to refund to plaintiff the amount claimed in the complaint. Defendant appealed referring to the jurisdiction as one of the errors. *Held*, it is true that under Sec. 22 of said Act the only cases that are required to be certified and remanded to the Court of Tax Appeals which upon its approval are pending determination before a CFI are apparently confined to those involving disputed assessment of internal revenue tax or custom duties, and the present case admittedly refers to an assessment of land tax, but it does not mean that because of that apparent omission or oversight the instant case should not be remanded to the Court of Tax Appeals, for in interpreting the context of the Section above adverted to we should not ignore Sec. 7 of the same Act which defines the extent and scope of the jurisdiction of said court. As we have held in a recent case "Sec. 22 of R.A. No. 1125 should be interpreted in such a manner as to make it harmonize with Sec. 7 of the same Act and that the primordial purpose behind the approval of said Act by Congress is to give to the Court of Tax Appeals exclusive appellate jurisdiction "over all tax, customs, and real assessment cases throughout the Philippines and to hear and decide them as soon as possible." BUSLIG BAY CO. INC. *v.* PROVINCIAL GOVERNMENT OF SURIGAO, G.R. No. L-9023, Nov. 13, 1956.

POLITICAL LAW — TAXATION — STEVEDORE IS SUBJECT TO TAX UNDER SECTION 191 OF THE TAX CODE. — In 1952 the Cebu Arrastre, an association of persons engaged in the handling of cargoes carried by coastwise vessels stopping at the port of Cebu, through its counsel, petitioned the Collector of Internal Revenue for exemption and refund for taxes paid. Counsel claimed that the Cebu Arrastre was not a "stevedore" under the Tax Code because it was not engaged in the loading and unloading of cargoes to and from boats and was not engaged in transportation business. However, upon investigation conducted by a BIR agent, it was found that the Cebu Arrastre engaged in the loading and unloading of cargoes to and from the ship's holds. The supervision of the ship's officers in the work done by the Cebu Arrastre was confined to only the proper handling of the cargoes according to their nature and to the proper placing of the cargoes inside the ship's holds. The Collector of Internal Revenue denied the petition for tax exemption and refund, considering Cebu Arrastre as a "stevedore". *Held*, the Cebu Arrastre admittedly engaged in the work of loading and unloading coastwise vessels calling at the port of Cebu and should be regarded as a stevedore and therefore subject to the percentage tax under Section 191 of the Tax Code. Even if we applied the narrower and more specific concept of stevedore used by the Tax Board, namely, that a stevedore is one who places cargoes in the holds of ships in such a way that the boat would maintain an even keel, and that even with the movements of the boat, especially in rough weather, the cargoes would not be displaced from their original position, still, under the finding of facts made by the Tax Board that the Cebu Arrastre is engaged in this work of stowing cargo either in the hold or even on the deck, appellant would be subject to the tax. We also agree with the Tax Board that the purpose for which the petitioner-appellant was organized, and the supervision exercised by the ship's officers over its work in loading and unloading vessels including the stowing of cargo, has nothing to do with the tax liability of the petitioner-appellant. CEBU ARRASTRE SERVICE *v.* COLLECTOR OF INTERNAL REVENUE, G.R. No. L-7444, May 30, 1956.

POLITICAL LAW — ADMINISTRATIVE LAW — UNDER THE PRESENT LAW (R.A. No. 557) AND JURISPRUDENCE, THE INVESTIGATION OF POLICE OFFICERS MUST BE CONDUCTED BY THE COUNCIL ITSELF AND NOT BY A MERE COMMITTEE THEREOF. — Roque Senarillos, being a civil service eligible, was appointed Chief of Police of Sibonga, Cebu, and served as such until Jan. 2, 1952. On this date, upon charges filed by one Roque Geraldizo and despite his denials, Senarillos was suspended by the Municipal Mayor of Sibonga, and investigated by a "police committee" composed of three councilors, created by Resolution No. 2, Series of 1952, of the Municipal Council. Notwithstanding express protest on the part of Senarillos that the investigation should not be conducted by a committee, but by full council, as provided by Rep. Act No. 557, the committee proceeded to try his case, and on April 15, 1952, rendered an adverse decision, signed later by the members of the Municipal Council. This decision was affirmed by the Commissioner of the Civil Service, and later, by the Civil Service Board of Appeals. *Held*, that the investigation of police officers under R.A. No. 557 (as distinguished from section 2272 of the Revised Administrative Code) must be conducted by the council itself, and not by a mere committee thereof, is now established jurisprudence. Therefore, it is clear that under the present law, the "police committee" constituted by the Municipal Council of Sibonga

had no jurisdiction to investigate the appellee Chief of Police; hence, the decision against him was invalid, even if concurred in by the rest of the councilors, specially since the petitioner called attention from the beginning to the impropriety and illegality of the committee's actuations. SENARILLOS *v.* HERMOSISIMA, ET AL., G.R. No. L-10662, Dec. 14, 1956.

POLITICAL LAW — ADMINISTRATION LAW — THE WORDS "CUSTOMS REVENUE" USED IN SECTION 1411 OF THE ADMINISTRATIVE CODE INCLUDE ANY KIND OF INCOME OR MONEY DERIVED FROM THE SALE OF IMPORTED MERCHANDISE VALIDLY AND LEGALLY SEIZED AND FORFEITED TO THE GOVERNMENT. — Alfredo Lidoc and Valentin Garcia imported potatoes after having previously obtained an import license therefor under Rep. Act. No. 650. This importation, which was authorized for seedling purposes in accordance with the terms of the import license, found its way in the market after having been released by the Bureau of Customs upon the payment of the usual customs duties and other charges. Petitioner learned of this anomaly and informed the Mayor of the City of Manila that the importers were disposing of the potatoes in question for commercial purposes, in violation of their import licenses. Acting upon this information, the City Mayor dispatched a team of police officers who, armed with search warrants, were able to seize 3,049 crates of potatoes. The importers were charged and convicted for a violation of Rep. Act No. 650 in the CFI of Manila. The potatoes in question were ordered confiscated and sold at public auction. From their sale there were realized net proceeds of ₱49,729.80, which the Clerk of Court deposited in the Treasury of the Philippines to the credit of the CFI of Manila and for the account of the general funds. Petitioner filed with the City Mayor a formal claim for reward under the provisions of Section 1411 of the Revised Administrative Code for having furnished the information to the government which led to the seizure of the potatoes, conviction of the importers and the confiscation and sale of the potatoes in question. The Auditor General, and in his behalf, the Solicitor General, argued that the proceeds made from the sale of the confiscated potatoes did not fall within the terms "customs revenue" as these words are used in Section 1411 of the Revised Administrative Code. *Held*, in construing the meaning of the words "customs revenue" we should not give them the restricted meaning indicated by the Solicitor General but the more liberal interpretation that would include any kind of income or money derived from the sale of imported merchandise validly and legally seized and forfeited to the Government. RUBIC *v.* AUDITOR GENERAL, G.R. No. L-9507, Jan. 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — A RETIRED GOVERMENT OFFICER OR EMPLOYEE WHO REENTERS THE SERVICE OF THE GOVERNMENT CANNOT RECEIVE BOTH THE PENSION, ANNUITY, OR GRATUITY AND THE COMPENSATION FOR THE POSITION UPON REENTERING THE GOVERNMENT SERVICE. — On March 16, 1951 H. M. Peralta, a member of the Armed Forces of the Philippines, retired under the provisions of Rep. Act No. 340 with the grade of First Sergeant, after 30 years of continuous service, and was paid a lump sum gratuity of ₱3,600. On Jan. 3, 1952 he reentered the service of the Government as patrolman of the Caloocan Police Force at a monthly salary of ₱80.00 His appointment was duly forwarded to the Commissioner of Civil Service. Pending action on his appointment he received compensation as patrolman from Jan. 3 to Dec. 31, 1952. On Sept. 10, 1953 the Commissioner authorized his temporary appointment but coursed the same through the Auditor General "for the proper determination on the matter of refunds which under the existing laws retired officers and employees are required to make upon reinstatement in the government service". The Auditor General asked for the refund of the gratuity of ₱3,000 received by Mr. Hermogenes Peralta under Sec. 1 (a) of Rep. Act No. 340 which he received in lump sum upon his retirement from the service of the Armed Forces of the Philippines. *Held*, a retired government officer or employee who reenters the service of the Government cannot receive both the pension, annuity, or gratuity and the compensation for the position upon reentering the Government Service. He must elect between receiving the pension, annuity, or gratuity and the compensation for the position upon reentering the service of the Government. Pension, annuity, or gratuity is granted by the Government to its officers and employees in recognition of past services rendered, designed primarily to provide for old age and disability of persons in its employ. PERALTA *v.* THE AUDITOR GENERAL, G.R. No. L-8480, March 29, 1957.

POLITICAL LAW — ADMINISTRATIVE LAW — INFRINGEMENT OF A TRADEMARK IS TO BE DETERMINED BY THE TEST OF DOMINANCY. — Petitioner, Lim Hoa, filed with the Patent Office an application for the registration of trademark, consisting of a representation of two midget roosters in an attitude of combat with the word "Bantam" The Agricom Development Co., Inc. opposed the application on several grounds, among others, that the trademark sought to be registered was confusingly similar to its trademark, consisting of a pictorial representation of a hen with the words "Hen Brand" and "Marka Manok", which mark or brand was also used on food seasoning product, before the use of the trademark by the applicant. The Director of Patent found and held in its order dated June 26, 1954, that to allow the registration of the applicant's trademark would likely cause confusion or mistake and deceive purchasers and he refused registration of said trademark. *Held*, it has been held that the question of infringement of a trademark is to be determined by the test of dominancy. Similarity in size, form, and color, while relevant is not conclusive. If the competing trademark contains the main or essential or dominant feature of another and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The two roosters appearing on the label of the applicant and the hen appearing on the trademark of the oppositor, although of different sexes, belong to the same family of chicken, known as *manok* in all the principal dialects in the Philippines and when a cook or a household helper or even a housewife buys a food seasoning product for the kitchen, the brand of "Manok' 'or "Marka Manok" would most likely be uppermost in her mind and would influence her in selecting the product; regardless of whether the brand pictures a hen or a rooster or two roosters. There lies the confusion, even deception. LIM HOA *v.* DIRECTOR, G.R. No. L-8072, Oct. 31, 1956.

POLITICAL LAW — ELECTION LAW — A SUBSTANTIAL AMENDMENT, INTRODUCING NEW GROUNDS OF PROTEST IS ONLY ALLOWED WITHIN THE TIME GRANTED BY

LAW FOR THE FILING OF A PROTEST OR COUNTER-PROTEST. — Claro Robles and Leon Guinto, Sr., were candidates for the post of Provincial Governor of Quezon in the elections held in November of 1955. Guinto was duly proclaimed elected on December 5, 1955, and one week later, on December 12, 1955, Claro Robles filed in the court below his petition contesting the election of Guinto. The latter filed on December 16 his answer and counter-protest, which he subsequently amended on December 27. Neither the original nor the amended counter-protest mentioned Precinct 1-A of Guinayangan. On June 1, 1956, six months after the case was begun, respondent-protestee, Leon Guinto, Sr., petitioned the trial court for permission to amend his counter-protest by including Precinct No. 1-A of Guinayangan which petition was granted. Hence, this petition for a wrt of certiorari. *Held*, it is the established rule in this jurisdiction that a substantial amendment, introducing new grounds of protest (new matter or new precincts), is only allowed within the time granted by law for the filing of a protest or counter-protest. The rule not only aims at protecting the other party from unfair surprise, but primarily tends to implement the speedy determination of election contests in consonance with the legislative policy prescribing that such contests be decided within one year. At the risk of occasional injustice and inconvenience, it is deemed more important that election contests be ended as soon as practicable, so that the results of the election be authoritatively determined once and for all, and the people may turn their attention to their moral pursuits for within two years the partisan turmoil is bound to be renewed by the next election. This salutary policy would be defeated if amendments were not confined within strict time limits. ROBLES *v.* DEL ROSARIO, ET AL., G.R. No. L-10918, Feb. 15, 1957.

POLITICAL LAW — PUBLIC CORPORATIONS — THE PROVINCIAL BOARD HAS THE POWER TO ABOLISH POSITIONS OF THE PROVINCIAL GOVERNMENT WHICH IT HAS THE POWER TO CREATE. — The Provincial Board of Rizal in its 1952-1953 budget abolished the positions of petitioners who were civil service eligibles. Said positions were: — position of clerk in the District Health Office; Office of the Deputy Assessor; and the position of Superintendent of Non-Christian Tribes of the province. The reason was "insufficiency of funds to inaugurate improvements necessary for the public welfare." Upon petition to the Sec. of Finance, the Provincial Board was directed to restore the positions abolished. Upon reinstatement, petitioners claimed for their salary during the time they were separated from the service because the abolition of their positions was contrary to law. *Held*, the principal ground for the abolition of the positions of the petitioners in this case was insufficiency of funds to inaugurate improvements necessary for the public welfare. There was nothing personal according to the evidence, to show that the positions of petitioners were abolished, for political or other reasons. It was the Provincial Board that created the positions in question, and so it was its consequent prerogative to abolish said positions in the exercise of its discretion. DOMINGUEZ ET AL., *v.* PROVINCIAL BOARD OF RIZAL, G.R. No. L-10057, March 30, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN THE ORDER OF THE COURT OF ORIGIN AUTHORIZES APPELLANT TO FILE AND SUBMIT A JOINT RECORD ON APPEAL WITHIN THE REGLAMENTARY PERIOD THE ORDER ISSUED SUSPENDS PERIOD

FOR FILING APPEAL OR GRANT ADDITIONAL TIME. — On October 17, 1952 the Court of First Instance adjudicated lots in question to respondents. December 8, 1952 notice of appeal was given. December 12, 1952, they asked to file a joint record on appeal which was acted upon only on January 13, 1953 due to the vacation leave of the judge. Copy of the order was given to the petitioner on February 19, 1950. The corresponding appeal was filed on February 20, 1953. Was appeal perfected on time? *Held*, under facts obtaining in this case, the order of the court of origin authorizing appellants upon latter's motion to file and submit for approval a joint record on appeal within the reglamentary period as required by law, was issued with intention either of suspending the running of the period for the filing of said joint record on appeal or of granting therefore additional time, equivalent to the portion of reglamentary period which had not expired at the time of the filing of said motion. JISON *v.* COURT OF APPEALS, G.R. No. L-8454, April 13, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — AS A GENERAL RULE, IT IS NOT WITHIN THE FUNCTION OF A COURT TO ACT UPON AND DECIDE A MOOT QUESTION OR SPECULATIVE, THEORETICAL, OR ABSTRACT QUESTION. — In a detainer suit in the Manila municipal court, W. Burr was ordered to pay Maria Castro, petitioner, accrued rents amounting to ₱9,225 plus ₱1,000 as attorney's fees. Burr appealed to the CFI and filed a supersedeas bond in the amount of ₱10,225 to secure payment of the accrued rents, damages and costs adjudicated to petitioner, plaintiff in said detainer case. Burr's surety was the Associated Insurance & Surety Co., Inc., which was not made a party in the present case. Judge Tan of the Manila CFI reversed the decision appealed, awarded Burr ₱2,000 as attorney's fees to be paid by petitioner. About a week later, Burr submitted a motion to cancel the supersedeas bond for being *functus oficio*, in view of the decision favorable to him. Maria Castro contended that the CFI's decision had not yet become final, and that the bond answered for rents down to the time of final judgment in the action. The court granted Burr's motion. Petitioner then brought this special civil action to vacate the order of cancellation. Thereafter, she brought to the Court of Appeals the main case, insisting on her right to collect rents. The Court granted her the sum of ₱9,225 as accrued rents. But the quashing of the bond was not discussed in said appeal. *Held*, the surety is not made a party before this Court. Therefore, any judgment in this case revoking Judge Tan's order and, or reviving the supersedeas bond will not affect said Surety Co. A judgment herein against Burr would entail no material advantage to petitioner. Bond or no bond, she is entitled to recover rents from him in accordance with the decision of the Court of Appeals. As the other respondent is merely a nominal party, the issues framed for our resolution become no more than academic, of no practical effect. As a general rule, it is not within the function of a court to act upon and decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question. CASTRO *v.* TAN, G.R. No. L-9515, Feb. 20, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — CIVIL ACTION FOR DAMAGES FOR PHYSICAL INJURIES WHICH RESULTED IN THE DEATH OF THE VICTIM MAY PROCEED SEPARATELY AND INDEPENDENTLY OF THE CRIMINAL PROSECUTION FOR HOMICIDE

BASED ON THE SAME OFFENSE. — Teresita was run over and mortally injured by the automobile of Basilia which was allegedly driven by Liggayu and Basilia's minor son, Roy. An information for homicide thru reckless negligence was filed against Liggayu and Roy. Later, and while the criminal case was pending, petitioners filed a civil case for damages against both drivers and the owner of the car, Basilia. Counsel for defendants asked the suspension of the civil case in view of the criminal proceeding. Over petitioners' objection, the petition for suspension was granted. After one year of waiting, petitioners prayed in a written motion that the civil case be heard without awaiting the outcome of the criminal action. Acting on such petition respondent judge denied petitioners' motion on the ground that the criminal proceeding out of which the civil case arose was still pending. *Held*, Art. 33 of the new Civil Code provides that a civil action for damages brought by the injured party in cases of defamation, fraud and physical injuries shall proceed independently of the criminal prosecution. Herein petitioners urged application of this article, contending that the civil action for damages arose out of physical injuries. Physical injuries in Art. 33 include bodily injuries, even those causing death. DYOGI, ET AL., *v.* YATCO, ET AL., G.R. No. L-9623, Jan. 22, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — ANNEXES ATTACHED TO A COMPLAINT DO NOT TAKE THE PLACE OF ALLEGATIONS. — Plaintiff's petitions to the Court of Appeals were dismissed on the ground of failure to make adequate allegations, and substituting for the same, general references to various annexes to the petitions, so that a reading of the petition alone failed to give a clear and coherent idea of what the petitions were about. Hence, this motion for reconsideration. *Held*, exhibits attached to a complaint do not take the place of allegations. They are referred to and annexed for the purpose merely of supporting the allegations of fact made in the complaint. No matter how many exhibits may be attached to a complaint and made a part thereof, the pleader still lies under the duty of alleging in *the complaint itself* all of the facts necessary to establish his cause of action precisely the same as if the exhibits were not attached. The complaint, should recite all the facts to which the court's attention is called, stated in a clear, coherent and concise manner, *without requiring any reference to or examination of the annexes.* A reading of the latter should not be made necessary except for the purpose of checking or verifying the correctness or completeness of the facts alleged in the complaint. In other words, the complaint must contain a brief summary of the annexes referred to therein, so as to be complete by itself independently of such annexes. LA MALLORCA *v.* COURT OF APPEALS, G.R. No. L-11953, March 18, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — JUDGMENT BY DEFAULT DUE TO FAILURE OF DEFENDANTS TO APPEAR BECAUSE OF THE INEXCUSABLE NEGLIGENCE OF HIS COUNSEL WOULD NOT BE A GROUND FOR NEW TRIAL. — On August 12, 1954, plaintiff filed a complaint against defendants for the recovery of a portion of about six hectares of the land covered by its Original Certificate of Title No. 68. Defendants answered alleging ownership over the land in question. The case was set for hearing on January 27, 1955, defendants having been notified thereof, through counsel on January 3, 1955. At the date of the hearing,

neither defendants nor their counsel appeared. The court ordered the plaintiff to present his evidence, and on the basis thereof, rendered judgment finding the land in question as belonging to plaintiff and ordered the defendants to vacate said land. Defendants' counsel filed a motion for reconsideration and new trial, claiming that counsel failed to communicate before the trial with defendants who were living in the mountains and far from the *poblacion;* that it was only on January 22, 1955 that he entrusted to a student named Iriola, who lived about two kilometers from the house of one of the defendants, a letter to defendants advising them of the trial set for January 27; and that Iriola, whose affidavit was attached to the motion, forgot to deliver said letter to defendants and was reminded thereof only when counsel inquired from him on January 27, the day of the trial. Said motion was ednied, hence, this appeal. *Held*, counsel had, from January 3, 1955, when he was notified of the date of the hearing, twenty-four days to contact his clients and inform them of the trial set for January 27. However remote from town where the residences of defendants, counsel had ample time to communicate with them before the trial. His neglect in promptly notifying his clients of the trial, as well as his failure to appear in court on the date of the hearing, is inexcusable and does not justify the new trial asked for by him. BUFETE *v.* VICTORINO ET AL., G.R. No. L-10103, March 28, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — A SUMMARY JUDGMENT IS NOT WELL TAKEN IF DEFENDANT'S ANSWER TENDERS GENUINE ISSUES BETWEEN THE PARTIES. — Plaintiff brought an action against defendant-appellant for the recovery of the sum of ₱2,000 representing the amount of a loan allegedly taken by the appellant from the P.N.B., the payment of which appellee guaranteed with an indemnity bond, and for which appellant as counter-guarantor, executed in plaintiff's favor a mortgage on his share in a parcel of land. The complaint further alleged that the appellant failed to pay said loan, together with interests, to the P.N.B., as a result of which the bank deducted the amount thereof from plaintiff's deposit. Appellant Alvarez answered, admitting the fact of the loan and the execution of the mortgage of the complaint, but denying knowledge of the alleged payment made by plaintiff to the *P.N.B.* and further alleged that the loan in question was secured by him only in accommodation of one Hao Lam, and that plaintiff agreed not to take any steps against appellant and the mortgage executed by him in plaintiff's favor until the latter had failed to obtain payment from said Hao Lam. On the basis of this answer the lower court upon motion of the plaintiff handed down a summary judgment in favor of the latter. *Held*, the affirmative defense in defendant's answer that he secured the loan in question only to accommodate a third party and that appellee promised not to proceed against him until it had failed to collect from said third party, tenders genuine issues on the time and manner of payment of the indebtedness in question. GENERAL INDEMNITY CO., INC. *v.* ALVAREZ, G.R. No. L-9434, March 29, 1957.

REMEDIAL LAW—CIVIL PROCEDURE—A CERTIFIED COPY OF A DOCUMENT MADE BEFORE IT WAS LOST IS ADMISSIBLE AS SECONDARY EVIDENCE OF ITS CONTENTS AND THE BURDEN OF PROOF IS UPON THE PARTY QUESTIONING ITS CORRECTNESS. — Appeal by the spouses Maxima Alcala and Hospicio Redito from the deci-

sion of the Court of Appeals affirming the judgment of the CFI of Pangasinan in Civil Case No. 9173 thereof declaring appellants owners of a portion of land in question of about one hectare in area while adjudicating another portion thereof of less than one hectare to spouses Leandron Rangel and Marta Regines and the remainder of the land to plaintiffs Bernardo Rangel, et al., and also condemning appellants to pay plaintiffs ₱3,000 as damages. The land awarded to the spouses Leandro Rangel and Marta Regines consisted of Marta Regines' property donated to her *propter nuptias* by Andrea Navarro and her children, including Leandro Rangel, and also the latter's own property segregated from appellant Alcala's land by changing the eastern boundery of the same. This change in boundary was based mainly on a document, Exhibit 4, wherein appellant Alcala appeared to have recognized the ownership of Leandro Rangel of that portion of the land that had been segregated. According to appellant Alcala Exhibit 4 was spurious and anomalous since it was only a certified copy of an original executed by a Notary Public, who had acknowledged the original document, the original document having been lost. Appellant claimed that only the Bureau of Archives could make the certification of the loss of the original document in order that secondary evidence thereof could be admissible. *Held*, as long as the original thereof in the possession of the parties have been proven lost, a certified copy of the document made before it was lost is admissible as secondary evidence of its contents, and the burden of proof is upon the party questioning its correctness to show that it is not a true and authentic copy of the original. ALCALA, ET AL., *v.* COURT OF APPEALS, G.R. No. L-9218, Oct. 31, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN THE RECORDS OF THE TRIAL COURT SHOW THAT PETITIONER FILED HER OWN ANSWER, AND THAT NO LAWYER EVER ENTERED HIS APPEARANCE AS COUNSEL FOR HER, SERVICE OF THE DECISION TO THE PETITIONER HERSELF IS JUSTIFIED. — Petitioner was a fourth-party defendant in civil case Nc. 10794 in the CFI of Manila. Manuel Casal was the fourth-party plaintiff in said civil case. The latter filed said fourth-party complaint against former for contribution, indemnity or subrogation for any amount that may be recovered against him by Enrico Poblete not exceeding ₱5,000. Upon being summoned Anzures filed an answer confessing judgment, in favor of Casal in an amount not exceeding ₱5,000, which amount she had received as purchase price of the property in litigation from Casal. A trial was held in the aforecited civil case and at said trial, in view of the absence of the attorney for Casal, Atty. F. Saulog, counsel for Anzures verbally moved that the complaint against Anzures be dismissed for failure of Casal to appear at the trial. The court entered an order dismissing the complaint against Anzures. But upon finding that Anzures had made a confession of judgment in favor of Casal in her answer, it reconsidered the order of dismissal. Judgment was rendered in the case. Of this judgment, petitioner Anzures, was notified by a copy served on her upon express order of the court. Petitioner objected to this mode of service. *Held*, as to the claim of error on the part of the trial court in not giving notice of the decision to her counsel, the records of the trial court show that petitioner (Anzures) filed her own answer, and that no lawyer ever entered his appearance as counsel for her. The only time when she appeared by counsel was at the time of the trial (on July 19, 1954 when Atty. Saulog appeared for her) but it does not appear that this attorney was appearing permanently as her lawyer, as she entered no appearance in the records. His appearance at the time of the trial, appearing in the record of the trial only, was only for that occasion, as it does not appear from the record that he was attorney of record. In view of this fact, the order of the court for service of the decision on the defendant herself was fully justified as this is expressly authorized by the Rules (Rule 27, Sec. 2). ANZURES *v.* IBAÑEZ, ET AL., G.R. No. L-9442, Jan. 28, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THE PROCEEDING PROVIDED BY LAW IN THE ENFORCEMENT OF THE GOVERNMENT LIEN ON LAND BY REASON OF IRRIGATION FEES IS CONSIDERED *IN PERSONAM*. — Mercedes Gatmaitan was listed as the owner of Lot No. 8709, situated at Kaytukong, Paombong, Bulacan, served by the Angat Irrigation System. For failure to pay the irrigation charges for the years 1945, 1946, 1947, 1948 and 1949 proceeding for the collection of unpaid irrigation charges were instituted in the CFI of Bulacan in accordance with Irrigation Act No. 2152, as amended. Among the delinquent lots proceeded against was Lot No. 8709. Section 13 of the aforecited Irrigation Act provides, among other provisions, "The Clerk of Court shall thereupon publish in the *manner provided for the publication of summons in a civil action*, a list of the lands so filed by the Director of Public Works, accompanied by a notice requiring all the owners to file an answer thereto within thirty days after the completion of the publication." The publication above described was made and upon failure of Mercedes Gatmaitan to file her answer within the period prescribed, judgment by the court was rendered against her ordering the sale of Lot No. 8709 or such portion thereof as may be necessary, to satisfy the delinquencies in the irrigation charges, and costs of the proceedings. Personal notice was not sent to the owners of the delinquent lots of the delinquency and of the necessity to make an answer. *Held*, although the proceeding provided by law in the enforcement of the Government lien on lands by reason of irrigation fees is a little different, for the protection of the landowner delinquent in the payment of said irrigation fees, we should adopt and follow in this jurisdiction as the better rule, that said proceedings be considered *in personam* in the sense that, although the delinquent landowner is summoned by publication, he should be sent personal notice of the delinquency and of the necessity to answer, addressed to his last known address and by ordinary mail. GATMAITAN, ET AL. *v.* DIRECTOR OF PUBLIC WORKS, ET AL., G.R. No. L-10012, Dec. 27, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — ONE OF THE GROUNDS UPON WHICH AN ACTION MAY BE DISMISSED UPON MOTION OF DEFENDANT IS THAT THE PLAINTIFF HAS NO LEGAL CAPACITY TO SUE. — Plaintiff claimed to be a non-stock corporation organized and existing under the laws of the Philippines. Its 35 members were licensed owners and operators in the City of Manila of slot machines. As such, it filed a complaint in the CFI praying that a preliminary injunction be issued to restrain the City Mayor and the City Treasurer from enforcing Ordinance No. 3628 passed by the Municipal Board of Manila on March 19, 1954 and approved by the City Mayor on the same day. Ordinance No. 3628 limited the operation of these slot machines and other similar mechanical devices to areas of more than 200 meter radius from any church, hospital, institution of learning, public market, plaza and government buildings.

It also increased the licenses for their operation from ₱55 annually to ₱330 payable in advance. Upon filing of bond, the writ of preliminary injunction was issued as prayed for. The Asst. City Fiscal, on behalf of defendants, filed a motion of lift the writ of preliminary injunction as well as a motion to dismiss on the ground that the plaintiff had no legal capacity to sue. Inquiries from the Securities and Exchange Commission and the Bureau of Commerce disclosed that the plaintiff was not registered and did not appear in the files of said offices. *Held*, the right to be and act as a corporation is not a natural or civil right of any person. Such right as well as the right to enjoy the immunities and privileges resulting from incorporation constitute a franchise and a corporation, therefore, cannot be created except by or under a special authority from the state (II TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES, 734). Section 1-(c), Rules of Court, provides for the grounds upon which an action may be dismissed upon motion of the defendant and one of them is that "the plaintiff has no legal capacity to sue". And "lack of capacity to sue" means that the plaintiff is not a corporation duly registered in accordance with law (I MORAN'S COMMENTS OF THE RULES OF COURT, 168, 1952 ed. RECREATION AND AMUSEMENT ASSOCIATION *v.* CITY OF MANILA, ET AL., G.R. No. L-7922, Feb. 22, 1957.

REMEDIAL LAW — CIVIL PROCEDURE — THERE IS NO JEOPARDY WHERE THE FIRST INFORMATION IS DIFFERENT FROM THAT WHICH IS REQUIRED TO SUSTAIN CONVICTION UNDER THE SECOND INFORMATION. — Defendant-appellant had two charges against him. The first information charging the defendant and seven others with robbery in band alleged that "conspiring together and helping one another for a common purpose and all armed with bolos, by means of violence and intimidation, (they) did then and there wilfully, unlawfully and feloniously, take and carry away with intent of gain and against the will of the owner thereof, ten (10) sacks of copra valued at ₱200.00 belonging to Jesus Alsua." Arraignment was had and defendants pleaded not guilty to the charge. This information was dismissed on motion of the Provincial Fiscal. Another information was filed charging defendant-appellant with theft as accessory after the fact. Said information recited that "having full knowledge of the commission of the crime of theft of ten sacks of copra from the hacienda of Jesus Alsua" he, defendant-appellant, "did then and there wilfully, unlawfully and feloniously take part in said crime after the commission thereof, to wit: by then and there buying from the aforementioned persons the stolen ten sacks of copra." *Held*, the evidence necessary to support a conviction for robbery in band is different from that which is required to sustain a conviction for theft as accessory after the fact. Hence the defendant Damaso Quedes was not placed nor could he be deemed to have been put in danger of being convicted of the crime of robbery in band either as principal or as accessory after the fact under the first information. PEOPLE *v.* QUEDES, G.R. No. L-8809, Dec. 29, 1956.

REMEDIAL LAW — CIVIL PROCEDURE — THE PERIOD OF SIX MONTHS FOR FILING THE PETITION FOR RELIEF FROM A JUDGMENT OR ORDER SHOULD BE COUNTED FROM THE ENTRY OF SUCH JUDGMENT OR ORDER. — Cristina died leaving a will. Asi was appointed judicial administrator. As such Asi filed a petition for probate of Cristina's will. In said petition Asi intentionally omitted the name of Emilio Soriano, altho he knew that the latter was a nephew of testatrix and was one of her heirs intestate, she having died without any surviving spouse, ascendants or descendants. As a result, Soriano was not given notice of the pendency of the petition for probate nor of the date set by the probate court. The order admitting the will to probate was rendered on Oct. 10, 1951. Soriano filed a petition for relief from said order on April 22, 1952. For the reasons stated in Soriano's petition for relief, the probate court vacated its order of Oct. 10, 1951. Now Asi wanted the decision of the probate court reversed on the ground that the petition for relief filed by Soriano was filed only 6 months and 12 days after the rendition of the order admitting the will to probate and, therefore, out of time. *Held*, the period of six months is incorrectly computed by the appellant from the rendition of the order complained of; it should be counted from the entry of such order. This is evident from Sec. 3 of Rule 38. Under Rule 35, sec. 2, a judgment or order is entered by the clerk after the expiration of the period for appeal or motion for new trial, i.e., after 30 days. This means that the probate order of Oct. 10, 1951; could be entered, at the earliest, on Nov. 9, 1951; wherefore, the petition for relief, filed on April 22, 1952, was within the six months period allowed by law. SORIANO *v.* ASI, G.R. No. L-9633, Jan. 29, 1957.

REMEDIAL LAW — PROVISIONAL REMEDIES — A MANDATORY INJUNCTION TENDS TO DO MORE THAN TO MAINTAIN THE STATUS QUO, IT HAS BEEN GENERALLY HELD THAT IT SHOULD NOT ISSUE PRIOR TO FINAL HEARING EXCEPT ONLY IN CASES OF EXTREME URGENCY. — Moises Antenor and others, hereinafter referred to as respondents, filed a complaint in the CFI against petitioners praying that they be entitled to the use and possession of certain passageway, 3 meters wide and 34.4 meters long, existing on a lot adjacent to D. Silang Street, which is a portion of Lot No. 133 of the Batangas Cadastral Survey and that, pending the determination of the case, a writ of preliminary mandatory injunction be issued ordering petitioners to remove the stone wall and fence erected thereon by petitioners and the *status quo* of the lot be maintained, so that in the meantime respondents may continue the use and enjoyment of said passage-way. Respondent claimed that for 50 years they had been using the northern portion of the lot in question as a passage-way. Petitioners claimed ownership of the lots in question and further alleged that the closing of the passage-way did not cause any prejudice to respondent because the lots belonging to them abut since the year 1940 on a small street 3 meters wide which was expressly provided for them by their previous owner, which street in turn abuts on Calle M. H. del Pilar and from this street they can easily go to any other place of the locality. *Held*, the mandatory preliminary injunction tends to do more than to maintain the *status quo*, it has been generally held that it should not issue prior to *final hearing* except only in cases of extreme necessity. In this case such extreme necessity is absent. BAUTISTA *v.* BARCELONA, G.R. No. L-11885, March 29, 1957.

REMEDIAL LAW — PROVISIONAL REMEDIES — WRIT OF CERTIORARI WILL NOT LIE TO CORRECT AN ERROR ALLEGEDLY COMMITTED BY THE TRIAL JUDGE SOME SIX YEARS AGO. — Petitioners brought an action against the respondents for the recovery of a registered parcel of land claimed by them under a transfer

certificate of title issued in the name of the petitioner. The complaint in that alleged that the land in question, though formerly owned by the defendant had ceased to be his, for he had already sold it *a retro* to one Nemesio Fontanos and had failed to redeem it within the time stipulated, and that said Fontanos, after consolidating title in himself, had in turn sold the land to the said Generosa, petitioners herein. The complaint further alleged that the defendant, with no further right to the land, wrested possession thereof from the plaintiffs in 1944 and had been withholding it from them since then. The defendant answered with a general denial but with the explanation that he was doing so to avoid being declared in default in view of the court's failure to resolve his motion for an extension of time to file his answer for which reason he was requesting for leave to file his special defense later. Without acting on this request, the Court at the instance of the plaintiffs and over the objection of th defendant, rendered a judgment on the pleadings, under date of Oct. 3, 1946, ordering the return of the land to the plaintiffs and condemning the defendant to pay them damages. Seven days after receiving notice of this decision, the defendant filed a motion for reconsideration and new trial, which he supplemented later with another motion for the same purpose but with a request for leave to file an amended answer that was attached to said motion. But the motion was opposed and it remained unacted upon for nearly 3 years, that is, until 1949, when the court then entered an order setting aside the judgment aforementioned, admitting defendant's amended answer and directing the clerk of court to calendar the case for hearing. It is this order that petitioners now seek to amend through a writ of certiorari on the ground that the respondent judge "committed an error of law and grave abuse of discretion" in setting aside a decision promulgated some 3 years before. *Held*, although the order complained of was handed down in 1949, it was not until Aug. 24, 1955, that is, some six years later, that the present petition to have it annulled was filed. In the absence of a satisfactory explanation, this denotes laches if not implied submission to the said order. GENEROSA ET. AL., *v.* MUÑOZ ET AL., G.R. No. L-9587, March 29, 1957.

REMEDIAL LAW — SPECIAL CIVIL ACTION — SECTION 8 OF RULE 72 IS APPLICABLE ALSO IN CASES OF UNLAWFUL DETAINER. — Petitioner executed in favor of respondent Maria B. Castro, a deed of sale with right to repurchase, of two parcels of land in Calauan, Laguna. At the same time the land sold was leased by the vendee to the vendor at a yearly rental of ₱7,200. In October, 1947, respondent Castro filed a complaint for unlawful detainer of said lands in the Justice of Peace of Calauan, alleging non-payment of the yearly rentals overdue. Defendant, petitioner herein, set up the following defenses :(1) that the lands subject of the action were not actually leased but mortgaged at 6% per annum; (2) that the court has no jurisdiction because title to the property is involved; (3) that there is another action pending in the CFI of Manila regarding the same land, this pending action being Civil Case No. 3910 of said court, in which case the question of possession of the property is necessarily included or involved. In 1949, the Justice of the Peace of Calauan rendered judgement in favor of the plaintiff, defendant appaled but the same was dismiss, hence the plaintiff's action for execution. *Held*, while section 8 of Rule 72 is applicable also in cases of unlawful detainer, the immediate execution it provides for, may be availed of only if no question of title is involved and the ownership and the right to the possession of the property is an admitted fact. DE LOS REYES *v.* CASTRO, G.R. No. L-8960, Jan. 31, 1957.

REMEDIAL LAW—SPECIAL PROCEEDINGS — THOUGH AS A RULE PETITIONS FOR CERTIORARI DO NOT INTERRUPT TIME FOR APPEAL, UNDER PECULIAR CIRCUMSTANCES, DEVIATION FROM SUCH RULE IS JUSTIFIED TO FACILITATE AND PROMOTE THE ADMINISTRATION OF JUSTICE. — The nature of the action of respondent concerns the operation of motorboats as a ferry service between one province and another which according to petitioner's theory, fall under the exclusive jurisdiction of the public service commission, for which reason she filed a motion to dismiss precisely on the ground of lack of jurisdiction on the part of the trial court. The issue has the character of prejudicial question. Because of this petitioner filed petition for certiorari after a request was made upon trial court to suspend the proceedings. *Held*, while as a rule petition for certiorari do not interrupt time for appeal for only motion to set aside decision has that effect, however, present circumstances justify duration from stringent rule considering that rules shall be liberally construed not to hide and delay but facilitate and promote the administration of justice. CRUZ *v.* GONZALES, G.R. No. L-9708, Dec. 29, 1956.

REMEDIAL LAW—SPECIAL PROCEEDINGS—A JUDICIAL ADMINISTRATOR, SERVING WITHOUT COMPENSATION, IS NOT ENTITLED TO CHARGE AS AN EXPENSE OF ADMINISTRATION THE PREMIUMS PAID ON HIS BOND. — On Dec. 20, 1948, the CFI of Manila, which has jurisdiction over the estate of the late Margarita David, issued an order appointing Carlos Moran Sison as judicial administrator, without compensation, after filing a bond in the amount of ₱5,000. Sison filed the corresponding bond and took his oath. On January 19, 1955, Sison filed an accounting of his administration which contain among others, the following disbursement items: Paid to Visayan Surety and Insurance Co. on Aug. 6, 1954, as renewal premiums on the Administrator's bond of Judicial Administrator Carlos Moran Sison covering the period from Dec. 20, 1949 to Dec. 20, 1954, inclusive — ₱380.00. The oppositor, one of the heirs, objected to the approval of the above-quoted items objected to on the ground that they are not necessary expenses of administration and should not be charged against the estate. On Feb. 25, 1955, the Court approved the report of the administrator that disallowed the items objected to on the ground that they cannot be considered expenses of administration. *Held*, expenses of executor or administrator to procure a bond is not a proper charge against the estate. There is no difference between a judicial administrator serving with compensation and another without for there is nothing in the rules nor in the decisions to justify the conclusion that the allowance or disallowance of premiums paid on the bond of the administrator is dependent on the receipt of compensation. The position of an executor or administrator is one of trust; that it is proper for the law to safeguard the estates of deceased persons by requiring the administrator to give a suitable bond, and that the ability to give this bond is in the nature of a qualification for the office. It is far-fetched to conclude that the giving of a bond by an administrator is a necessary expense in the care, management and settlement of the estate within the meaning of the law, because these expenses are incurred "after the executor or administrator has met the require-

ments of the law and has entered, upon the performance of his duties." MORAN SISON *v.* TEODORO, G.R. No. L-9271, March 29, 1957.

REMEDIAL LAW—SPECIAL PROCEEDINGS— WHEN THE SERVICES RENDERED BY AN ADMINISTRATOR APPOINTED BY THE COURT TO REPRESENT AN HEIR BENEFIT THE ESTATE, THE ESTATE SHOULD COMPENSATE HIM FOR SUCH SERVICES. — David died leaving a testate estate and two heiresses. The will named Jose Teodoro, Sr., executor and the court appointed petitioner Sison as judicial administrator. Sison repeatedly stated that he was judicial administrator representing the interests of Priscila Sison, one of the heiresses. But he rendered services which consisted in defending suits brought by the executor and an attorney for their respective fees. As a result of his services, the fees claimed were reduced. Again, when the executor resigned he became the only administrator of the estate. When Sison submitted his petition for compensation heiress Narcisa objected, alleging that Sison had not rendered services to the estate, but only to his wife, Priscila, the other heiress. Narcisa claimed that Sison had previously and repeatedly represented himself as representing the interests of Priscila in the testate estate; and that the Court of Appeals had declared Sison to be judicial administrator of the estate representing the interests of Priscila. *Held*, the interests of the heir coincide with those of the estate — the bigger the estate the better for the heir. Therefore, to protect the interests of heiress Priscila usually meant to favor the interests of the estate, as shown by the various services rendered by the administrator Sison which reduced the expenditures of the estate. Again, an administrator appointed by the court for the purposes of giving representation to designated heirs is deemed administrator of the estate. Since the services rendered by petitioner benefiting Priscila, admittedly benefited the estate, the estate, therefore, should compensate him for such servics. SISON *v.* DE TEODORO, G.R. No. L-8039, Jan. 28, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — DEATH OF THE ACCUSED LONG AFTER THE THIRTY-DAY PERIOD FOR THE PRODUCTION OF THE BODY WILL NOT MEAN FULL BUT ONLY PARTIAL EXONERATION OF BONDMEN'S RESPONSIBILITY. — Ali was charged with illegal possession of firearms and arrested. He was bonded by the Luzon Surety Co., Inc. At the arraignment he failed to appear and the prosecution moved to confiscate the bond. The bondsmen failed to produced the body of the accused due to his death long after he jumped bail. Can the bail be confiscated? *Held*, the death of the accused after the period of 30 days within which the bondsmen should have produced the body of the accused as required by the court cannot constitute sufficient cause for a full discharge of bondsmen's responsibility arising from a violation of the terms and conditions of the bond but only entitled them to partial exoneration. PEOPLE *v.* ALI G.R. No. L-6962, April 25, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — MANDAMUS WILL NOT LIE TO COMPEL A COURT TO SUBPOENA PRISONERS SERVING FINAL SENTENCE IN PRISON TO TESTIFY AT TRIAL WHERE PETITIONER FAILED TO COMPLY WITH THE REGULATIONS ISSUED BY THE DEPARTMENT OF JUSTICE, REGARDING ISSUANCE OF

SUBPOENA TO PRISONER SERVING FINAL SENTENCE. — Amante was detained in the provincial jail of Rizal in connection with a estafa charged against him. Herinas is desirous of presenting as witnesses in his behalf Reyes and Canananan, both convicted of estafa by the Court of First Instance of Rizal, but already serving final sentence in Muntinglupa. He petitioned the Judge of said Court of First Instance to subpoena said persons to testify for him at trial but was refused. So a petition for mandamus was brought before this court to issue said subpoena. When mandamus was called for hearing defendant failed to appear. *Held*, Mandamus will not lie to compel a court to subpoena prisoners serving final sentence in prison to testify at the trial where it is shown that the petitioner has not complied with the regulations or circular of the Department of Justice regarding the issuance or subpoena to prisoners serving final sentences, in order to prevent abuse of defendant's right to secure witnesses and avoid unnecessary risk of escape of prisoners, as well as the entailed expenses in transfering said witnesses from Bilibid Prisons to the place of trial. AMANTE *v.* ENRIQUEZ, G.R. No. L-9660, Jan. 29, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — INCREASE IN PENALTY CONSTITUTES DOUBLE JEOPARDY. — On or about Dec. 20, 1954, the accused, having in his possession the amount of $3,140, failed and refused to declare the same with any authorized agent of the Central Bank as prescribed by Circulars 20 and 42 as amended and Circular 25 of the Central Bank. Accused of violation of said Circulars, accused entered a plea of guilty and upon recommendation of the prosecution, the trial court sentenced him to suffer the penalty of ten (10) days imprisonment and to pay a fine of ₱100. The decision did not provide for the confiscation or forfeiture of the aforementioned amount in favor of the government. It seems that this point was subsequently raised by both parties, the prosecution contending that the confiscation should have been included in the decision as part of the penalty, and the latter naturally claiming return to the accused. Thereafter the lower court issued a resolution expressing the opinion and holding that the amount should not be confiscated. The government, through the Solicitor General, is appealing from the resolution directly to this court. *Held*, the confiscation or forfeiture of the above-mentioned sum should be an additional penalty and would amount to an increase of the penalty already imposed upon the accused. To reopen the case for the purpose of increasing the penalty as sought by the Government's appeal, would be placing the accused in double jeopardy and under Rule 118, Sec. 2 of the Rules of Court, the government cannot appeal in a criminal case if the defendant would be placed thereby in double jeopardy. PEOPLE *v.* PAET, G.R. No. L-955. Nov. 26, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — SECTION 87, SUBSECTION (C) OF R.A. No. 296 APPLIES TO CONSUMMATED ACTS ONLY. — Accused was charged and convicted in the CFI of Manila of theft of the sum of ₱262.00. From said decision accused appealed assigning the jurisdiction of the trial court as one of the errors. *Held*, it is true that section 87 (c) of R.A. No. 296 provides that "larceny, embezzlement, and estafa where the amount of money or property stolen, embezzled or otherwise involved, does not exceed the sum or value of two hundred pesos", likewise come under the original jurisdiction of the

municipal court of a chartered city and in the instant case the value of the property involved is ₱202, or a little more than the minimum fixed by said subsection, however we should not lose sight of the fact that the offenses mentioned in said subsection refer to consummated acts and not to those that are merely attempted or frustrated in nature. Decision reversed without prejudice on the part of the prosecution to refile the information in the proper court. PEOPLE *v.* OCAMPO, G.R. No. L-10015 Dec. 18, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE PENALTY FROM DESTIERRO TO "ARRESTO MAYOR" COMES UNDER THE JURISDICTION OF THE MUNICIPAL COURT. — The accused opened the bag of the offended party containing the sum of ₱202.00 in cash, but the said accused was not however able to perform all the acts of execution which would have produced the crime of theft as a consequence by reason of causes independent of her own voluntary will. Charged in the CFI of Manila of attempted theft with the aggravating circumstance of recidivism she was convicted and sentenced to six months and one day of destierro. Accused appealed assigning as one of the errors the jurisdiction of the trial court. *Held*, under Art. 309 of the Revised Penal Code, if the value of the property stolen is more than ₱200 but does not exceed ₱2,000, the penalty of prison correctional in its minimum and medium period shall be imposed. If we reduced this penalty by two degrees, the penalty to be imposed will be destierro in its maximum period to arresto mayor in its minimum period which, insofar as the imprisonment is concerned does not exceed 2 months. The offense charged comes therefore, under the original jurisdiction of the municipal court in view of Sec. 87 (b) of R.A. No. 296 which provides that all offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos or both such fine and imprisonment, comes under the original jurisdiction of said court. PEOPLE *v.* OCAMPO, G.R No. L-10015, Dec. 18, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — FAILURE TO DELIVER AN ACCUSED WITHIN 18 HOURS TO THE JUDICIAL AUTHORITIES WILL NOT AFFECT THE CRIMINAL PROCEEDINGS AGAINST HIM. — Mabong went berserk and was arrested by Verano, a member of the local police force. Three days after his arrest, the chief of police filed two separate informations for murder before the J.P. When the latter conducted the corresponding preliminary investigation, Mabong pleaded guilty, whereupon the J.P. forwarded the two cases to the CFI. In due time the provincial fiscal filed against the accused the informations required by law, and when the court set the same for arraignment, the accused filed a motion to quash and a petition for *habeas corpus* alleging as main ground that his detention by the local authorities became illegal upon the expiration of the period of 18 hours without having been proceeded with in accordance with law, and that the filing later on of the two criminal complaints against him by the chief of police did not have the effect of validating his detention. Said motion was denied. *Held*, the law indeed provides that a public officer or employee who shall detain any person for some legal ground and shall fail to deliver him to the proper judicial authorities within the period of 18 hours if the crime for which he is detained calls for an afflictive or criminal penalty, may be held amendable to criminal prosecution, but there is

nothing said therein that the charge for which he has been detained and for which he has been properly indicted, becomes invalid or nugatory. While a public officer who thus detains a person beyond the legal period may be held criminally liable, the proceeding taken against him for the act he has committed remains unaffected for the two acts are distinct and separate. PEOPLE *v.* MABONG, G.R. No. L-9805-06, March 29, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — CONVICTION OR ACQUITTAL UNDER A FATALLY DEFECTIVE COMPLAINT IS NOT NECESSARILY VOID. — As a result of a collision between two public service vehicles, one driven by Ciriaco Belga and the other by Jose Belga, the chief of police of Malilipot, Albay, filed a complaint in the justice of the peace court of that municipality charging the two drivers of Reckless Imprudence with Physical Injuries. Without this complaint having been dismissed or otherwise disposed of, two other criminal complaints were filed in the same court in connection with the same collision, one (for damage to property thru reckless imprudence) signed by Eufrosinio Belmonte, owner of TPU-759, and the other (for multiple physical injuries through reckless imprudence) signed by five injured passengers of the said vehicle. Unlike the complaint of the chief of police which was against the drivers of both vehicles, the latter two complaints were against Jose Belga only, driver of TPU-854. The complaint of the Chief of Police was duly heard but the Justice of the Peace declared both accused "acquitted of the charge against them." Following his acquittal, counsel for Jose Belga moved to quash the complaint for multiple physical injuries through reckless imprudence alleging that the same was merely a duplication of the complaint of the chief of police against him. He also moved for dismissal of the complaint for damage to property thru reckless imprudence on the ground of double jeopardy. Fiscal contended that the complaint of the chief of police was fatally defective for failure to name the passengers injured. *Held*, conviction or acquittal under a fatally defective complaint or information is not necessarily void when no objection appears to have been raised at the trial and the fatal defect could have been supplied by competent proof. PEOPLE *v.* BELGA, G.R. No. L-890102, Feb. 28, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PERSON, HIMSELF *PARTICEPS CRIMINIS* CAN BE PRESENTED AS A GOVERNMENT WITNESS EVEN THOUGH HE HAS NOT BEEN INCLUDED AS A CO-ACCUSED IN THE INFORMATION. — Proceso Binsol, Tomas Pelleroa and Roman Perolino were charged of having kidnapped Dr. Severo Siasoco and were convicted by the trial court principally upon the testimony of Isabelo Jeciol who was a co-participant in the commission of the crime, having done the mechanical act of kidnapping Dr. Siasoco, upon the direction and plan of Binsol. Jeciel, however, for one reason or another was not included by the fiscal in his information. The question then is whether it is an error for the lower court to have allowed said witness to testify as a witness for the prosecution without first including him in the information as one of the accused and if he appears to be the least guilty, for the fiscal to file later a motion for his discharge to be utilized as a witness for the prosecution, for only in that way can the defense be given an opportunity to help the court in determining that all the elements required by

the rule to warrant such discharge are present. *Held*, the fact that a person has not been previously charged or included in the information even if he appears to have taken part in the commission of the crime does not, and cannot, prevent the government prosecutor from utilizing him as a witness that can testify as to the commission of the crime. In the discharge of his duties, a government prosecutor is free to choose the witness or witnesses he deems more qualified or competent to testify for the prosecution and there is nothing either in the law or in the rules that would require him to first include him in the the information and then later secure his discharge before he could present him as a government witness. The rule, therefore, relative to the right of the government prosecutor to utilize a person who has participated in the commission of the crime as a witness for the prosecution, is as follows: (1) when an offense is committed by more than one person, it is the duty of the fiscal to include all of them in the complaint or information; (2) if the fiscal desires to utilize one of those charged with the offense as a government witness, the fiscal may ask the court to discharge one of them after complying with the conditions prescribed by law; (3) there is nothing in the rule from which it can be inferred that before a person can be presented as a co-accused in the information, for the fiscal is free to produce as a witness anyone whom he believes can testify to the truth of the crime charged; and (4) the failure to follow the requirements of the rule relative to the use of a person, himself, *particeps criminis*, as a government witness does not violate the due process clause of the constitution, nor render his testimony ineffectual if otherwise competent and admissible. PEOPLE *v.* BINSOL, ET AL., G.R. No. L-8346, Jan. 22, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — FOR A PLEA OF GUILTY TO MITIGATE PENALTY, IT IS NECESSARY THAT IT BE MADE BEFORE THE SUBMISSION OF ANY EVIDENCE BY THE PROSECUTION. — Accused was charged with murder in the CFI of Quezon. The original complaint for murder was presented to the JP court of Sariaya, Quezon. Arrested and arraigned, the accused entered a plea of guilty. Then the case was forwarded to the CFI of Quezon wherein the information for murder signed by the provincial fiscal was presented. This time, upon araignment. the accused pleaded not guilty. Trial on the merits began with several persons testifying for the government. The People presented the confession of the accused with other pertinent documents. Thereafter separate motions to quash the information were filed by the accused alleging they were members of the Huk organization, entitled to the Amnesty Proclamation No. 76. However, the motions failed inasmuch as it was found that in committing the crime accused had been motivated by personal reasons, and had not acted in furtherance of the rebellious movement. Trial was then resumed and the accused, with the court's consent, withdrew their former plea of not guilty, to plead guilty to the charges. Convicted by the CFI of the crime charged, accused appealed, contending that the trial court should have imposed the minimum penalty because of the mitigating circumstance of plea of guilty. *Held*, this contention has no merit because the plea of guilty was made after the prosecution had presented its evidence. For a voluntary confession to mitigate the penalty, it is necessary that it the made before the submission of evidence by the prosecution. PEOPLE *v.* CAMO, G.R. No. L-8745, Jan. 11, 1957.

REMEDIAL LAW — CRIMINAL PROCEDURE — WHERE IN A CRIMINAL CASE, THE ACCUSED EXPRESSLY GIVES HIS CONSENT TO ITS TEMPORARY TERMINATION, HE IS DEEMED TO HAVE WAIVED HIS RIGHT TO INVOKE DOUBLE JEOPARDY IF SUBSEQUENTLY PROSECUTED FOR THE SAME OFFENSE. — Petitioner was prosecuted for physical injuries thru reckless imprudence but same was provisionally dismissed due to lack of interest of the complainant with consent of the accused. Subsequently, the accused was prosecuted for the same offense and interposed double jeopardy as a defense. *Held*, where in a criminal case, the accused expressly gives his consent to its temporary termination, like an order removing it to a lower court or providing for a provisionally dismissal, he must be deemed to have waived his right to invoke jeopardy if subsequently prosecuted for the same offense. ANGELES *v.* PEOPLE, G.R. No. L-18331-R, Nov. 29, 1956.

REMEDIAL LAW — EVIDENCE — FAILURE OF AN EYEWITNESS TO RECOGNIZE COMPANIONS OF THE ACCUSED IN THE COMMISSION OF THE CRIME CHARGED WILL NOT NECESSARILY INDICATE THAT SHE WAS NOT ABLE TO RECOGNIZE THE ACCUSED. — The evidence on record conclusively showed that on Dec. 11, 1940 at about 7:00 o'clock in the evening while Manuel Sulla, his common law wife Matilde Dellera, their six children and their nephew, Luciano, were taking their supper in the kitchen of their house in barrio Salog, Leyte, defendant Arpon, armed with a carbine, and accompanied by two persons whose identities were never known, forced open the kitchen door and entered the house. Manuel Sulla tried to reach for his bolo but Arpon fired at him thrice, hitting him at the waist which sent him down. At this instant Matilde hurriedly left the house with her children, to seek help. Defendant Arpon then grapped the bolo from Sulla and hit him at the right foot. Arpon started ransacking the big trunk in the room, whereupon he saw the boy Luciano. After an inquiry, Arpon struck Luciano with the carbine and left him. Luciano retreated to a room and there he was able to observe the movements of defendant Arpon and his companions. Luciano saw the robbers take a small trunk from the sala, bringing the same to the yard where it was forced open. On the trial for the crime of robbery with homicide, Matilde and Luciano identified defendant Arpon as one of the three persons who entered their house forcibly and who shot deceased Manuel Sulla. They were not able, however, to identify the two other companions of defendant. Now defendant contended that the testimony of Matilde should not have been given credence because she testified that she had not recognized the two companions of defendant-appellant who also went up the house. *Held*, certainly the failure of Matilde to recognize appellant's companions in the commission of the crime at bar will not necessarily indicate that she was not able to recognize the appellant. PEOPLE *v.* ARPON, ET AL., G.R. No. L-9044, Jan. 29, 1957.

REMEDIAL LAW — EVIDENCE — HAVING BEEN SUFFICIENTLY IDENTIFIED AS THE LEADER OF THE GANG THAT PERPETRATED THE CRIMES CHARGED, THE ALIBI PUT UP BY APPELLANT IN AN EFFORT TO EXCULPATE HIMSELF FROM LIABILITY CANNOT BE OF MUCH HELP. — Appellant de la Cruz was charged with the crime of kidnapping with murder in three separate cases and with the crime of murder in two other cases. The trial was held jointly in these five cases.

Five witnesses identified the appellant as the leader of the gang that took the victims from their respective houses. Feliciana Manubay testified that it was appellant who, with others, went up her house to take her husband and who took him to Barrio Buliran where she found her husband's dead body the following day. Lolita Alberto testified that she recognized appellant among those who took her husband to Barrio Buliran where, the following morning, she found the latter's body sprawling among other dead bodies. Cosme de la Cruz also pointed to appellant as among those who took his son from his house and who brought the same to Buliran to be killed. Maria Solis identified appellant as one of those who maltreated her husband. She later found her husband dead in front of her house. Maria Lopez was another witness for the prosecution who testified to having seen appellant come up her house with other men to take her husband. This witness saw appellant shoot her husband to death. All these killings took place on the night of Sept. 20, 1948. Appellant put up the defense of alibi. He denied having gone to the houses of the alleged victims in the evening of Sept. 20, 1948. He claimed that on the night of Sept. 20, 1948 he was in Cabanatuan Cty in the house of Jose Ramos whose rig he was driving. Jose Ramos corroborated appellant's testimony. Felix Gulapa also gave corroborating testimony in favor of appellant. *Held*, having been sufficiently identified as the leader of the gang that perpetrated the crimes charged, the alibi put up by appellant in an effort to exculpate himself from liability cannot certainly be of much help, not only because that defense is by nature weak because of the facility with which it can be fabricated, but also because there is nothing in the evidence to show why the prosecution witnesses would point to him as one of the culprits unless he is really one of those who had perpetrated the crimes. PEOPLE *v.* UMALI, ET AL., G.R. No. L-8866-8870, Jan. 23, 1957.

COURT OF APPEALS

CIVIL LAW — PROPERTY — LANDS COVERED BY THE WATERS OF A LAKE ONLY TEMPORARILY AND ACCIDENTALLY AND FOR THE SHORTER PERIOD OF TIME OF THE YEAR ARE PROPERTY OF PRIVATE OWNERSHIP. — Plaintiff bought from the heirs of De Relos a parcel of land located in the province of Camarines Sur. To the east of this piece of land laid Bula lake. During the longer part of the year Bula lake left dry portions of said land. Said portions of land were covered by the waters of Bula lake only during the months of December, January and March. Defendants took possession of these portions of land, claiming the same to be of public ownership. Plaintiff, on the other hand, claimed ownership of the same since these portions of land adjoined his property. *Held*, the law applicable to the present case is the Spanish "Ley de Aguas de 3 de Agosto de 1866", the effectivity of which was extended to the Philippines on Sept. 21, 1871, and which has expressly been declared as supplementary legislation to the new Civil Code and Irrigation Law. Consequently, the controverted parcels of land cannot be considered as of public ownership because Art. 77 of the "Ley de Aguas de 3 de Agosto de 1866" expressly provides that "Los terrenos que fueren accidentalmente inundados por las aguas de los lagos o por los arroyos, rios y demas corrientes, continuaran siendo propiedad de sus deños respectivos." Even in the event that the two parcels of land claimed by appellants may be considered as accretions gradually deposited

by accessions or sediments from the water of Bula lake, still appellee should be considered as the owner of said parcels of land because Article 84 of the Spanish Law of Waters of 1866 provides that "Pertenece a los dueños de los terrenos confinantes con los arroyos, torrentes, rios y lagos, el acrecentamiento que reciban paulatinamente por la accesion o sedimentacion de las aguas." YOROBE *v.* OROZCO, (CA) G.R. No. 14820-R, Nov. 14, 1956.

CIVIL LAW — PROPERTY — THE OWNER OF THE LAND HAS NO RIGHT TO DEMAND RENTS FOR THE OCCUPATION THEREOF BY THE BUILDER IN GOOD FAITH PENDING THE PAYMENT OF INDEMNITY OR THE SALE OF THE LAND TO THE LATTER. — Appellant Maximo Baquilaran built a house on two lots which on partition fell to the plaintiffs. Appellant was the son of Benito Baquilaran, also a defendant, one of the co-owners of the six lots to which the two lots abovementioned belonged. The lower court found that appellant built his house in good faith. It ruled that the plaintiffs were entitled to acquired said house of appellant by paying him ₱5,000, or to compel appellant to pay them the price of the lands on which appellant's house stood. Should the plaintiffs choose to acquire the house, appellant, the trial court ruled, had the right to retain the same until the amount of ₱5,000 was satisfied by the plaintiffs. The court ordered appellant to pay rents to the plaintiffs in the amount of ₱120 a month from October, 1957 until the plaintiffs should have acquired his house, or until appellant should have chosen to buy the lands where his house was built. *Held*, appellant's house falls within the scope of the term "useful expenses." Since he built it in good faith he has the right of retention pending reimbursement. This right extends to the land itself, because the right to retain the improvements while the indemnity is not paid implies the tenancy or possession in fact of the land on which they are built. It need only be added, as a logical conclusion from what has been said, that the owner of the land has no right to demand rents for the occupation thereof by the builder in good faith pending the payment of the indemnity or the sale of the land to the latter, whichever is the choice of the said owner. BAQUIRAN, ET AL., *v.* BAQUIRAN ET AL., (CA) G.R. No. 13515-R, Nov. 12, 1956.

CIVIL LAW — PROPERTY — THE NATURE OF PROPERTIES OWNED BY CITIES IN THIS COUNTRY IS DETERMINED BY THE CHARACTER OF THE USE OR SERVICE FOR WHICH THEY ARE INTENDED OR DEVOTED. — Appellants constructed their houses on a lot donated to the city of Manila which was intended for a traffic circle. A lease contract was executed between them and the city mayor. The city needed said lot for the intended purpose so that it gave to the appellants notice to vacate which the latter did not mind claiming they had a valid lease contract and that the property in question was patrimonial being vacant when they occupied the same. *Held*, the nature of the properties owned by cities in this country is determined by the character of the use or service for which they are intended or devoted. Properties which are intended for public use or for some public service are properties for public use. All others are patrimonial properties. It matters not that the property is not actually devoted for public use or for some service. CAPITULO ET. AL., *v.* AQUINO (CA) G.R. No. 15488-R, Nov. 19, 1956.
