fees adjudged, plaintiff moved for immediate execution of the judgment. Granted. **Held,** a supersedeas bond is unnecessary when defendant deposits in court the amount of all back rentals adjudged. The question now is for what items does a supersedeas bond stand under Section 8 of Rule 72? Apparently, for (a) rents, (b) damages and (c) costs. What damages? Those that refer to the reasonable compensation for the use and occupation of the property to which plaintiff is entitled which, generally, is measured by the fair rental value of the property. It cannot refer to other kinds of damages foreign to the enjoyment or material possession of the property. Consequently, the attorney's fees in quesion cannot be considered as damages. The trial court erred in ordering immediate execution of judgment. **Castueras v. Hon. Judge Bayona,** G. R. No. L-13657, October 16, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — DISMISSAL OF A PETITION FOR PROBATE AT THE INSTANCE OF THE PROPONENT DOES NOT BAR A SUBSEQUENT PETITION BY HIM, NOTWITHSTANDING AN ORDER OF THE PROBATE COURT TERMINATING, CLOSING AND ARCHIVING THE PROCEEDINGS. — Petitioner-appellant instituted special proceedings for the probate of the will of her deceased spouse. Subsequently, after the publication of the notice of hearing and service of copies thereof to all concerned, petitioner filed a motion stating that the instituted heirs had agreed to partition the estate in accordance with the provisions of the will, and praying that an order be issued terminating and closing the proceedings. Upon submission of a copy of the deed of extrajudicial partition to the court, the motion was granted and the proceedings were "terminated, closed and archived" by order of the court. Later, petitioner filed another petition for the probate of the same will. Oppositors-appellees moved for dismissal on the ground that the petition amounted to reopening the proceedings already terminated, closed and archived. Applying Section 1, Rule 30 in relation to Section 2, Rule 73 of the Rules of Court, the Supreme Court **Held,** the order of dismissal issued in the initial proceedings was without prejudice, the contrary not having been stated in the order nor in the motion that prompted its issuance. **Ventura v. Ventura,** G. R. No. L-11609, September 24, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — WHERE DECEDENT LEAVES A WILL, THERE CAN BE NO EXTRAJUDICIAL PARTITION OF HIS ESTATE WITHOUT THE WILL BEING FIRST PROBATED. — Appellant herein filed a petition for the probate of the will of her deceased husband. Subsequently, she moved to dismiss the petition on the ground that the instituted heirs had agreed to partition the estate among themselves in accordance with the dispositions of the will. Granted. Thereafter, petitioner filed another petition for the probate of the same will. Oppositors moved for dismissal on the ground that the will had already been carried out in the extrajudicial partition. Citing the earlier case of Guevara v. Guevara, 74 Phil. 479, the high court **Held,** if the decedent left a will and no debts and the heirs and legatees desire to make an extrajudicial partition of the estate, they must first present that will to the court for probate. The law enjoins the probate of the will and public policy requires it because unless the will is probated the right of a person to dispose of his property by will may be rendered nugatory. **Ventura v. Ventura,** G. R No. L-11609, September 24, 1959.

COURT OF APPEALS CASE DIGEST

COMMERCIAL LAW — CORPORATION LAW — A CORPORATION FORMED BY AND CONSISTING OF THE MEMBERS OF A PARTNERSHIP WHICH TAKES A CONVEYANCE OR ASSIGNMENT OF ALL THE ASSETS OF THE PARTNERSHIP FOR THE PURPOSE OF CONTINUING ITS BUSINESS IS DEEMED TO HAVE ASSUMED THE OBLIGATIONS OF THE PARTNERSHIP. — Plaintiff commenced action to recover certain sums from the partnership Guanzon Mine Development Company, Ltd. and its individual partners. During the trial the complaint was amended so as to have the partnership aforestated substituted by Guanzon Mine Development Company, Inc., formed and organized by the members of the partnership and which took over all the assets thereof. Mining equipments previously used by the partners were also transferred to the corporation. It was likewise shown that after the assignment of all its assets to the corporation the partnership virtually ceased to exist and, in the words of the managing partner himself, "we are operating under a corporation", that is, the Guanzon Lime Development Company, Inc. However, the defense was put up that the corporation was entirely new, distinct and separate from the partnership and that since the deed of assignment of the latter's assets did not in any way provide for the corporation assuming the liability of the partnership, defendant corporation could not be held liable on the recovery. **Held,** upon the above facts we are of the opinion and so hold that the corporation must be deemed to have assumed the obligations of the partnership. **Valdeavella v. Guanzon,** CA-GR No. 18932-R, July 2, 1958.

CRIMINAL LAW — LIBEL — REPUBLICATION OF LIBELOUS MATTER, ALTHOUGH MERELY REPETITIOUS WITHOUT ANY INTENTION TO EXTEND OR ENLARGE UPON THE CIRCULATION OF THE DEFAMATION, IS PUNISHABLE, THE PRINCIPLE BEING THAT A PERSON WHO REPEATS SLANDER IS PRESUMED TO INDORSE IT. — Defendants Bernie Salumbides, editor and publisher of a tabloid weekly, and Lilia Rianzares, staff member thereof, were charged with libel for a story published in the tabloid entitled "Celia Flor Figures in U.S.A. Scandal." The story was substantially based upon another previously published in an American magazine concerning a Hollywood party where Celia Flor, the complainant, was said to have posed with multi-millionaire Winthrop Rockefeller "in a candid unprinted pose". Spicy parts of the local edition read: "Winnie, according to the magazine, threw up the shindig because he is one multimillionaire who has a special weakness for the female flesh spots. He is said to be keeping a special collection of pornographic pictures of beautiful women with whom he has posed. And, in all likelihood, the picture of Celia Flor is one of them. x x x The scandal magazine said 'Bobo' (former wife of Winthrop) knew of Winnie's affairs with women all over the country, including movie stars, society belles, international beauties, etc. He has so become well-known (we mean his good-time adventures) that the magazine said that whenever he was with a woman, he was sure to give her the usual Winthrop treatment. Sex maniacs know what that means. So, now, we ask: did Celia Flor fall prey to this Winthrop treatment?" Defendants put up in defense the fact that the story was mainly based on another already published. Held, that the defamatory article was a republication cannot exculpate defendants. One is liable for the

publication of defamatory words against another although he is only repeating what he heard and names the source of his information, and this doctrine extends even to cases where the repetition is made without any intention to extend or enlarge upon the circulation of the defamation, the principle being that a person who repeats slander heard from others is presumed to indorse it. **People v. Salumbides,** CA-GR No. 21704-R, November 22, 1958.

LABOR LAW — WORKMEN'S COMPENSATION ACT — TO DETERMINE THE EMPLOYER'S LIABILITY UNDER THE WORKMEN'S COMPENSATION ACT, THE TEST IS WHETHER THE WORK DONE PERTAINS TO HIS BUSINESS, TRADE OR OCCUPATION; IF SO, HE IS LIABLE EVEN THOUGH THE WORK IS DONE THRU THE MEDIUM OF AN INDEPENDENT CONTRACTOR, OR THOUGH THE LABORER IS CONTRACTED FOR A LUMP SUM. — Suit for the recovery of compensation under the Workmen's Compensation Act for the death of plaintiff's husband while in the employ of defendant, operator of a fishing launch. Deceased was a professional diver who accepted employment to disentangle fishing nets entangled at the bottom of the sea. He was engaged twice by defendant, the last ending in his death when he passed out while diving, from which he never regained consciousness. Against the action, defendant put up these defenses: (a) that deceased was an independent contractor, (b) that he was contracted for a lump sum, and, hence, excluded from the operation of the Workmen's Compensation Law. **Held,** as stated in the syllabus of this digest. **Joco v. Aguilar,** CA-GR No. 9064-R, October 25, 1958.

LAND TITLES AND DEEDS — MINING ACT — AN ADVERSE CLAIM FILED UNDER SECTION 73 OF THE MINING ACT, AS AMENDED BY REPUBLIC ACT NO. 746, TO BE VALID, MUST STATE IN FULL DETAIL ITS NATURE, BOUNDARIES AND EXTENT, AND ACCOMPANIED BY ALL PLANS, DOCUMENTS AND AGREEMENTS UPON WHICH IT IS BASED. — Defendant-appellee filed with the Bureau of Mines an application for the lease of his lode mineral claim. During the period of publication, plaintiff-appellant filed an adverse claim opposing appellee's lease application for overlapping his. To his claim, appellant did not attach any plan or documents and agreements on which the claim was based. Neither did the claim contain any statement in detail of its nature, boundaries and extent. The question is whether or not there was a valid adverse claim filed. Section 73 of the Mining Act, as amended by Republic Act No. 746, provides: "At any time during the period of pubilcation, any adverse claim may be filed under oath with the Director of the Bureau of Mines, and shall state in full detail the nature, boundaries and extent of the adverse claim, and shall be accompanied by all plans, documents and agreements upon which said adverse claim is based." **Held,** none. Under the terms of the statute, the adverse claimant must show the nature, boundaries and extent of the claim, accompanied by plans, proper papers and documents. The use of the term "shall" in the statute, imparts a mandatory and imperative character to the said requirements, so that if an adverse claim is to be valid it must strictly comply with such requirements. **Bagasan v. Pabilona,** CA-GR No. 21613-R, October 23, 1958.

LAND TITLES AND DEEDS — MINING ACT — PERFORMANCE OF THE REQUIRED ANNUAL ASSESSMENT WORK AND FILING OF THE AFFIDAVIT OF ASSESSMENT WORK IN ACCORDANCE WITH SECTIONS 81 AND 83 OF THE MINING ACT ARE MANDATORY. — Plaintiff commenced action for the purpose, among others, of securing judgment declaring defendant to have forfeited his rights over and abandoned a mining claim covered by a mining lease contract, declaring said contract cancelled, with a further declaration opening said mining for relocation. It was shown that defendant failed at one time to perform the required annual assessment work and to file the affidavit of assessment work in accordance with with sections 81 and 83 of the Mining Act. It was also proved that he left the claim and dismantled certain equipments placed on the mineral land subject-matter of the lease and had not returned them thereto since then. **Held,** forfeiture and opening for relocation of the mining claim declared. The requirements of the aforestated sections of the mining law are mandatory and failure to comply with them constitutes abandonment. We agree that the legal provisions providing for forfeiture of mining rights should be strictly construed, but we are of the opinion that in the instant case abandonment both in law and in fact has been proven. **Valdeavella v. Guanzon,** CA-GR No. 18932-R, July 2, 1958.

POLITICAL LAW — PUBLIC CORPORATIONS — A MUNICIPAL CORPORATION IS NOT ESTOPPED FROM DENYING THE VALIDITY OF A CONTRACT ENTERED INTO BY ITS OFFICERS WITHOUT AUTHORITY THOUGH BENEFITED THEREBY. — Class suit to recover unpaid wages for services rendered on the construction and repair of a road maintained by defendant Quezon City. Plaintiffs-appellants worked upon alleged authorization by the acting mayor and a councilor of said city. They had no authorization from the city engineer who, under the provisions of section 25 of Republic Act No. 537, section 1 of Commonwealth Act No. 424 and section 79(D) of the Revised Administrative Code, is the officer clothed with authority to hire laborers in public works projects or construction of said city. Hence, even admitting that plaintiffs were authorized by the acting mayor and councilor aforesaid, as claimed, said officials exceeded their authority, and, hence, their acts were ultra vires creating no valid and binding contract between defendant city on the one hand and plaintiffs on the other. The latter, however, invoking equity, contend defendant in estoppel to deny the validity of the contract upon the ground that it benefited therefrom. **Held,** the contention is untenable. A municipal corporation cannot be estopped from denying the validity of a contract entered into by its officers without authority. **Alcantara v. Quezon City,** CA-GR No. 22339-R, November 7, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — AN APPEAL BOND SIGNED BY APPELLANT'S LAWYER IN HIS OWN NAME AS PRINCIPAL IS DEFECTIVE. — Petitioner Layson was ordered to pay in a judgment in a civil case respondent Melliza a certain sum. Within the reglementary

period, petitioner took steps to perfect an appeal filing his notice of appeal and record on appeal. These matters are not disputed. Whether or not the appeal bond was duly filed is the question. Said bond was signed by petitioner's attorney — not as former's authorized representative or agent — but in his own name, as principal. **Held,** the appeal bond is defective. It is true that Section 5, Rule 41 of the Rules of Court does not prescribe any form for appeal bonds, and it is equally true that appellant is not required to join the bondsmen as the principal in the appeal bond subscribed by the latter, but the lawyer is not the principal, the client is. The appeal bond was not ratified by petitioner, hence, defecive. **Layson v. Hon. Judge Querubin,** CA-GR No. 22960-R, November 7, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — DEPUTY CLERKS OF COURT ARE NOT CLOTHED WITH THE MAGISTRACY OF THE LAW TO RECEIVE EVIDENCE; SUCH AUTHORITY OR POWER IS PRIMARILY LODGED IN THE PERSON OF THE TRIAL JUDGE. — Defendant city was sued for the payment of unpaid wages for services rendered in the construction and repair of its road. Defendant failed to file its answer and, on plaintiffs' motion, was declared in default. On order of the court, plaintiffs presented their evidence before the deputy clerk of court, after which judgment was rendered in their favor. On grounds provided by law, defendant filed a petition to lift the order of default, to set aside the judgment, and to allow presentation of its answer. Granted. Notwithstanding their preference to rely upon the recorded evidence taken before the deputy clerk, the court directed plaintiffs to present anew all of their oral and documentary evidence after the lifting of the order of default. This the plaintiffs assigned as error on appeal from dismissal of their complaint. **Held,** plaintiffs are the ones in error. The deputy before whom plaintiffs had presented their evidence is not clothed with the magistracy of the law to reecive evidence. Such authority or power is primarily lodged in the person of the trial judge. We have already held that appointment motu proprio by a court of a clerk of court as an arbiter to take evidence is irregular and improper (Ilagan v. Sambrano, CA-GR No. 6537-R, September 14, 1951). Even where a witness had testified before a trial judge, still the same judge could recall such witness and require him to testify anew (Castillo v. Sebullina, 31 Phil. 518). **Alcantara v. Quezon City,** CA-GR No. 22339-R, November 7, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — DUPLICITY OF OFFENSES IN THE INFORMATION, WHEN NOT OBJECTED TO, DOES NOT PREVENT CONVICTION FOR BOTH OFFENSES IF DULY PROVED. — Accused here was an accountable officer. He pocketed some of his collections. In the duplicate and triplicate copies of the receipts issued for the collections, he made adjustments of the amounts appearing thereon. For these acts the trial court found him guilty of the complex crime of malversation of public funds through falsification of public documents. **Held,** in the commission of malversation in the instant case, falsification was not a necessary means. The falsification was intended to conceal the misappropriation. Hence, there should be two separate crimes here. The two crimes of malversation of public funds and falsification of public documents having been alleged in the information and both duly proved beyond reasonable doubt in the trial, without the least exception from the accused, the latter could and should be convicted thereof. **People v. Jaromay,** CA-GR No. 20337-R, October 23, 1958.

REMEDIAL LAW — EVIDENCE — THE TESTIMONY OF A HANDWRITING EXPERT CANNOT SUPPLANT THE POSITIVE TESTIMONY OF THE NOTARY BEFORE WHOM THE DOCUMENT BEARING THE HANDWRITING IS RATIFIED, AND THAT OF TWO OTHER EYEWITNESSES TO THE EXECUTION AND SIGNING OF THE DOCUMENT. — Action to annul a deed of donation on the ground of forgery. Plaintiff introduced testimonial and documentary evidence to establish the alleged forgery, including the testimony of a handwriting expert who proceeded by the superimposition method. Upon the other hand, defendant presented documentary evidence and testimonies of the notary who ratified the document bearing the handwriting, and two eyewitnesses to the execution and signing of said document. The question is which should preponderate, the testimony of the handwriting expert or those of the notary and the two eyewitnesses? **Held,** the latter's, for the following considerations: proof of handwriting by comparison is in most cases unsafe, even when several documents are used as a basis for comparison; fact testimony is of greater weight than opinion evidence; direct evidence of occurrences is entitled to greater weight than opinion evidence; positive testimony of a credible, witness to the effect that the testator signed the will in his presence is not overcome by the opinion of handwriting experts; evidence by comparison of handwriting is very reliable; and, specially, expert witnesses are no longer impermeable to the influence of fees. **Beraña v. Rilloma,** CA-GR No. 12253-R, November 18, 1958.