REMEDIAL LAW—SPECIAL PROCEEDINGS—AN ORDINARY ACTION FOR PARTITION CANNOT BE CONVERTED INTO A PROCEEDING FOR THE SETTLEMENT OF THE ESTATE OF A DECEASED, WITHOUT COMPLIANCE WITH THE PROCEDURE OUTLINED BY THE RULES OF COURT. — This is an action for liquidation and partition of the estate left by the spouses Mariano Bautista and Gertrudes Garcia filed by plaintiffs against the defendants, legitimate grandchildren and children, respectively, of said deceased spouses. The complaint alleged, among others, that Mariano Bautista died intestate on December 5, 1947 and that his properties had already been extra-judicially partitioned among his heirs; that Gertrudes Garcia likewise died intestate on August 31, 1956 leaving as her legitimate heirs plaintiffs and defendants; and that the deceased Gertrudes Garcia left outstanding obligations to the Rehabilitation Finance Corporation and the G.A. Machineries, Inc. On a motion to dismiss filed by the defendants alleging that the action was premature because it is admitted in the complaint that the deceased left certain debts, the lower dismissed the complaint on that ground. From the order of dismissal, plaintiffs appealed. Appellants claim that there is nothing that would prevent the trial court from directing and ordering that the pending obligations of the estate be paid first, or that they should constitute liens on the respective shares to be received by each heir. *Held,* the order appealed from is affirmed. What the appellants propose is that the administration of the estate for the purpose of paying off its debts be accomplished right in the partition suit. Obviously, and ordinary action for partition cannot be converted into a proceeding for the settlement of the estate of a deceased, without compliance with the procedure outlined by Rules 79-90 of the Rules of Court. GUICO *v.* BAUTISTA, G.R. No. L-14821, December 31, 1960.

REMEDIAL LAW—SPECIAL PROCEEDINGS—DOMICILIARY AND ANCILLARY ADMINISTRATIONS ARE TWO SEPARATE AND INDEPENDENT PROCEEDINGS.— Walter G. Stevenson, a British subject, died in California with real and personal properties in the Philippines. Principal or domiciliary administration in California and ancillary administration in the Philippines resulted. In this appeal from a decision of the Court of Tax Appeals one of the questions raised is whether a claim for indebtedness of the decedent incurred during his lifetime must be approved by the Philippine probate court regardless of its prior admission and approval by the California provate court before such claim may be allowed as a deductible item for purposes of Estate and Inheritance taxation. *Held,* the approval of the Philippine probate court is necessary. This distinction between domiciliary administration serves *only* to distinguish one administraton from the other, for the two proceedings are separate and independent. The Philippine probate court in this case is therefore, a regular court of administration with power to admit and approve claims, for the Rules of Court could not have intended that our Courts be subordinate to foreign courts over which we have no control. COLLECTOR OF INT. REV. *v.* FISHER AND FISHR; FISHER AND FISHER *v.* COLLECTOR OF INT. REV., G.R. Nos. L-11622 & 11668, January 28, 1961.

REMEDIAL LAW—SPECIAL PROCEEDINGS—UNTIL ALL THE DEBTS OF THE ESTATE ARE PAID, AN ACTION FOR PARTITION AND LIQUIDATION IS PREMATURE. — This is an action for liquidation and partition of the estate left by the spauses Mariano Bautista and Gertrudes Garcia filed by plaintiffs against the defendants, legitimate grandchildren and children, respectively, of said deceased spouses. The complaint alleged that Mariano Bautista died intestate on December 5, 1947 and that his properties had already been extra-judicially partitioned among his heirs; that Gertrudes Garcia likewise died intestate on August 31, 1956 leaving as her legitimate heirs plaintiffs and defendants and that the deceased Gertrudes Garcia left outstanding obligations to the Rehabilitation Finance Corporation and the G.A. Machineries, Inc. On a motion to dismiss filed by the defendants alleging, among other things, that the action was premature because it is admitted in the complaint that the deceased left certain debts, the lower court dismissed the complaint on that ground. From the order of dismissal, plaintiffs appealed, urging that their action for partition and liquidation may be maintained notwithstanding that there are pending obligations of the estate, subject to the taking of adequate measures either for the payment or the security of its creditors. *Held,* until all the debts of the estate in question are paid, appellant's action for partition and liquidation is premature. Where the deceased left pending obligations, such obligations must be paid first or compounded with the creditors before the estate can be divided among the heirs; and unless they reach an amicable settlement as to how such obligation should be settled, the estate would inevitably be submitted to administration for the payment of such debts. GUICO *v.* BAUTISTA, G.R. No. L-14921, December 31, 1960.

COURT OF APPEALS CASE DIGEST

CIVIL LAW—DAMAGES—NEGLIGENCE MUST BE THE PROXIMATE CAUSE OF THE DAMAGE IF LIABILITY IS TO ATTACH. — Gloria Valdez was a student in the school of midwifery owned and operated by the defendant and at the same time was a boarder in the school's dormitory located adjacent to the defendant's hospital. Gloria occupied the upper bunk of the wooden double decker bed which she shared with another student. The upper bunk was some 46 inches above the cement floor, 75 inches long 30 inches wide. To reach it one had to use a chair as a stepping board. All the beds provided for the student boarders were of the same make and had no railings on the sides. While in the act of getting down, Gloria slipped and lost her footing, resulting in the accident which caused her death. The plaintiffs filed an action to recover damages from the defendant corporation for the death of their daughter Gloria. The plaintiff's claim for damages is predicated on the alleged negligence of the defendant in having violated its contractual obligation with the deceased to furnish her reasonably safe accommodations, particularly a

bed provided with railings to avoid any danger of falling while asleep. *Held*, the plaintiffs cannot recover damages. The dimensions of the bed of the deceased and the absence of railings along its side had nothing to do with the fall which caused her injury. She did not fall while asleep; she was awake and in the act of getting down slipped and lost her footing. The law concerning negligence, whether in the performance of a contractual obligation or a non-contractual one, requires that the negligence of the defendant be the proximate cause of the damage to the plaintiff if liability is to attach. VALDEZ *v.* FAMILY CLINIC. (CA), G.R. No. L-22945-R, August 12, 1959.

CIVIL LAW—PROPERTY—AN ISLAND FORMED BY ACCRETION TO THE BED OF A STREAM BELONGS TO THE STATE. — The Cia. General de Tabacos is the owner of a vast tract of land known as the Hacienda Sta. Isabel situated in the municipalities of Ilagan and Tumawini ,Isabela, bounded on the east and southeast by the Cagayan River. In 1947, Miguel Vide filed a homestead application over a piece of land of nearly 3 hectares in area, east of the Hacienda, which application was approved and the corresponding original certificate of title was issued in his favor. In 1950, Mariano Santos filed a sales application over a parcel of land of approximately 3 hectares, located south of Vide's land and east of the Hacienda. Under two separate complaints filed in the court of first instance, the company sought to recover from Santos and Vide ownership and possession over the parcels of land presently occupied by them. The disputed parcels of land were part of an island which appeared in the middle of the Cagayan River. In 1936 it was already in existence but still underwater. In 1941 there appeared stony land about 1/2 hectare in extent and located 70 meters east of the Hacienda. As more land were left dry by the receding waters, the island became even bigger until eventually the edge of the island met the edge of the company's hacienda. At present the island is connected to the Hacienda, although the boundary between the two is marked by a distinct depression which is dry at times but is filled with water during rainy season, at which time the creek is 5 meters wide and 2 meters deep. The island was finally united with the eastern side of the Hacienda not only as a result of the recession of the water, but also due to the original accumulation of soil to both both island and the shore of the Hacienda. The court of first instance rendered judgment in favor of the plaintiff company. Hence, this appeal. *Held*, the judgment appealed from is reversed. Where title to the bed of a stream rests in the state, islands formed by accretion to such bed belong to the state and not to the owner of either shore, and, where an island springs up in the midst of a stream, it is an accretion to the soil in the bed of the river, and not to the land of the riparian owner, although it afterwards becomes united with the mainland (65 C.J.S. 179). At present the land is no longer continuously surrounded by water, but the fact remains that it started as an island and was therefore part of the public domain which can be disposed of by way of homestead or sales patent. GENERAL TABACOS DE FILIPINAS *v.* SANTOS, (CA) G.R. No. 19156-R; GENERAL TABACOS DE FILIPINAS *v.* VIDE, (CA) G.R. No. 19157-R, August 24, 1959.

COMMERCIAL LAW — PRIVATE CORPORATIONS—CORPORATE CREDITORS HAVE A CAUSE OF ACTION AGAINST STOCKHOLDERS FOR UNPAID SUBSCRIPTIONS.—This is an action filed by the Philippine Bank of Commerce to recover the sum of P11,199.54, with interest plus attorney's fees against the Empire Motors Inc. and to compel the stockholders or subscribers thereof to pay the balance of their unpaid subscriptions to be applied to the obligation of the defendant company in favor of the plaintiff bank. Judgment was rendered against both the Empire Motors Inc. and the stockholders, the latter to pay the balance of their unpaid subscriptions to be applied to the obligation of the defendant corporation. On appeal, it is contended that the plaintiff bank had no cause of action against the stockholders. *Held*, the contention is untenable. Independently of any statute, stockholders are liable to corporate creditors in case of insolvency of the corporation for the amount unpaid on their subscriptions to stock (13 Fletcher Cyclopedia Corporations, p 465). An unpaid subscription is an asset to which corporate creditors look for payment, and they have the right to insist upon its collection in the same way as any other debt due the corporation (13 Am. Jur. 548-549). PHILIPPINE BANK OF COMMERCE *v.* EMPIRE MOTORS INC. (CA) G.R. No. 17166-R, June 22, 1959.

CRIMINAL LAW—ATTEMPTED ARSON—WHERE NO PART OF THE HOUSE IS BURNED, THE CRIME IS ONLY ATTEMPTED ARSON.—The defendant tried to set on fire the nipa house of Espiridiona Vda. de Fruel by throwing a glaring torch upon the roof. The torch, however, fell rolling to the ground without burning the roof. The defendant was charged with frustrated arson and convicted. On appeal, one of the questions raised was whether the defendant's act constituted consummated or attempted arson. *Held*, the crime is attempted arson only. If no part of the building is burned, no one could truthfully or successfully maintain that the offender had performed all acts of execution which would produce the felony of arson as a consequence, because the element of burning of the building is still missing, and the result can be no more than an attempt to commit the offense. PEOPLE *v.* BAESA, (CA) G.R. Nos. 20304-R and 20305-R, June 18, 1959.

CRIMINAL LAW—DEFAMATION—WHERE DEFAMATORY WORDS ARE UTTERED IN PUBLIC, THE CRIME COMMITTED IS DEFAMATION AND NOT THAT OF INTRIGUING AGAINST HONOR.—In the morning of December 5, 1955, while Paz Reyes was sitting on a bench at the entrance of the office of the assistant city fiscal, she was approached by the accused and asked for the reason of her presence there. When Paz answered that she was in the company of Joaquina Borja, the accused remarked that Borja was a "bad" and a "quarrelsome" woman. The remarks were made in the presence of Salustia Sucgang, a daughter of Borja, and several persons. Having been acquainted with the accused's utterances against her, Borja filed a complaint against the accused for intriguing against honor. Convicted both in the municipal court and later in the court of first instance on appeal, she filed the present appeal. The question is

whether the alleged utterances were made in public and could be considered besmirching to the good name of the aggrieved party. *Held*, the accused is guilty of defamation. A "public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead" (Article 363, R.P.C.) constitutes the crime of defamation and not that of intriguing against honor which may be committed by "any scheme or plot designed to blemish the reputation of a person" (p. 803, Padilla's Revised Penal Code, Book II, 1955 Ed.) The evidence in the present case fully shows that several persons were present when the defamatory remarks were uttered. PEOPLE *v.* FONTANILLA, (CA) G.R. No. 25648-R, August 31, 1959.

CRIMINAL LAW—DIRECT ASSAULT—IN DETERMINING WHETHER AN ACT CONSTITUTES DIRECT ASSAULT OR MERE RESISTANCE, THE ATTENDANT CIRCUMSTANCES AS WELL AS THE PERTINENT PENALTIES, THE DEGREE OF FORCE EMPLOYED AND THE INTENT TO DEFY THE AUTHORITY SHOULD BE FULLY CONSIDERED.—The defendant tried to set on fire the house of Espiridiona Vda. de Fruel. Having discovered the defendant, Espiridiona cried for help and scared by her cries, the defendant ran away. In no time the barrio lieutenant and some neighbors came but could no longer find the defendant as he had run away. Moments later the accused reappeared and pretendedly inquired about the commotion. At this juncture Espiridiona was telling the people that the defendant wanted to burn her house. The accused, angered, attempted to attack Espiridiona but he was prevented by the barrio lieutenant. The defendant took hold of the barrio lieutenant's hand, pulling the latter and causing him to fall to the ground. The defendant was aware that Broca was the barrio lieutenant at the time the incident took place. He was charged with the crime of direct assault and convicted. Among the questions raised on appeal was whether the defendant's act constituted an assault upon an agent of a person in authority or a mere resistance. *Held*, in determining whether acts constitute an assault upon a person in authority or his agent, or simple or grave resistance against the same, such circumstances as the particular conditions under which the act was committed; the nature and extent of the pertinent penalties as well as the degree of force employed; and perhaps other particular circumstances attendant thereto, should be weighed. Again what was behind the aggressor's conduct, revealing or not, of a determination to defy the law and its representatives, should likewise be fully considered. (U.S. v. Tabiana and Canillas, 37 Phil. 515). Under the circumstances, in those unthought of moments and the evidently excited feelings and mental storm raging within the defendant, there would seem to be no criminal intent on his part to ignore, disregard, much less defy the authority or his agent. He is guilty only of serious resistance and disobedience to an agent of a person in authority. PEOPLE *v.* BAESA, (CA) G.R. Nos. 20304R and 20305-R, June 18, 1959.

CRIMINAL LAW—PARDON—TO BE AVAILABLE AS A DEFENSE, PARDON MUST BE GIVEN AFTER THE COMMISSION OF THE CRIME.—Dolores Caballero and Benjamin Cordova were married in 1943. In 1950 the husband and the wife had a serious altercation as a result of which they agreed to divide their property and to live apart. They drew up a document to that effect. However, pursuant to the advice of the justice of the peace, the couple resumed their married life together in Malaybalay, Bukidnon. Subsequently, the husband made frequent business trips to Davao City, with the understanding that with the proceeds of the business he would construct a house in Davao City, after which he would fetch his wife. The house was in fact constructed, but the husband failed to fetch his wife. She learned later that her husband was living with another woman in the newly constructed house. The husband was charged with the crime of concubinage. He contended that the complaint had pardoned him and presented in support thereof their written agreement to separate executed in 1950. *Held*, a written agreement to separate between husband and wife, executed before the accused and his paramour began living together cannot serve as a pardon in a case of concubinage. To be available as a defense, pardon must be given after the commission of the crime. Consent given theretofore is ineffective. PEOPLE *v.* CORDOVA, (CA) No. 19100-R, June 23, 1959.

CRIMINAL LAW—VAGRANCY—LOITERING IN A UNIVERSITY GYMNASIUM DOES NOT CONSTITUTE THE CRIME OF VAGRANCY.—In the afternoon of April 4, 1954, the defendant was arrested while loitering in the gallery of the U.S.T. Gymnasium where graduation exercises were being held. Upon being asked, the defendant answered that he was jobless at the time. He was charged with vagrancy under section 822 of the Revised Ordinances of Manila and was convicted. On appeal, it is contended that loitering in the U.S.T. Gymnasium is not punishable under the said ordinance. *Held*, the decision appealed from is reversed. One who loiters in the gallery of a university gymnasium cannot be punished for vagrancy. For such a place is not similar to a "hotel, cafe, drinking saloon, house of ill-repute, gambling house, railroad depot, wharf, public waiting room or park" which are specified under section 822 of the Revised Ordinances of the City of Manila as places where vagrants habitually and idly loiter about or where people gather together without the previous consent of the *owner*. PEOPLE *v.* MORALES, (CA) No. 15543-R, July 20, 1959.

LABOR LAW—DISMISSAL—A DISMISSED EMPLOYEE IS NOT ENTITLED TO REINSTATEMENT, BACK WAGES AND DAMAGES, ALTHOUGH SUBSEQUENTLY ACQUITTED OF CRIMINAL CHARGES.—The plaintiff was an employee of the Samar branch of the PNB in the capacity of acting cashier. On May 13, 1952, she received a memorandum from an agent of the PNB at Samar requiring her to refund a shortage of P869.62 found by the bank auditor in the examination of her cash and to explain why she should not be suspended and dismissed from service. At the request of the plaintiff, an investigation of the alleged dis-

crepancies was conducted by the bank authorities. On the basis of the findings of the investigating agent, the plaintiff was dismissed for having violated the rules and regulations of the defendant bank which provide that dishonesty and infidelity in the handling of the bank's funds and properties shall be sufficient ground for dismissal from service of the bank. Subsequently, two informations were filed against the plainfitf, one for falsification of commercial documents and the other for estafa. She was acquitted of both charges on reasonable doubt. After her acquittal, she filed a complaint for the recovery of back wages and damages and for reinstatement to her position as cashier. It is urged that she should be automatically reinstated because she was acquitted of the two criminal charges preferred against her. *Held,* the contention is untenable. Acquital from a criminal charge, especially on reasonable doubt, does not necessarily mean that the prior suspension or dismissal of the employee accused in the criminal case is unlawful or invalid. The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer (Nat. Labor Union, Inc. v. Standard Vacuum Oil and CIR, 73 Phil. 279). Conversely, acquittal in a criminal case will not necessarily invalidate a prior suspension or dismissal. Employee in the case at bar was duly investigated and after the investigation she was dismissed from the service for cause. FABELLA *v.* P.N.B., (CA) G.R. No. 22454-R, August 7, 1959.

LEGAL ETHICS—ATTORNEY AND CLIENT—THE CLIENT'S PROFFER OF ASSISTANCE OF ADDITIONAL COUNSEL IS NOT EVIDENCE OF WANT OF CONFIDENCE.—Atty. Ricardo Nolan was the legal counsel for a group of allied corporations under the presidency of J. Amado Araneta. As such legal counsel, Nolan represented the corporations in several court litigations among were Civil Case No. 1468 of the CFI of Negros Occidental and Civil Case No. 1532 of the same court (the present civil case). During the trial of Civil Case No. 1468, Atty. Vicente Hilado handed to Atty. Nolan a letter written by Araneta asking him to let Atty. Hilado cooperate with him in the trial of the case. Nolan, taking the matter as an affront to his professional dignity, offered to withdraw from the two cases. Araneta accepted the withdrawal only after Nolan stubbornly and unreasonably refused the collaboration of Atty. Hilado. Nolan filed notice of lawyer's lien demanding the sum of ₱48,000 as attorney's fees. The lower court awarded ₱46,612.01 in favor of Atty. Nolan. Hence, this appeal. *Held,* the order appealed from is reversed. A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client (No. 7, Canons of Professional Ethics, cited in Malcolm's Legal and Judicial Ethics, p. 141). The mere fact of employment by the client of associates is not sufficient ground to justify an attorney in abandoning a case, unless he has personal and professional objections to such associate counsel and is unwilling to be associated with him (Martin's Legal and Judicial Ethics, p. 63, citing Tenny v. Berger, 45 Am. Rep. 263). MONTELIBANO *v.* BACOLOD MURCIA MILLING CO., INC., (CA) G.R. No. 17052-R, June 22, 1959.

POLITICAL LAW—ADMINISTRATIVE LAW—THE PROVINCIAL BOARD MAY CONDUCT ADMINISTRATIVE PROCEEDINGS AGAINST A MUNICIPAL OFFICER, EVEN WITHOUT A PRELIMINARY INVESTIGATION BY THE PROVINCIAL GOVERNOR AND ALTHOUGH THE COMPLAINT IS NOT SWORN TO.—Three complaints were filed against Lloren with the office of the Provincial Governor of Leyte on different dates. The complaint filed on August 1, 1956 was signed by 41 residents of the Municipality of Inopacan, Leyte; that filed on September 27, 1956 was signed by some residents of Apid Island of the same municipality. However, both complaints were not verified. The complaint filed on September 22, 1956 was a verified complaint signed by Andrade, a policeman in the municipality of Inopacan. Because of Lloren's failure to comply with the orders of the Provincial Governor, the latter filed against him Administrative Case No. 2, Series of 1956 before the Provincial Board of Leyte, based on the three complaints. Upon the filing of the said case, Lloren was suspended from office. The Provincial Board passed a resolution authorizing the investigation of the charges against Lloren and said investigation was conducted. Before the Provincial Board could take action on the case, Lloren filed a petition for prohibition with preliminary injunction against the Board. The court of first instance held that the Board in taking cognizance of written charges filed by the Provincial Governor acted without jurisdiction, because the complaint of Andrade against Lloren was only received but not investigated by the Provincial Governor and the complaints filed by the inhabitants were not sworn to. *Held,* the provincial board has jurisdiction to conduct an investigation on the merits of administrative charges against a municipal officer, even without the corresponding preliminary investigation thereof by the provincial governor, and although the complaint is not sworn to, if public interest or special circumstances so warrant. LLOREN *v.* PROV. BOARD OF LEYTE, (CA) G.R. No. 23652-R, August 14, 1959.

POLITICAL LAW—EXPROPRIATION—THE SUB-DIVISION OF THE LAND UNDER EXPROPRIATION AND THE SALES MADE BY REASON THEREOF DO NOT CONSTITUTE EVIDENCE OF THE VALUE OF THE LAND.—In 1948, the land in question was assessed by the provincial assessor at ₱570.00. In August, 1949 plans were made to purchase the land for school site and the owner thereof was accordingly notified of the matter. In September, 1949, the owner divided the property into two parts and declared by her under Tax Declaration No. 8116 as having a total assessed value of ₱4,320.00. In August, 1952, the land was sold for ₱11,000 and bought by Tantoco for that amount. On August 27, 1952, the provincial appraisal committee approved the resolution of the Municipal Council of Hagonoy to expropriate the land at an appraised value as follows: assessed value of the land upon general revision in 1948—₱570.00, plus 50% thereof ₱285; total—₱885.00. Tantoco claimed that he should be paid ₱11,000 as actual price of the land and ₱1,500 for the improvements made thereon. The commission on appraisals recommended ₱2,000 as just compensation for the expropriation of the land. Efforts to acquire the land amicably having failed, expropriation proceedings were instituted against Tantoco. It is urged, that the amount fixed by the lower court at ₱2,000 was not a just compensation and sales of the lands in the vicinity

are cited in support of the claim that a higher compensation is due. *Held,* the sub-division of the land under expropriation and the sales made by reason thereof do not constitute evidence of the value of the land. Neither should the increase in value caused by sales of land in the vicinity made shortly before the complaint for expropriation was filed and while the expropriation case was already pending be considered in awarding compensation. MUNICIPALITY OF HAGONOY *v.* VIRI, (CA) G.R. No. 14950-R, June 22, 1959.

POLITICAL LAW—PUBLIC LAND ACT—A FORESHORE LAND IS A PART OF THE PUBLIC DOMAIN AND CANNOT BE SUBJECT TO DISPOSITION BY THE MUNICIPAL GOVERNMENT. — In 1947, Rustico Siega filed an application with the Director of Lands for a revocable permit to construct a house for commercial purposes on the foreshore area of Maasin, Leyte. The Director of Lands indorsed the matter to the Municipal Council of Maasin, which passed a resolution allowing Siega to construct a temporary building on the lot applied for on the condition that the same should be demolished by the applicant at any time the government should need the property. Siega built his house on the site in 1949. In 1945, the municipal council passed a resolution asking that Siega vacate the area because construction of a cargo shed at the Maasin wharf would be undertaken. Siega referred the matter to the Bureau of Lands and on Feb. 16, 1956 the Director of Lands sent a letter to the municipal mayor stating that it was the said Office that was empowered by law to determine the utilization of the disputed area and suggesting that if the municipality wished to establish a municipal project an appropriate request by resolution of the municipal council be formally filed in accordance with section 83 of the Public Land Act. The municipal council, however, again passed a resolution ordering Siega to remove his house and authorizing the municipal mayor to take steps necessary to carry the resolution into effect. In view of the threatened removal, Siega filed a complaint against the defendants asking that they be enjoined from demolishing the house constructed by him. The principal issue raised depends upon the determination as to whether or not the municipal council had the authority in respect to the disposal and use of the said area. *Held,* a foreshore land is a part of the public domain the disposition of which is vested by law in the Secretary of Agriculture and Natural Resources. It is not a municipal property that is subject to disposition by the municipal government. It may not be the subject of a contract between the municipal government and a private person for the construction of a temporary building thereon on condition that the same should be demolished by the applicant at any time the government needs the property. SIEGA *v.* MAYOR OF MANILA. (CA) No. 21780-R, June 27, 1959.

REMEDIAL LAW—CRIMINAL PROCEDURE—IN CASES OF ERRONEOUS COMPLAINT, THE COURT SHOULD DISMISS THE INFORMATION AND ORDER THE FILING OF A NEW INFORMATION CHARGING THE PROPER OFFENSE. — On May 30, 1957, the accused told Leonor Villorijo to elope with him, and because she refused to yield to this

proposition, the accused threatened to kill her if she would not follow. Overcome by fear, Leonor accompanied the accused who took her from the barrio of Abucayan Norte, Calape, Bohol to the barrio of Locob in the same municipality where they spent the night. Guhil was charged with the crime of abduction with consent and convicted. On appeal, the question raised was whether or not the accused who has been charged with consented abduction can be convicted of this crime, notwithstanding the fact that the evidence showed that the offense committed was forcible abduction. *Held,* the accuser cannot be convicted of consented abduction. It is elemental that an accused cannot be convicted merely upon the allegations of a complaint or information, but also upon the evidence establishing beyond reasonable doubt the facts alleged therein. What the trial court should have done after hearing the testimony of the prosecution's witnesses showing that the crime committed was forcible abduction was to dismiss the information based on the erroneous complaint and then, without releasing the accused or cancelling his bond, order the filing of a new information charging the proper offense. PEOPLE *v.* GUHIL, (CA) G.R. No. 25680-R, August 15, 1959.
