the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than 6 years or a fine not exceeding ₱3,000 or both.

"(3) The amount of legal fees to be collected for the filing of civil cases or proceedings."

The amount of legal fees collectible for the filing of civil cases in the different courts is fixed in Rule 130 of the Rules of Court. Section 1 of the said Rule explicitly provides that the officers and persons authorized to collect the fees "may demand, receive, and take *the several fees hereinafter mentioned* and allowed for any business by them respectively done by virtue of their several offices, *and no more.*" Under Section 5 (b) also of the same Rule, the fee for "each civil action" filed in justice of the peace and municipal courts is three pesos.

Although Republic Act 2613 has extended the exclusive original jurisdiction of inferior courts to civil cases where the subject matter or amount of the demand does not exceed ₱5,000, Rule 130 of the Rules of Court, which is procedural in character, has not been modified or amended. Consequently, only ₱3.00 may be collected as legal fees for each civil action filed in justice of the peace and municipal courts.

ALEJO MABANAG
Secretary of Justice

SUPREME COURT CASE DIGEST

CIVIL LAW — CONTRACTS — MERE FAILURE OF A MINOR TO DISCLOSE HIS MINORITY WHEN MAKING A CONTRACT DOES NOT BAR ITS SUBSEQUENT ASSERTION IN AVOIDANCE OF THE OBLIGATION. —Minors Rodolfo and Guillermo, together with their mother, obtained a loan from one Villa Abrille. In the contract evidencing the loan, no disclosure was made of their minority. At the time, they were 16 and 18 years old, respectively. No payment having been made when the loan matured, Villa Abrille sued for recovery. Defense, minority. The trial court held them liable, and on appeal the Court of Appeals affirmed the judgment, holding that minors pretending to be of age, when in fact they are not, should not later on be permitted to excuse themselves from the fulfillment of the obligation contracted by them or to have it annulled. **Held,** mere failure of a minor to disclose his minority when making a contract does not bar its subsequent assertion in avoidance of the obligation. In the instant case, if at all the minors are guilty, it is of passive misrepresentation which is not actionable. To hold an infant liable, the fraud must be actual. **Braganza v. Villa Abrille,** G. R. No. L-12471, April 13, 1959.

CIVIL LAW — CONTRACTS — MINORS WHO ENTER INTO CONTRACT PRETENDING TO BE OF LEGAL AGE, ALTHOUGH NOT LEGALLY BOUND BY THEIR SIGNATURES, ARE NOT ENTIRELY ABSOLVED FROM MONETARY OBLIGATIONS, BUT ARE LIABLE TO THE EXTENT THAT THEY PROFIT THEREBY. — Petitioner and her two sons, Rodolfo and Guillermo, obtained a loan from Villa Abrille in Japanese war notes payable "in legal currency of the P.I. two years after the cessation of the present hostilities or as soon as International Exchange has been established in the Philippines." Because payment had not been made, Villa Abrille sued them. In their answer, they contended among others that Rodolfo and Guillermo were minors at the time they signed the promissory note evidencing the loan, and therefore lacked capacity. The trial court held them liable solidarily, and on appeal the judgment was affirmed by the Court of Appeals. Hence, this petition for review. **Held,** minors who enter into contract pretending to be of legal age, although not legally bound by their signatures, are not entirely absolved from monetary obligations, but are liable to the extent that they profit thereby. The money was used for their support during the Japanese occupation. It is but fair to hold them liable. **Braganza v. Villa Abrille,** G. R. No. L-12471, April 13, 1959.

CIVIL LAW — PARTNERSHIP — A PARTNER WHO REDEEMS PARTNERSHIP PROPERTY MORTGAGED HOLDS THE SAME IN TRUST FOR HIS CO-PARTNER, THE REDEMPTION BEING VIEWED AS HAVING MERELY REMOVED THE LIEN OF MORTGAGE RESTORING THE PROP-

ERTY TO ITS ORIGINAL PARTNERSHIP STATUS. — Appellee and appellant are partners. In the course of their business, they obtained a loan to secure which they mortgaged their partnership property registered in their name under one certificate of title. The partnership failed to pay the loan and the mortgage was duly foreclosed. The property was sold at public auction. Later, appellee redeemed the property with his own funds and thereafter initiated proceedings to have the same registered in his own name and that of his wife excluding the appellant. The petition was based on the theory that appellee was subrogated to the rights of the creditor-purchaser upon making the redemption. Inspite of vigorous opposition by the appellant, the court granted the petition. **Held,** we cannot agree to the above proposition or theory. Under general principles of law, a partner is an agent of the partnership. Consequently, when the appellee redeemed the properties in question, he became a trustee and held the same in trust for his co-partner, the appellant, subject of course to his right to demand from the latter his contribution to the amount of redemption, plus legal interest. In effecting redemption, the same can be viewed as having merely removed the lien of mortgage and restoring the property to its original status as partnership property, freed from any encumbrance. **Director of Lands v. Alba,** G. R. No. L-11648, April 22, 1959.

CIVIL LAW — PROPERTY — THE LANDOWNER'S OPTION, UNDER ARTICLE 361 OF THE OLD CIVIL CODE (448 OF THE NEW), TO APPROPRIATE CONSTRUCTIONS MADE ON HIS LAND, ONCE DULY EXERCISED, IN CONFORMITY WITH A COURT DECISION, IS CONVERTED INTO A MONEY OBLIGATION, ENFORCEABLE BY EXECUTION, REGARDLESS OF HIS INABILITY TO PAY THE VALUE THEREOF. — One of the petitioners, Belen Uy Tayag, married to her co-petitioner, purchased the two lots, on which the constructions in question were erected, from her mother on November 29, 1945. The latter had previously leased the lots to the respondent spouses, who built a residential house and a garage thereon with the consent of the lessor. Thereafter, petitioners asked the respondnts to pay rent or remove their house from the lots. The latter refused. After a long litigation, petitioners were given the option to buy the buildings or sell the lots to respondent spouses, under Article 361 of the old Civil Code. They chose the first option. After several appeals, the value of the buildings was finally fixed at ₱47,500.00. Consequently, the trial court issued the corresponding writ of execution to collect from the petitioners the sum. Petitioners protested, contending they still retained the right of option to buy the buildings or sell their lots, and that even if they already have made the choice to buy they cannot be compelled to pay the price, because of their inability to do so. **Held,** once a party, in conformity with a court decision, has made his choice, that duty is converted into a money obligation which can be enforced by execution, regardless of the unwillingness and alleged inability of the party concerned to pay the amount. **Tayag v. Yuseco,** G. R. No. L-14043, April 15, 1959.

CIVIL LAW — SALES — A STIPULATION IN A SALE CON PACTO DE RETRO GIVING VENDEE A RETRO THE RIGHT OF USUFRUCT OVER THE LAND, DURING THE REDEMPTION PERIOD, DOES NOT CONVERT THE CONTRACT TO ONE OF EQUITABLE MORTGAGE. — Plaintiff entered into a contract of sale with right to repurchase with defendant. The contract granted to vendee a retro the right of usufruct over the land during the redemption period. Plaintiff failed to redeem the land and defendant consolidated her title. Plaintiff now claims that the contract was one of equitable mortgage, because the defendant, vendee a retro, enjoyed the right of usufruct during the period of redemption. **Held,** that the stipulation granting the right of usufruct to the vendee a retro converts the contract into one of equitable mortgage is untenable. **Claridad v. Novella,** G. R. No. L-12666, May 22, 1959.

COMMERCIAL LAW — CENTRAL BANK ACT — CENTRAL BANK CIRCULAR 31 PENALIZING MATERIAL MISREPRESENTATION IN ANY APPLICATION FOR IMPORT LICENSE DOES NOT NEED, FOR ITS LEGALITY, THE CHIEF EXECUTIVE'S APPROVAL. — Defendants were prosecuted for violations of Central Bank Circular 31 in connection with Section 34 of Rep. Act. 265, for overvaluation of imports. Motion to quash the information was filed by them alleging, among others, the illegality of said circular. The trial court opined that it was invalid because it was issued without the approval of the President of the Philippines, in violation of Section 74 of the above-mention Act. **Held,** although Central Bank Circular 31 bears no specific sanction of the President, this does not affect its validity because it merely implements or clarifies Circular 20 which has the approval of the President. The latter circular provides for the restriction of sales of foreign exchange and subjects all transactions in gold and foreign exchange to licensing by the Central Bank of the Philippines. **People v. Henderson,** G. R. Nos. L-10829-30, May 29, 1959.

COMMERCIAL LAW — PUBLIC SERVICE ACT — THE APPROVAL OF THE PUBLIC SERVICE COMMISSION IS NECESSARY FOR THE SALE OF A PUBLIC SERVICE VEHICLE EVEN WITHOUT CONVEYING THEREWITH THE AUTHORITY TO OPERATE THE SAME. — Because of the reckless imprudence of its driver, the jeepney on which Miranda was riding met an accident causing him to suffer serious physical injuries. When Fores, the operator, was sued for damages, she claimed to have sold the jeepney involved one day before the accident happened. Assuming the dubious sale to be a fact, the Court of Appals held that the sale should have the approval of the PSC. **Held,** the law was designed primarily for the protection of the public interest and until the approval of the Public Service Commission is obtained, the vehicle is, in contemplation of law, still under the service of the owner or operator standing in the records of the Commission, to which the public has a right to rely upon. **Fores v. Miranda,** G. R. No. L-12161, March 4, 1959.

COMMERCIAL LAW — PUBLIC SERVICE ACT — THE PUBLIC SERVICE COMMISSION HAS AUTHORITY TO DETERMINE THE CITIZENSHIP OF APPLICANTS FOR OPERATORS OF PUBLIC UTILITIES. — Respondent is an operator of a public utility. Petitioner filed this case before the Public Service Commission for the revocation of respondent's certificate of authority on the ground of alienage. The Commission, how-

ever, declared respondent a Filipino citizen, after it was shown that he was born in the Philippines an illegitimate son of a Filipino mother and a Chinese father. Petitioner now questions the authority of the Commission to determine the citizenship of respondent. **Held,** under the Public Service Law, the Commission has to determine the qualifications of an applicant for a certificate of authority for the operation of a public utility, and as such certificate can be granted only to Filipino and American citizens, or to corporations, sixty per centum of the capital of which is owned by such citizens, the Commission must necessarily be vested with authority to determine whether the applicant has the citizenship qualifications. **Zamboanga Transportation Co. v. Lim,** G. R. No. L-10975, May 27, 1959.

COMMERCIAL LAW — PUBLIC SERVICE ACT — TRANSFER, WITHOUT THE APPROVAL OF THE PUBLIC SERVICE COMMISSION, OF A PROPERTY COVERED BY A FRANCHISE IS NOT BINDING AGAINST SAID COMMISSION AND THIRD PERSONS, THE ORIGINAL GRANTEE CONTINUING UNDER THE FRANCHISE. — In a compromise agreement conditionally approved by the Court of First Instance of Ilocos Norte, certain individuals transferred to petitioner's grantor all their rights and interests in a certificate of public convenience. The transfer was without the approval of the Public Service Commission. Petitioner purchased said rights. Later, the deputy sheriff of the court, in accordance with an alias writ of execution issued by said court in a civil case, levied on the lines covered by the aforementioned certificate. Petitioner immediately filed a third party claim with said sheriff, but movant for the alias writ filed a bond not to stay execution. Ultimately, another alias writ was issued and the lines were conditionally sold at public auction. Hence, the instant petition for certiorari to annul the auction sale. Did the sale confer upon petitioner the desired consequences? **Held,** no. We have always pointed out that the transfer, without the approval and consent of the Public Service Commission, of a property covered by a franchise is not binding against said Commission and against third persons, and that the original grantee continues to be responsible under the franchise. **Dagdag v. Flores,** G. R. No. L-11554, May 27, 1959.

COMMERCIAL LAW — TRANSPORTATION — THE REGISTERED OWNER OF A PUBLIC SERVICE VEHICLE IS RESPONSIBLE FOR DAMAGES THAT MAY BE CAUSED TO PASSENGERS THEREIN, EVEN IF SAID VEHICLE HAD ALREADY BEEN SOLD TO ANOTHER PERSON WHO WAS AT THE TIME OF THE ACCIDENT ACTUALLY OPERATING THE VEHICLE.—Tamayo is a holder of a certificate of public convenience. Before the occurrence of the accident which gave rise to this action for recovery of damages against Tamayo, he sold the ill-fated truck to Rayos which sale, however, was not, at the time of the accident, approved by the Public Service Commission. Tamayo claims exemption from liability arguing that the owner and operator at the time of the accident was not he but Rayos and therefore, the latter should be liable. **Held,** the registered owner of a public service vehicle is responsible for damages that may be caused to passengers therein, even if said vehicle had already been sold, leased or transferred to another person who was at the time of the accident, actually operating the vehicle. **Tamayo v. Rayos,** G. R. No. L-12634, May 29, 1959.

CRIMINAL LAW — CONSPIRACY — CONSPIRACY MAY BE INFERRED WHERE THE ACTS OF THE ACCUSED POINT TO A JOINT PURPOSE AND DESIGN, CONCERTED ACTION AND COMMUNITY OF INTEREST. — Wenceslao Dacanay and Cayetano Dacanay, father and son, enraged and shamed by the disrespect shown their family occasioned by a quarrel during the wedding of Wenceslao's daughter, went down their house, each with a bolo, to the street and waited for anyone who may trouble them again to come. The deceased with some policemen came. Whereupon, Wenceslao instantly gave deceased a thrust in the abdomen, immediately followed with a stab in the arm by Cayetano. Was there conspiracy? **Held,** affirmative. Conspiracy may be inferred where the acts of the accused point to a joint purpose and design, concerted action and community of interest. Both defendants felt aggrieved and insulted by what happened in their home in the night of the wedding. They both went down the house each armed with a bolo and acted together and simultaneously in attacking the deceased. **People v. Dacanay,** G. R. No. L-11568, March 30, 1959.

CRIMINAL LAW — DOUBLE JEOPARDY — ACQUITTAL IN A CRIMINAL CASE FOR ACTS COMMITTED WITHIN A CERTAIN PERIOD DOES NOT CONSTITUTE A CERTIFICATE OF IMMUNITY TO BAR PROSECUTION FOR ACTS COMMITTED SUBSEQUENT THERETO. — Accused is the owner of a fashion and beauty school which operated under a temporary permit issued by the Secretary of Public Instruction. Despite the expiration of the permit, she continued operating. Charged with violation of Section 5, in relation to Section 12, of Act No. 2706, as amended, the trial court acquitted her for lack of evidence. Subsequently, she advertised her school as recognized by the government for which she was again prosecuted. Defense, double jeopardy. **Held,** the respondent is not placed in double jeopardy, because acquittal in a criminal case for acts committed within a certain period does not constitute a certificate of immunity to bar a prosecution for acts committed subsequent thereto. **People v. Foster,** G. R. No. L-12828, April 13, 1959.

CRIMINAL LAW — MALVERSATION — PUBLIC OFFICERS WHO ARE NOT ENTRUSTED WITH GOVERNMENT FUNDS MAY BE HELD LIABLE FOR MALVERSATION IF THEY COOPERATED IN THE COMMISSION OF THE CRIME BY ACTS WITHOUT WHICH THE CRIME COULD NOT HAVE BEEN PERPETRATED. — Defendants, all of them audit clerks in the Bureau of Public Works were named co-principals on charges of padding the payroll of laborers. Their participation in the crime consisted of having verified the correctness of the payroll in an imprudent manner by not computing the total amount due, thus causing their superiors to approve the payroll and enable the paymaster to pay the padded payroll. Contending that the acts imputed to them did not constitute a crime, the defendants moved to have the information quashed. **Held,** while the Penal Code refers to the offender as a public officer accountable for public funds or property,

it is settled that the crime may also be committed by one who is not in that position but who aids, induces, or conspires with another who is, or cooperates with him in its commission by acts without which it could not have been accomplished. The defendant audit clerks, while they are not public officers entrusted with government funds could be held liable as principals of the crime of malversation of public funds thru falsification of a public document. **People v. Rodis,** G. R. Nos. L-11670-11708, April 30, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — AN EDUCATIONAL INSTITUTION CANNOT BE BROUGHT BEFORE THE COURT OF INDUSTRIAL RELATIONS FOR UNFAIR LABOR PRACTICE, EDUCATIONAL INSTITUTIONS NOT BEING INDUSTRIAL OR BUSINESS ORGANIZATIONS OR CORPORATIONS WHICH CAN BECOME SUBJECT TO THE JURISDICTION OF SAID COURT. — A prosecutor of the CIR charged the Cebu Chinese High School with unfair labor practice, for alleged interference with complainants' right to self-organization. Complainants are employees of the institution. A motion to dismiss was filed but was denied. The CIR proceeded to hear the case and entered a decision ordering the reinstatement of the complainants, who were previously dismissed. A motion for reconsideration on the ground of lack of jurisdiction having been denied, hence this petition for certiorari. **Held,** the main reason why we are constrained to grant the petition is the fact that the Cebu Chinese High School is an educational institution and it cannot be brought before the CIR for supposed unfair labor practice, because educational institutions are not industrial or business organizations or corporations which can become subject to the jurisdiction of the CIR. **Cebu Chinese High School v. PLASLU,** G. R. No. L-12015, April 22, 1959.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS HAS NO JURISDICTION OVER CLAIMS DEMANDING PAYMENT OF WAGE DIFFERENTIAL AND OVERTIME COMPENSATION. — Petitioner, on behalf of its members, filed against respondents claim for wage differential and overtime compensation. The CIR allowed the claim. Their motion for reconsideration having been denied, respondents filed an urgent motion to annul the whole proceedings and to dismiss the complaint on the ground of lack of jurisdiction, and, finally, this petition for review by certiorari on the same ground. Respondents invoked the rulings in Aguilar v. Salumbides, G. R. No. L-10124, and Mindanao Bus Employees Labor Union v. Mindanao Bus Co., G. R. No. L-9795, promulgated Dec. 28, 1957. **Held,** in dismissing the first case cited, involving overtime, wage differential and separation pays, we stated that in PAFLU v. Tan, 52 O. G. 5836, Reyes v. Tan, 52 O. G. 6187, PAFLU v. Barot, 52 O. G. 6544, and Allied Free Workers Union v. Apostol, G. R. No. L-8876, Oct. 31, 1957, we held that the power of the CIR has been confined to the following cases: (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court, (2) when the controversy refers to minimum wage under the Minimum Wage Law (R. A. No. 602), (3) when it involves hours of employment under the Eight Hour Labor Law (C. A. No. 444), and

(4) when it involves an unfair labor practice; and the second case cited, involving overtime wages, we also dismissed on the same grounds. The subject matter of the case at bar is identical to that of the two cases cited. Accordingly, they are controlling on the issue before us. **Chua Workers' Union v. City Automotive Co.,** G. R. No. L-11635, April 29, 1959.

LABOR LAW — EMPLOYERS LIABILITY — THE LIABILITY OF EMPLOYERS UNDER THE WORKMEN'S COMPENSATION ACT IS SOLIDARY. — Appellants, co-owners of a business establishment, hired one Roque Balderama, as security guard. Subsequently, the latter was killed in line of duty, and his widow and children filed a claim for compensation with the Workmen's Compensation Commission, which was granted. Appellants agreed to pay the amount adjudicated, but questioned the nature of their liability which the Commission declared to be solidary. **Held,** although the Workmen's Compensation Act does not specify the nature of their obligation, the liability of employers thereunder is solidary. The new Civil Code requires solidarity when the nature of the obligation so necessitates. This is the case under the Act involved, as to hold otherwise would defeat or cripple its beneficial purpose. **Liwanag v. Workmen's Compensation Commision,** G. R. No. L-12164, Nay 7, 1959.

LABOR LAW — JURISDICTION — COURTS OF FIRST INSTANCE HAVE JURISDICTION OVER ISSUES ARISING FROM A LABOR DISPUTE, WHERE THE DISPUTE DOES NOT AFFECT AN INDUSTRY INDISPENSABLE TO THE NATIONAL INTEREST SO CERTIFIED BY THE PRESIDENT, AND THE CONTROVERSY NEITHER REFERS TO MINIMUM WAGE NOR TO HOURS OF EMPLOYMENT NOR INVOLVES AN UNFAIR LABOR PRACTICE. — Members of the petitioning association, working with the People's Bank & Trust Company, declared a strike. Thereafter, the Bank secured a writ of preliminary injunction in the sala of the respondent Judge prohibiting the attorneys, representatives, etc. of the petitioner from doing a number of things set forth therein. Petitioner association therefore sued out this petition alleging among others that the respondent Judge had no jurisdiction in granting the writ, the case involving a labor dispute cognizable only by the Court of Industrial Relations. **Held,** although the issue between the parties arose admittedly out of a labor dispute, courts of first instance have jurisdiction over issues so arising, where the dispute does not affect an industry indispensable to the national interest so certified by the President, and the controversy neither refers to minimum wage nor to hours of employment nor involves an unfair labor practice. **National Ass'n of Trade Unions v. Hon. Judge Bayona,** G. R. No. L-12940, April 17, 1959.

LABOR LAW — TENANCY LAW — THE TENANT MAY BE EJECTED WITHOUT PREVIOUS AUTHORITY FROM THE COURT OF AGRARIAN RELATIONS WHERE THE LAND HAS LOST ITS AGRICULTURAL NATURE WITHIN THE CONTEMPLATION OF R. A. No. 1199. — Meliton Estate acquired a 20-hectare land at Marikina, Rizal for the purpose of

developing it into a residential and industrial subdivision. A portion of the land was cultivated by defendant de Guzman who was informed that the land would be converted into a subdivision. De Guzman was allowed to continue cultivating the land while the subdivision was not yet under construction. However, when the subdivision project was already underway, de Guzman expressed reluctance to leave his landholding until a strongly worded letter from petitioner forced him to leave. He went to respondent Court of Agrarian Relations which held that petitioner, in converting the land in question without prior approval of said court, ejected de Guzman in violation of R. A. 1199. **Held,** where the land ceases to be agricultural, the legal provisions calling for previous authority from the respondent court may not be invoked. De Guzman's right of cultivation was subject to a resolutory condition which arose when the subdivision plan was approved and its construction readied. The land had lost its agricultural nature upon the hapenning of the resolutory condition and tenancy relationship between the parties terminated. **Meliton Estate v. De Guzman,** G. R. No. L-11912, April 30, 1959.

LABOR LAW — WAGE ADMINISTRATION SERVICE — "DECISIONS" OF THE WAGE ADMINISTRATION SERVICE ALLOWING THE RECOVERY OF UNPAID WAGES ARE NOT EXECUTABLE BY THE COURTS OF JUSTICE; ACTION FOR THEIR RECOVERY MUST BE BROUGHT IN A COMPETENT COURT. — Petitioner filed a claim with the Wage Administration Service against the respondent for the recovery of unpaid overtime compensation, unjust dismissal and vacation and sick leave pay. The WAS awarded in his favor an aggregate amount of ₱8,569.75. Subsequently, he filed in the Court of First Instance of Rizal a petition for the issuance of a writ of execution, alleging that no appeal having been taken by the respondent the "decision" had become final and executory. Without either notice to the respondent employer, or hearing, said Court issued an order granting the petition and ordering the issuance of the writ against the respondent. Receiving a copy of the order and of the writ, respondent petitioned to set aside and to quash both, respectively. Denied. On motion of the petitioner, an **alias** writ of execution was subsequently issued. Respondent now seeks a review. **Held,** the issue before us is whether a "decision" of the WAS, finding petitioner entitled to recover, may be ordered executed by a court of justice, without an ordinary action for such recovery, and without a decision of such court sentencing the respondent to pay. It is obvious to us that the answer must be negative. **Potente v. Saulog Transit, Inc.,** G. R. No. L-12300, April 24, 1959.

LABOR LAW — WORKMEN'S COMPENSATION COMMISSION — THE WORKMEN'S COMPENSATION COMMISSION HAS JURISDICTION OVER COMPENSATION CASES BROUGHT AGAINST PRIVATE EDUCATIONAL INSTITUTIONS ORGANIZED FOR PROFIT OR GAIN. — Fumar, a high school teacher employed by petitioner fell from the balcony of the school building owned by the latter during its commencement exercises, when the railing on which he leaned gave way. He sustained a fractured skull from which he died. In due time, his widow filed with the Commission a claim for death compensation against petitioner. After hearing, the referee

rendered a decision ordering petitioner to pay the heirs of the deceased death compensation and reimbursement of medical and hospital expenses and funeral expenses. This decision was affirmed by a Commissioner and later by the Commission sitting **en banc.** Petitioner brought the case to the Supreme Court for review on ground of jurisdiction. **Held,** it has jurisdiction. The law in defining 'industrial employment' in the case of private employers includes all employment or work at a trade, occupation, or profession exercised by an employer for the purpose of gain. It being admitted that petitioner issues dividends to its stockholders it is therefore an enterprise organized for the purpose of gain, hence liable. **St. Thomas Aquinas Academy v. Workmen's Compensation Commission,** G. R. No. L-12297. April 22, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — CONSIDERING THE PURPOSE OF OUR TORRENS SYSTEM, THE NULLITY OF THE DECREE AND TITLE OVER THE PROPERTY CAN NOT BE ASSERTED AFTER THE LAPSE OF MORE THAN 30 YEARS. — Plaintiff Hermitaño seeks to recover from defendants the possession of portions of land registered under Act 496 which he purchased from plaintiff Aguilar. Defendants, free patent applicants, seek to annul the certificate of title issued to Hermitaño's predecessor in interest on the ground that it was issued by a court without jurisdiction in that (1) when the petition for registration was filed in 1919 in the CFI of Tarlac, there was already pending in the CFI of Pangasinan another registration case involving the same land; (2) that defendants or their predecessor in interest was not notified of the proceedings in the Tarlac court as required by law; (3) that portions of the land in question were subsequently declared public land by the Supreme Court in another registration case brought by one Foster. **Held,** (1) CFI of Tarlac is the proper court to take cognizance of the case since the land in dispute is actually situated in province of Tarlac; (2) registration proceedings have the nature of actions **in rem** and the decree of registration is binding upon and conclusive against all persons; (3) the inclusion of the land here in dispute in the Foster case cannot have the effect of nullifying the decree issued in favor of plaintiff considering that land once registered shall be and always remain registered. What makes the claim of defendants futile is that they are raising the nullity or invalidity of the decree and title after the lapse of more than 30 years, which can not be done considering the purpose of our Torrens System. **Aguilar v. Caoagdan,** G. R. No. L-12580, April 30, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — SEC. 112 OF THE LAND REGISTRATION ACT DOES NOT FIX A LIMITATION OR PERIOD FOR FILING A PETITION TO REGISTER OR ANNOTATE A DEED OF SALE. — On March 2, 1944, Samante, registered owner of a parcel of land, executed a deed of sale over the same in favor of petitioner. Before the sale could be registered, the owner's duplicate copy of the certificate of title was lost when the bus on which petitioner's son was riding was robbed. She therefore petitioned the cadastral court to order a reconstitution of the original certificate of title, the registration of the deed of sale in favor and the issuance of a transfer certificate of title in her

name. The heirs of Samante opposed the petition on the ground that having been filed on June 28, 1954 or more than ten years after the sale, it was already barred by the Statute of Limitations. **Held,** under the provisions of Section 112 of the Land Registration Act, no limitation or period is fixed for filing a petition to annotate a deed of sale at the back of a certificate of title. If any party claims that a person registering a deed of sale can no longer do so, because the deed was executed more than ten years ago, such objection must be raised in an ordinary civil action, for a cadastral court lacks jurisdiction to consider whether the right to register or annotate a deed of sale has already lapsed. **Mendoza v. Abrera,** G. R. No. L-10519, April 30, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — VIOLATION OF SECTION 118 OF COM. ACT 141 DOES NOT REQUIRE THAT THE ENCUMBRANCE OR ALIENATION BE REGISTERED IN THE OFFICE OF THE REGISTER OF DEEDS, IT BEING SUFFICIENT THAT THE ENCUMBRANCE OR ALIENATION TAKES PLACE WITHIN THE PROHIBITIVE PERIOD. — Appellant obtained by purchase the homestead rights of a certain individual to a parcel of land with an area of 23.21 hectares. Three years and three months after the issuance of the homestead patent, appellant sold 19 hectares. Whereupon, the State commenced action for the reversion of the whole homestead, the sale being violative of the condition imposed by the Land Registration Act (C. A. 141) on homestead grants. Defense, non-registration of the alienation in the proper office of the Register of Deeds. Is registration in this case the operative act? **Held,** no. To make the act of registration the operative act is to defeat the very prohibition, for no party to a prohibited sale or conveyance would register such illegal transaction. **Republic v. Garcia,** G. R. No. L-1197, May 27, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION COURT — A PENDING SUIT INVOLVING TITLE TO OR OWNERSHIP OF A PARCEL OF LAND DOES NOT DIVEST THE LAND REGISTRATION COURT OF JURISDICTION TO HEAR AND DETERMINE PETITIONS FOR THE ISSUANCE OF OWNER'S DUPLICATE CERTIFICATE OF TITLE AND THE CANCELLATION OF ENCUMBRANCES ANNOTATED THEREON. — Petition in the 4th Branch of the Court of First Instance of Manila, acting as land registration court, for the issuance of owner's duplicate certificate of title in lieu of one lost and destroyed and for the cancellation of encumbrances appearing thereon. Oppositor opposed on the ground that suit was brought by her against petitioners in the same court raising the question of ownership and title to the same parcel of land covered by the certificate subject of the petition, hence, the land registration court is without jurisdiction to grant the petition. Over this opposition, the petition was granted. Oppositor appealed. **Held,** the court of first instance, acting as land registration court, may direct the issuance of a new duplicate certificate of title in lieu of a lost or destroyed one and the cancellation of encumbrances on the certificate of title which have terminated or ceased. The filing of a suit involving ownership or title to the parcel covered by the certificate, duplicate of which is prayed for in a petition in the same court, is of no moment. **Santiago v. Garcia,** G. R. No. L-11260, April 29, 1959.

LAND TITLES AND DEEDS — LAND REGISTRATION COURT — ONLY THE LAND REGISTRATION COURT CAN ENTERTAIN PETITIONS FOR CANCELLATION OF TITLE TO LAND AND THE ISSUANCE OF A NEW ONE. — By virtue of a judgment, a writ of execution was issued levying on a parcel of land belonging to defendant, covered by a Transfer Certificate of Title. In the auction sale, plaintiff was the highest bidder. After the expiration of the redemption period, plaintiff petitioned for the cancellation of defendant's title and the issuance of a new one in his name, in the Court of First Instance which rendered decision executed. Has the trial court jurisdiction to entertain the petition? **Held,** the trial court has no jurisdiction. Under Section 112 of Act 496 (Land Registration Act), as was held in the case of Cavan v. Wislizenus, 43 Phil. 632, the petition should be filed with the court which took cognizance of the original case relative to the registration of the property. **Alto Surety & Ins. Co. v. Limcaco,** G. S. No. L-11596, March 16, 1959.

LAND TITLES AND DEEDS — PUBLIC LAND LAW — THE SALE OR ALIENATION OF A PART OF THE HOMESTEAD GRANT WITHIN THE PROHIBITED PERIOD RENDERS THE PATENT NULL AND VOID REVESTING THE WHOLE GRANT TO THE STATE. — Defendants-vendors were grantees of a homestead patent covering 23.21 hectares. Three years and three months after the issuance of the patent, 19 hectares thereof were sold to defendant-vendees For this violation, the lower court ordered reversion of the whole grant in favor of the State. **Held,** even if only 19 of the 23.21 hectares of the homestead had been sold within the prohibited period, such alienation is a sufficient cause for the reversion of the whole grant. In granting a homestead, the law imposes as a condition that the land should not be encumbered, sold or alienated within five years from the issuance of the patent. The sale or alienation of part of the homestead within that period violates that condition. **Republic v. Garcia,** G. R. No. L-11597, May 27, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — ALL VESSELS, WHETHER PRIVATE OR GOVERNMENT-OWNED, INCLUDING SHIPS OF THE PHILIPPINE NAVY, COMING FROM A FOREIGN PORT, WITH THE POSSIBLE EXCEPTION OF FOREIGN WAR VESSELS, NOT ENGAGED IN THE TRANSPORTATION OF MERCHANDISE IN THE WAY OF TRADE, ARE REQUIRED TO PREPARE AND PRESENT A MANIFEST TO THE CUSTOMS AUTHORITIES ON ARRIVAL AT ANY PHILIPPINE PORT. — The RPS Misamis Oriental, a unit of the Philippine Navy, was dispatched to Japan to transport contingents of the 14th BCT bound for Pusan, Korea during the Korean conflict. While in Japan, it loaded 180 cases of various articles subject to customs duties. Destination, Philippines. Is a manifest required of the vessel? **Held,** all vessels, whether private or government-owned, including ships of the Philippine Navy, coming from a foreign port, with the possible exception of foreign war vessels, not engaged in the transportation of merchandise in the way of trade, are re-

quired to prepare and present a manifest to the customs authorities on arrival at any Philippine port. The collection of duties is not the only purpose of a manifest. The government wants to know, without being put to a search, what articles are brought into the country to make up its own mind not only what duties it will demand, but whether it will allow the goods to enter at all. **Commissioner of Customs v. Relunia,** G. R. No. L-11860, May 29, 1959.

POLITICAL LAW — ADMINISTRATIVE LAW — INFLICTING PHYSICAL INJURIES ON HIS WIFE AND DAUGHTER IN THE MUNICIPAL BUILDING IN THE PRESENCE OF THE COUNCILORS; ORGANIZING AND PARTICIPATING DIRECTLY IN ILLEGAL COCKFIGHTS IN ANOTHER MUNICIPALITY; REFRAINING FROM INSTITUTING OR CAUSING THE PROSECUTION OF THOSE RESPONSIBLE FOR ILLEGAL COCKFIGHTS AND GAMBLING HELD IN HIS PRESENCE IN ANOTHER MUNICIPALITY; AND ORDERING HIS POLICEMEN TO ACCOMPANY HIM TO ILLEGAL COCKFIGHTS AND GAMBLING OR ASSIGNING THEM AS BODYGUARDS OF HIS MISTRESS DO NOT CONSTITUTE THE GROUNDS FOR WHICH A MUNICIPAL MAYOR MAY BE SUSPENDED.— Respondent governor suspended petitioner mayor grounded on the following administrative charges filed against the latter: inflicting physical injuries upon his wife and daughter in the municipal building in the presence of the municipal councilors; organizing and participating directly in illegal cockfights in another municipality; refraining from instituting or causing the prosecution of those responsible for illegal cockfights and gambling held in his presence in another municipality; and ordering his policemen to accompany him to illegal cockfights and gambling or assigning them as bodyguards of his mistress. Are these acts constitutive of the grounds provided by law for which a municipal mayor may be suspended? **Held,** no. While it is primarily for the governor to determine whether gravity of the offense charged would warrant the filing of administrative charges and the propriety of the suspension of a municipal official, he will only have occasion to exercise such power where the charge is one affecting the official integrity of the officer, or is connected with the performance of his duties as a municipal official. Abetting gambling may constitute misconduct if it is held within the jurisdiction of the official concerned. The infliction of physical injuries upon his wife and daughter can be committed by a person without being the mayor. Oppression has been defined as an act of cruelty, severity, unlawful exaction, domination or excessive use of authority. Ordering his policemen to accompany him to illegal cockfights etc. seems to be too superficial to meet the standard fixed by the definition. **Ochate v. Ty Deling,** G. R. No. L-13298, March 30, 1959.

POLITICAL LAW — CIVIL SERVICE — EMPLOYMENT WITH THE U. S. VETERANS ADMINISTRATION DURING THE COMMONWEALTH REGIME IS SERVICE RENDERED TO THE PHILIPPINE GOVERNMENT, BUT ON JULY 4, 1946 IT CEASED TO BE OF SUCH EFFECT; CONTINUANCE THERETO MAY BE CONSIDERED AS SEPARATION FROM THE PUBLIC SERVICE FORFEITING ACCRUED SICK AND VACATION LEAVE WITH PAY DURING THE FORMER REGIME. — Petitioner was

employed by the University of the Philippines until February 28, 1946 when he resigned to join the U. S. Veterans Administration in Manila, without enjoying five months of accrued vacation leave with pay. Subsequently, he was appointed to the Import Control Commission and thereafter to the Fiber Inspection Service, where he requested to be credited his five months vacation leave. After reconsideration, the Civil Service Commissioner allowed his request, but the University objected. The Auditor General decided against the petitioner, holding the latter was separated from the service on February 28, 1946. **Held,** it may be conceded that the petitioner was not separated from the service on February 28, 1946, because the next day he went to work in the U. S. Veterans Administration, regarded during the Commonwealth as a local office. But it cannot be denied that on July 4, 1956, (Independence Day) service in said office ceased to be service to the Philippine Government. His vacation is deemed forfeited under Section 286 of the Rev. Adm. Code. **Recio v. Auditor General,** G. R. No. L-11557, April 17, 1959.

POLITICAL LAW — CONSTITUTIONAL LAW — THE ILLEGITIMATE CHILD OF A FILIPINO MOTHER BY AN ALIEN FATHER FOLLOWS THE CITIZENSHIP OF THE MOTHER AND THEREFORE A FILIPINO CITIZEN. — Respondent is an operator of a TPU-truck service in Zamboanga. In September of 1953, he applied for a certificate of public convenience to operate an ice plant. Petitioner opposed the application on the ground of alienage. Respondent is the illegitimate son of a Filipino mother by an alien father. **Held,** it is settled that the illegitimate issue of a Filipino mother by an alien father follows the citizenship of the mother. It is unnecessary for such child to elect Philippine citizenship upon coming of age. **Zamboanga Transportation Co. v. Lim,** G. R. No. L-10975, May 27, 1959.

POLITICAL LAW — PUBLIC CORPORATIONS — A CITY ORDINANCE, IMPOSING A FEE OF ₱24.00 PER ANNUM PER APARTMENT ON TENEMENT HOUSES PARTLY OR WHOLLY ENGAGED IN OR DEDICATED TO BUSINESS, IS A REVENUE MEASURE, ULTRA VIRES IN THE ABSENCE OF EXPRESS AUTHORITY IN THE CITY CHARTER. — Defendants-appellants are proprietors of apartment houses. The Municipal board of Iloilo City passed an ordinance imposing an annual license fee of ₱24 per apartment on all tenement houses partly or wholly engaged in or dedicated to business located in certain sections of the city. Present action is for the recovery of said fee. The Charter of Iloilo City grants power to the municipal board to impose a license fee in the exercise of its police power. Is the ordinance in question a proper exercise of that power? **Held,** a distinction must be made between license fee for revenue and license fee merely as a regulatory measure. The first is based on the taxing power, the second on police power. The power of a city to impose license fee for revenue must be expressly granted by the Charter. This power is not granted to the City of Iloilo by its Charter. License fee for regulatory purposes must be only of a sufficient amount to include the expenses of issuing the license and the cost of necessary inspection or police surveilance, including incidental expenses. A cursory reading of the ordinance in question would at once reveal that the license fee charged therein is not merely

for regulation but for revenue. It is ultra vires insofar as it taxes tenement houses such as those belonging to defendants-appellants. **Iloilo City v. Villanueva,** G. R. No. L-12695, March 23, 1959.

POLITICAL LAW — PUBLIC CORPORATIONS — A MUNICIPAL ORDINANCE WHICH HAS FOR ITS PURPOSE NOT THE REGULATION OF FISHING OR THE OPERATION OF FISHPONDS, BUT THE RAISING OF REVENUE NEED NOT BE SUBMITTED TO THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES FOR APPROVAL. — The Municipality of Cotabato enacted an ordinance imposing an annual tax on the operation of fishponds. Pursuant thereof, it commenced action to recover from defendants, fishpond operators, taxes and penalties by reason of their operations. Defendants questioned the validity of the ordinance on the ground that it did not have the approval of the Secretary of Agriculture and Natural Resources as required by Act No. 4003, as amended. **Held,** an ordinance which has for its purpose not the regulation of fishing or the operation of fishponds, but the imposition of taxes on such operation for revenue purposes, need not be submitted to the Secretary of Agriculture and Natural Resources for approval. To be valid, it is sufficient that it is approved by the provincial board concerned. **Cotabato v. Santos,** G. R. No. L-12757, May 29, 1959.

POLITICAL LAW — TAXATION — A MUSCOVADO SUGAR MILL, DEVOTED TO THE USE OF ITS OWNER ONLY, IS NOT A SUGAR CENTRAL WITHIN THE PURVIEW OF SECTION 189 OF THE NATIONAL INTERNAL REVENUE CODE; AS SUCH, ITS OWNER IS NOT LIABLE FOR THE PERCENTAGE TAX IMPOSED THEREIN. — On account of breakdowns of sugar centrals to which respondent is affiliated, he was forced to mill his sugar in his Muscovado sugar mill. Petitioner assessed against respondent the percentage tax of 2% on the value of the sugar milled, under Section 189 of the Tax Code. Respondent argued before the Court of Tax Appeals that he could not be held liable for the percentage tax, on the ground that he is not a proprietor or operator of a sugar central. On the other hand, petitioner claimed that "muscovado sugar mills" are embraced within the term "sugar central" as used in the aforementioned section. The Tax Court upheld the respondent. Hence, this petition for review. **Held,** respondent's sugar mill is not a sugar central within the purview of Section 189 of the Tax Code. Respondent is not bound to pay the tax provided therein, the mill in question not having a status analogous to that now obtaining in our sugar centrals, that is, devoted to the use of the public in general. **Collector v. Ledesma,** G. R. No. L-12158, May 27, 1959.

POLITICAL LAW — TAXATION — IN AN ACTION TO ENFORCE PAYMENT OF INCOME TAX, A REFUSAL TO PAY THE BALANCE DUE DOES NOT RENDER THE ASSESSMENT A DISPUTED ONE SO AS TO BRING THE CASE WITHIN THE JURISDICTION OF THE COURT OF TAX APPEALS. — The government brought an action in the Court of First Instance to enforce payment out of defendant's respective shares of

the estate of the late Simplicio del Rosario, the balance of his 1916 deficiency income tax. The Court of First Instance certified the case to the Court of Tax Appeals on the ground that it involved a disputed assessment. In turn, the Court of Tax Appeals resolved that as the complaint was filed after the enactment of the law of its creation, it had no jurisdiction and returned the case to the Court of First Instance. Maintaining its previous opinion, the Court of First Instance dismissed the case without prejudice. The government appealed. **Held,** appellees' failure to appeal from the assessment rendered it final and executory and their refusal to pay the balance due from their late father after paying partially does not render the assessment a disputed one. **Republic v. Del Rosario,** G. R. No. L-10460, March 11, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — A DEFENDANT DECLARED IN DEFAULT HAS NO STANDING IN COURT, UNLESS THE ORDER DECLARING HIM IN DEFAULT IS SET ASIDE BY THE SAME COURT. — For failure to appear and answer the complaint brought against him in the inferior court, appellant was declared in default. Motions for reconsideration having been denied, he appealed said order to the Court of First Instance. Appeal dismissed. It is now contended that defendant's legal standing had been restored because the inferior court sent him a copy of the judgment as well as notices of its various orders and gave due course to his appeal. **Held,** the only way a defendant, who has been declared in default in an inferior court, may regain his standing in that court is by recourse to the remedy provided for in Section 14 of Rule 4, which permits a defaulted defendant to apply for the setting aside of the entry of default within two hours after such entry, or through a petition for relief in the Court of First Instance, under Section 1 of Rule 38, which defendant failed to do, notwithstanding his motions for reconsideration, the grounds therefore, not being those specified in said Section 14 of Rule 4. **Manila Motor Company v. San Juan,** G. R. No. L-9163, May 29, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — COMPROMISE AGREEMENTS IN SETTLEMENT OF CASES ARE NOT LIMITED TO THOSE ABOUT TO BE FILED OR ALREADY PENDING IN COURTS, BUT MAY BE EFFECTED EVEN AFTER FINAL JUDGMENT. — The Philippine Movie Pictures Association, to which petitioners are affiliated, and respondent Premiere Productions, Inc. effected a compromise agreement dismissing and withdrawing all pending petitions and cases filed by the union in the Court of Industrial Relations against the corporation, as well as their pending incidents, including pending executions, levy, atachment, and garnishment of the properties and equipments of the corporation. By virtue thereof, the CIR issued a final order of dismissal and withdrawal. Petitioners appealed by certiorari. The question posed was whether at any stage of the proceedings compromise may still be agreed upon by and between the parties. **Held,** the settlement of cases in court is authorized and even encouraged by express provision of law. The law does not limit compromises to cases about to be filed or cases already pending in courts.

That a compromise may be effected even after final judgment is impliedly authorized by Article 2040 of the Civil Code. **Jesalva v. Hon. Judge Bautista**, G. R. No. L-11928-11930, March 24, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — COURTS OF FIRST INSTANCE HAVE JURISDICTION TO ENTERTAIN PETITIONS FOR RELIEF, UNDER SECTION 1, RULE 38, OF THE RULES OF COURT, NOTWITHSTANDING THE FAILURE OF THE AGGRIEVED PARTY TO APPEAL FROM THE DECISION OF THE INFERIOR COURT WHICH HAS BECOME FINAL. — In an ejectment case, defendants failed to appear on the day set for hearing. Plaintiff presented his evidence, and consequently judgment was rendered against them. Thereafter, they moved for a reopening of the case alleging their absence was excusable and that they had good and valid defenses, etc. Their motion denied, they filed a petition for relief from judgment, under Section 1, Rule 38, of the Rules of Court, in the proper Court of First Instance, specifying several circumstances that prevented their appearance at the hearing. Plaintiff opposed on the ground that defendants could have appealed, but did not appeal, the decision of the justice of the peace. After hearing, the respondent judge granted the relief and ordered trial on the merits in his own court. **Held,** it is not correct to argue that, because the party had not appealed and the judgment had become final, the court of first instance lost all jurisdiction to entertain the petition. Secion 1, Rule 38, of the Rules of Court precisely contemplates failure by one party to take an appeal, and provides a remedy. **Villongco v. Hon. Judge Rilloraza**, G. R. No. L-12278, April 22, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — MONEY CLAIMS ARISING FROM CONTRACT DO NOT SURVIVE, AND MUST BE FILED PROMPTLY AGAINST THE ESTATE OF THE DECEASED DEBTOR; THAT THE OBLIGATION ARISES FROM A WRITTEN CONTRACT, AND, THEREFORE, WITH A PERIOD OF LIMITATION OF TEN YEARS, IS IRRELEVANT TO THE POLICY OF SPEEDY LIQUIDATION OF DECEDENT'S ESTATE. — Rio Olabarrieta, plaintiff's predecessor-in-interest, entered into a 'Contrato de Servicios Personales' with the defendant's father, engaging the latter's personal services for the administration and exploitation of the former's forest concession. By virtue of the contract, defendant's father obtained credits from the plaintiff. Upon his death in 1941, the defendant carried on the account of her father and made payments until December 31, 1941, when the balance due and unpaid stood at P18,614.58. On November 19, 1953, defendant, as sole heir, extra-judicially adjudicated to herself the estate of her father. On January 29, 1954, plaintiff instituted action to recover the unpaid balance. The trial court dismissed the action on the ground of prescription. **Held,** money claims arising from contract do not survive, and must be filed promptly against the estate of the deceased debtor; that the obligation arose from a written contract, and, therefore, with a prescriptive period of ten years, is irrelevant to the policy of speedy liquidation of decedent's estate. It appearing that more than 12 years had elapsed from the death of the debtor before a complaint was filed to recover the indebtedness and without the filing of any intestate proceedings in court, the action is now barred. **Rio y Compaña v. Maslog**, G. R. No. L-12302, April 13, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — THE ANNULMENT OF A PRIVATE CONTRACT EVEN WHEN IT COVERS A PORTION OF THE PUBLIC DOMAIN COMES UNDER THE JURISDICTION OF REGULAR COURTS. — Plaintiff applied for a sales application for a large tract of public agricultural land. While the same was under consideration, an agreement was entered into between the applicant's widow and the defendant whereby the latter was allowed to apply for himself a portion thereof containing an area of 30 hectares. Defendant was thus able to file in behalf of his wife and daughter a free patent application. Plaintiff claims that she was prevailed upon to agree provided that the portion to be released be taken from the uncultivated portion but she later discovered that the portion of land described in the deed of release was the cultivated portion contrary to the agreement and representations made by the defendant who was at the same time overseer of the plaintiff. Plaintiff thus filed this action to annul the deed of release. The lower court refused to take cognizance of the case for the reason that the portion of land covered by the deed is part of public land covered by plaintiff's sales application as well as by defendant's free patent application both pending consideration by the Bureau of Lands. **Held,** while it is the Bureau of Lands that has exclusive jurisdiction to act on matters which concern the sale, lease or other disposition of public lands, and that any conflict that may arise in relation thereto comes under its authority, the annulment of a priavte contract even when it covers a portion of the public domain comes under the jurisdiction of the regular courts. **Baclic v. Serrano**, G. R. No. L-12515, April 30, 1959.

REMEDIAL LAW — CIVIL PROCEDURE — THE PROPER REMEDY OF A PARTY DISSATISFIED WITH A FIRST ORDER OF DISMISSAL IS A SEASONABLE APPEAL. — Plaintiff filed a complaint against defendant demanding a sum of money, allegedly representing unpaid differential and overtime pay, etc. On latter's motion, the complaint was dismissed for lack of jurisdiction. A motion to reconsider was filed, but was denied. Plaintiff then filed the same action against the same defendant. It was again dismissed. Was the second order of dismissal correct? **Held,** yes. The appropriate remedy of a party dissatisfied with a first order of dismissal is a seasonable appeal. **Monares v. CNS Entreprises**, G. R. No. L-11749, May 29, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — A 'MITTIMUS' AFTER CONVICTION IS, IN CRIMINAL CASES, SIMILAR TO AN EXECUTION AFTER JUDGMENT IN CIVIL CASES, A FINAL PROCESS CARRYING INTO EFFECT THE JUDGMENT OF THE COURT. — Defendant was accused of acts of lasciviousness. On arraignment he appeared without counsel. The court appointed a de oficio counsel who asked for postponement. On the day set defendant appeared but without counsel de oficio and upon inquiry by the court answered there was no need of counsel as

he would plead guilty, as in fact he did. On conviction, the clerk issued judicial form No. 34 stating "the time of imprisonment will commence to run on the 10th day of December, 1956." Subsequently, defendant thru another counsel moved for reconsideration of the decision. Denied. He appealed assigning among others the absence of counsel de oficio as reversible error. **Held,** that defendant was guilty thereof there can be no question, because after having the benefit of counsel de oficio, he voluntarily entered a plea of guilty. After the sentence, appellant was not merely returned to prison as a detention prisoner but was sent with the 'mittimus' to serve his sentence. A mittimus after conviction is, in criminal cases, similar to an execution after judgment in a civil case. It is final process. It is carrying into effect the judgment of the court. **People v. Mamatik,** G. R. No. L-11922, April 16, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PROVISIONAL DISMISSAL OF A CRIMINAL CASE FOR INSUFFICIENCY OF EVIDENCE IS NOT A MERE INTERLOCUTORY ORDER SUBJECT TO MODIFICATION BUT IS A FINAL ORDER TERMINATING THE CASE, BECOMING FINAL AFTER THE EXPIRATION OF THE PERIOD OF APPEAL. — The Assistant City Attorney of Pasay City moved for the provisional dismissal of a charge of arbitrary detention filed against the defendants on the ground of insufficiency of evidence. At first the accused objected to a mere provisional dismissal but later gave their written consent thereto and the trial court dismissed the case provisionally. Later accused filed a motion for permanent dismissal alleging that nothing had been done to revive the case. This was denied on the ground that the order of provisional dismissal sought to be modified had long become final. The issue raised was whether the appealed order was mere interlocutory order subject to modification or a final order terminating the case becoming final after the expiration of the period of appeal. **Held,** A provisional dismissal of a criminal case for insufficiency of evidence is not a mere interlocutory order subject to modification but is a final order terminating the case, becoming final after the expiration of the period of appeal. **People v. Hewald,** G. R. No. L-,205', April 30, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — SECTION 1(c), RULE 107, OF THE RULES OF COURT, DOES NOT REQUIRE THAT THE CIVIL ACTION MENTIONED THEREIN BE FOR THE RECOVERY OF CIVIL LIABILITY, BUT APPLIES TO ANY CIVIL ACTION ARISING FROM THE OFFENSE CHARGED IN THE CRIMINAL ACTION. — Petitioner filed an action for legal separation on the ground of concubinage. During the pendency of this action, a criminal action for concubinage was filed against the husband and his paramour. Subsequently, the defendant filed a motion in the civil action praying that the same be held in abeyance pending final determination of the criminal action. Granted, on the authority of the third paragraph of Rule 107 of the Rules of Court. Hence, this special civil action for certiorari and/or mandamus, on the theory that the civil actions alluded to in said Rule 107 are those seeking enforcement of civil liability arising from the offense charged in the criminal case, which is not the case with the right to a legal separation. **Held,** obviously, the petitioner has in mind paragraph (a) of Section 1 of said Rule 107. However, this was not the provision relied upon by the respondent judge, but paragraph (c) of said section, which does not require that the civil action mentioned therein be for the recovery of civil liability arising from the offense charged in the criminal action, as provided in paragraph (a). Said paragraph (c) applies to any civil action arising from the same offense which is the subject matter of the criminal prosecution. **Jerusalem v. Hon. Judge Zurbano,** G. R. No. L-11935, April 24, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE DISMISSAL OF A CASE ON MOTION OF THE ACCUSED BY REASON OF THE CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AMOUNTS TO AN ACQUITTAL WHICH CAN BE INVOKED IN A SECOND PROSECUTION FOR THE SAME OFFENSE. — Charged with homicide, the accused pleaded not guilty. After obtaining two postponements, the fiscal moved for a third postponement of the hearing on account of the absence of his witnesses, specially his principal witness whose appearance was uncertain as his whereabouts were unknown. The absence of witnesses being the very reason for the two previous postponements, the defendants objected and moved for dismissal of the case, invoking their constitutional right to a speedy trial. Motion was granted. Subsequently, the fiscal filed another information for murder. The accused moved to quash the information on the ground of double jeopardy. **Held,** when the first case was called for hearing for the third time and the fiscal was not ready to enter into trial due to the absence of his witnesses, the herein appellees had the right to object to any further postponement and ask for the dismissal of the case by reason of their constitutional right to a speedy trial, and if, pursuant to that objection and petition for dismissal, the case was dismissed, such dismissal amounted to an acquittal which can be invoked in a second prosecution for the same offense. **People v. Tacneng,** G. R. No. L-12082, April 30, 1959.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE DISMISSAL OF A CRIMINAL CASE, IF PROVISIONAL IN CHARACTER AND WITH THE EXPRESS CONFORMITY OF THE ACCUSED, EVEN AFTER TRIAL HAD ALMOST BEEN COMPLETED, DOES NOT BAR ANOTHER PROSECUTION FOR THE SAME OFFENSE.—After defendants' plea of not guilty to the crime of theft, prosecution presented its evidence and thereafter rested its case with reservation to introduce additional evidence which was claimed to be unavailable at the time. The defense likewise offered its evidence but before it had entirely closed, the fiscal moved for provisional dismissal to which the accused expressly consented. Six months after the provisional dismissal, the prosecution moved to revive the case. Defendants objected on the ground of double jeopardy. **Held,** when the accused signified their express conformity with the provisional dismissal of the case, there was neither acquittal nor dismissal that would put them twice in jeopardy of the same offense upon the refiling of the case. It is important to note that what was sought for by the fiscal, to which the accused expressed their agreement, was not a simple or unconditional dismissal, but a provisional dismissal that prevented it from being finally disposed of. **People v. Hinaut,** G. R. No. L-11315, March 18, 1959.

REMEDIAL LAW — EVIDENCE — THE RULE THAT THE ADMISSION OF A CONSPIRATOR RELATING TO THE CONSPIRACY IS NOT ADMISSIBLE IN EVIDENCE AGAINST HIS CO-CONSPIRATORS, WITHOUT PROOF OF THE CONSPIRACY BY EVIDENCE OTHER THAN SUCH ADMISSION, DOES NOT APPLY TO TESTIMONY GIVEN ON THE STAND AT THE TRIAL, WHERE THE DEFENDANT HAS THE OPPORTUNITY TO CROSS-EXAMINE THE DECLARANT. — Appellants, together with their co-defendants, were prosecuted for murder. On the strength of the testimony of a co-conspirator, discharged as a witness for the prosecution, they were convicted. Conspiracy was not established by proof other than the testimony of said witness. Appellants contend that for the testimony of the witness to be admissible in evidence against them, there must be a showing by proof other than his admission itself that the conspiracy actually existed and that they were privy to it. **Held,** the contention is without merit. The rule alluded to applies only to extra-judicial acts or declarations but not to testimony given on the stand at the trial, where opportunity is given the defendant to cross-examine the declarant. **People v. Serrano,** G. R. No. L-7973, April 27, 1959.

REMEDIAL LAW — PROVISIONAL REMEDIES — COURTS OF FIRST INSTANCE HAVE JURISDICTION OVER INDIRECT CONTEMPT CASES, NOTWITHSTANDING THE PROVISIONS OF SECTION 87 OF REPUBLIC ACT 296 AND SECTION 6, RULE 64, OF THE RULES OF COURT. — Defendants were charged with indirect contempt before a court of first instance for having re-entered the land from which they have been ejected by virtue of a final judgment of an inferior court. They questioned the jurisdiction of the court on the ground that, under Section 87 of Rep. Act 296 (Judiciary Act of 1948), it is the inferior courts that have jurisdiction, the penalty for indirect contempt being only a fine not exceeding ₱100, or imprisonment of not more than 10 days, or both, as provided by Section 6, Rule 64, of the Rules of Court. **Held,** although Rep. Act 296 assigned to the inferior courts all criminal offenses penalized with imprisonment of not more than six months or a fine not exceeding ₱200, or both, this case must be deemed not included in such assignment. Under Section 4 of Rule 64, proceedings for contempt committed against a justice of the peace may be instituted either in the Court of First Instance or in the court of said Justice of the Peace. **People v. Orpilla-Molina,** G. R. No. L-12703, March 25, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — ALTHOUGH, ORDINARILY, CERTIORARI DOES NOT LIE AGAINST A COURT HAVING JURISDICTION OVER A CRIMINAL CASE WHICH ERRONEOUSLY DENIES A MOTION TO QUASH GROUNDED ON DOUBLE JEOPARDY, THE FLAW IN THE PROCEDURE FOLLOWED MAY BE OVERLOOKED IN THE INTEREST OF A MORE ENLIGHTENED AND SUBSTANTIAL JUSTICE. — Yap was first charged before the Municipal Court of Iloilo with reckless driving in violation of a city ordinance. Thereafter, he was again charged before the same court with serious physical injuries thru reckless imprudence. Yap moved to quash the latter charge on the ground of double jeopardy. Meanwhile, he was acquitted in the first case. His motion to quash having been denied, as well as a subsequent motion for reconsideration, Yap petitioned the CFI for a writ of certiorari and prohibition. Respondent Judge contested petitioner's plea of double jeopardy. **Held,** ordinarily, when a court with jurisdiction over a criminal case erroneously denies a motion to quash on the ground of double jeopardy, a writ of certiorari would not lie to correct the error thus committed, for the same does not render the order of denial null and void for want of jurisdiction. The proper procedure is for the accused to plead not guilty upon arraignment, reiterate his defense of former jeopardy, and in case of conviction, to appeal therefrom. However, the flaw in the procedure followed by the petitioner may be overlooked in the interest of a more enlightened and substantial justice. **Yap v. Lutero,** G. R. No. L-12669, April 30, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — AN ORDER APPOINTING AN ADMINISTRATOR MAY BE EXECUTED PENDING APPEAL, NOTWITHSTANDING THE ABSENCE OF A MOTION TO THAT EFFECT AND OF REASONS THEREFOR REQUIRED BY LAW TO BE STATED IN THE SPECIAL ORDER ALLOWING IMMEDIATE EXECUTION, PROVIDED GOOD REASONS ARE FOUND SOMEWHERE IN THE RECORD.— The deceased instituted in his will the plaintiff, a family corporation, as his heir. He named as executor, one Canuto Borromeo, who in due time assumed the position. The widow moved for Borromeo's removal and requested for her appointment instead. The court removed Borromeo but refused to appoint the widow, thereby leaving the estate without administrator. Subsquently, the widow filed a motion reiterating her appointment as administratrix. The petitioner-corporation opposed, but this notwihtstanding the court issued an order appointing her. After putting up the required bond, letters of administration were issued to her and she assumed her trust. Whereupon, petitioner, its motion for reconsideration of the order being denied, appealed. Thereafter, the court issued another order directing the removed executor to deliver certain records in his possession to the administratrix. Consequently, the petitioner filed a motion to set aside the letters of administration issued to the widow, and the order directing the delivery of the aforementioned records to her. Denied. The Court of Appeals sustained the denial. Hence, this review grounded on the contention that the order of appointment having been appealed, it could not have been given due course without a motion to that effect, and without a special order stating the reasons for allowing the immediate execution thereof pursuant to Section 2, Rule 39, of the Rules of Court, and since the respondent judge allowed immediate execution in disregard of this rule, he acted in excess of jurisdiction, or with grave abuse of discretion. **Held,** the courts may, even without any previous motion to that effect, give immediate effect to an order when the interest of the parties so justifies. Even if the reasons for the granting of immediate execution are not expressed in the order, the same would not have an adverse result nor constitute abuse of discretion for the element that gives validity to an order of immediate execution is the existence of good reasons, which may be found somewhere in the record. **Borromeo Bros. Estate, Inc. v. Court of Appeals,** G. R. No. L-12240, April 15, 1959.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE COURT OF FIRST INSTANCE, TO WHICH A WRIT OF HABEAS CORPUS ISSUED BY AN APPELLATE COURT IS MADE RETURNABLE, HAS AUTHORITY TO PASS UPON THE LEGALITY OF THE DETENTION, REGARDLESS OF WHETHER THE PETITIONER IS CONFINED WITHIN ITS JURISDICTION. — Petition in the Supreme Court for the issuance of a writ of habeas corpus for the release of petitioner allegedly illegally detained and deprived of his liberty by respondent. By virtue thereof, a resolution was issued ordering respondent to file within 5 days an answer returnable to the Court of First Instance of Manila. Respondent assailed the jurisdiction of said court to pass upon the legality of petitioner's detention, relying on section 2, Rule 102, of the Rules of Court. The writ of habeas corpus issued by the Supreme Court was made returnable before the Court of First Instance of Manila. May the latter court validly inquire into the legality of petitioner's restraint? **Held**, the Court of First Instance of Manila may validly inquire into the legality of petitioner's restraint and issue such orders, in connection therewith, as may be proper, in the light of the facts proven and the law applicable thereto. **Saulo v. Cruz**, G. R. No. L-14819, March 19, 1959.

COURT OF APPEALS CASE DIGEST

ACTS AND LAWS — REPEAL — WHERE AN ACT EXPIRES BY ITS OWN LIMITATION, THE EFFECT IS ITS REPEAL WHICH CARRIES WITH IT THE DEPRIVATION OF THE PROPER COURT OF JURISDICTION TO TRY, CONVICT AND SENTENCE PERSONS CHARGED WITH VIOLATION OF THE OLD LAW PRIOR TO THE REPEAL. — On November 2, 1953, defendant Alfredo V. Jacinto, as Commissioner of the Bureau of Customs allowed the release of a shipment of old newspapers knowing that 2% ICC license fee has purportedly been paid under a falsified official receipt. Finding him negligent in not forfeiting the goods in favor of the government, the trial court convicted the defendant accordingly. **Held,** the law violated by the importer was the Import Control Law (R. A. No. 650) which expired by its own limitation on June 30, 1953. The falsification made could no longer be the basis of forfeiture at the time of the release of the goods. Where an act expires by its own limitation, the effect is its repeal, and the same carries with it the deprivation of the proper court of jurisdiction to try, convict and sentence persons charged with violation of the old law prior to the repeal. **People v. Jacinto,** (CA) G. R. No. 17206, May 27, 1958.

CIVIL LAW — AGENCY — BEFORE THERE CAN BE RATIFICATION, THERE MUST BE KNOWLEDGE ON THE PART OF THE PRINCIPAL OF THE THINGS HE IS GOING TO RATIFY. — Parreno entered into possession of a building, administered by the Philippine Alien Property Administration, allegedly on the authority of its custodian. The purpose according to him was to preserve the building. The conveyance was made without the written consent of the Enemy Property Custodian, from whom transferor-custodian derives authority. Sometime later, the Philippine Alien Property

Administration demanded rentals for the occupancy of the building. Parreno demurred, contending that he was given permission to occupy without rental by the custodian. **Held,** the custodian in agreeing to convey the property without rental exceeded his authority. The precise limitation of his authority was not to transfer the property without the written consent of the Enemy Property Custodian. The defense that there was ratification was not proved by evidence. Before there can be ratification, there must be knowledge on the part of the principal of the things he is going to ratify. There was no proof that the plaintiff had knowledge of what was to be ratified. **Brownell, Jr. v. Parreno,** (CA) G. R. No. 16714-R, May 27, 1958.

CIVIL LAW — LEASE — UNDER ARTICLE 476 OF THE OLD CIVIL CODE, THE LESSEE HAS NO MORE RIGHT THAN A MERE USUFRUCTUARY; AS SUCH HE IS NOT ENTITLED TO REIMBURSEMENT OR INDEMNIFICATION FOR IMPROVEMENTS HE MAY HAVE INTRODUCED IN THE LEASED PREMISES. — One Amado B. Parreno in 1946 entered into possession of a building under the Philippine Alien Property Administration, allegedly upon authority of its custodian. He introduced improvements thereon amounting to ₱3200. Sometime in 1948, the Philippine Alien Property Administration demanded rentals in payment for occupancy since 1946. Parreno seeks to recover reimbursement for the improvements introduced, claiming himself a possessor in good faith. **Held,** defendant's contention that since it was only in 1948 when plaintiff demanded rentals from him, he was a possessor in good faith before that time is untenable. Precisely, in asking for the payment of rentals, plaintiff evinced its desire to collect from defendant as a lessee. The lessee has no more right than a mere usufructuary and is not, therefore, entitled to reimbursement or indemnification for improvements he may have introduced in the leased premises. **Brownell, Jr. v. Parreno,** (CA) G. R. No. 16174-R, May 27, 1958.

CIVIL LAW — PERSONS — ARTICLE 163 OF THE NEW CIVIL CODE IS APPLICABLE BY ANALOGY TO PERSONAL DEBTS OF SPOUSES CONTRACTED AFTER MARRIAGE. — Defendant Carmen Pacquing obtained a loan from plaintiff Hian. The loan was secured in her personal capacity and after her marriage to Isabelo Pacquing. Defendant having defaulted, plaintiff commenced action against the spouses for recovery. **Held,** under Article 163 of the new Civil Code, in case of insufficiency of the exclusive property of the debtor-spouse, debts contracted by him or her may be enforced against the conjugal partnership, provided the liabilities mentioned in Article 161 have been covered. There being no provision covering personal debts contracted after marriage, Article 163 should be applied by analogy. The conjugal partnership is liable for the personal debts of the spouses contracted after marriage, provided it is shown that the liabilities mentioned in Article 161 have been met and that the exclusive property of the spouse bound is insufficient. **Hian v. Pacquing,** (CA) G. . No. 19420-R, May 21, 1958.

COMMERCIAL LAW — TRANSPORTATION — THE RIGHTS AND OBLIGATIONS OF COMMON CARRIERS, IN MATTERS NOT REGULATED BY THE CIVIL CODE, ARE GOVERNED BY THE CODE OF COMMERCE,

AND IN DEFAULT THEREOF, BY THE CARRIAGE OF GOODS BY SEA ACT. — A shipment of cargo consisting of chopped beef arrived from San Francisco on board the M/S Doña Alicia, operated by the defendant. About half of the shipment was damaged due to fresh water caused by the change of weather from cold to warm. Plaintiff failing to obtain indemnity from the defendant brought this action to recover his damages. The trial court applying the Carriage of Goods By Sea Act, absolved the defendant from liability, holding that a carrier cannot be held liable for loss or damage arising from the inherent defect, quality or vice of the goods. The plaintiff appealed claiming such Act has been repealed by the New Civil Code. **Held,** the rights and obligations of common carriers, in matters not regulated by the Civil Code, are governed by the Code of Commerce, and in default thereof, by the Carriage of Goods By Sea Act. There has never been a repeal, express or implied, of such law. **Tay Lian Grocery, Inc. v. De La Rama Steamship Co.,** (CA) G. R. No. 18319-R, June 12, 1958.

CRIMINAL LAW — COMPROMISE — AN INCIPIENT CRIMINAL LIABILITY ARISING FROM CONTRACT MAY BE AVOIDED BY NOVATION. — The complainant Mangulabnan, to be employed in the firm of the accused, posted a bond to be returned in case of his separation or resignation. Because his salary was paid in trickles in the form of vales and merchandise, Mangulabnan resigned and demanded from the accused his bond together with his back salary. Unable to comply, the accused was prosecuted for estafa. The defense was that even after filing the complaint the offended party continued getting money from the accused; that a contract was in fact executed between them for Mangulabnan to ask for the provisional dismissal of the case filed by him in return for the monthly installments the accused was to make. The trial court convicted the accused on the ground that a criminal case cannot be compromised. **Held,** on the ground of equities of the case alone, the appellant should be exonerated on reasonable doubt as he had no manifest intention to defraud. Although criminal liability of the offender cannot be compounded by subsequent agreements between him and the offended party, there seems however to be no prohibition in our law to prevent the parties to contract, to novate it so that an incipient criminal liability under the first is thereby avoided. **People v. De La Rama,** (CA) G. R. No. 17677—R, May 21, 1958.

CRIMINAL LAW — INDUCEMENT OF MINOR TO ABANDON HOME — IT IS AN ESSENTIAL REQUISITE OF THIS CRIME THAT INDUCEMENT BE ACTUAL, COMMITTED WITH CRIMINAL INTENT TO INDUCE THE MINOR TO LEAVE HIS HOME. — The defendant, Suela Paalam, maid of Mary Tan, left the house of the latter dissatisfied with her work. While in the employ of Mary, she had occasion to talk to the niece of her mistress who was 14 years of age, and another child of a neighbor, also of the same age, about the attractions of Manila and its many places of myriad amusements. She promised to take them to the City at her expense. Six days after her separation from the household, the two minors followed her to her aunt's place with their bundles. The guardians of both minors conducted a search and found them with the defendant. She was prosecuted and convicted of inducing the minors to leave their homes. **Held,** the evidence presented did not clearly and convincingly prove that there was an actual inducement committed with criminal intent to induce the minors to leave their homes. In the face of this doubt, the same must be resolved in favor of the accused. **People v. Suela Paalam,** (CA) G. R. No. 17411—R, July 11, 1958.

LABOR LAW — EMPLOYER AND EMPLOYEE RELATIONS — THE REPRESENTATIVE OF THE EMPLOYEES IS EMPOWERED TO ENTER INTO COLLECTIVE BARGAINING WITH THE EMPLOYER, INCLUDING DISCHARGES OF EMPLOYEES. For his dismissal from defendant company, plaintiff brought this action to be reinstated, claiming the dismissal without justifiable reason. The defendant successfully proved abandonment of work on the part of the plaintiff, prompting the court to rule in favor of the defendant company. **Held,** in addition to the fact of abandonment of work by the plaintiff justifying his separation from service, there was the agreement entered into between the employees' association and the company to the effect that of the 19 dismissed employees, 2 should be reinstated and plaintiff was not one of them. By Section 13 of the Industrial Peace Act the representative of the employees is empowered to enter into collective bargaining with the employer, including discharges of employees. **Tolentino v. Bachrach Co.,** (CA) G. R. No. 16341-R, June 18, 1958.

LABOR LAW — MINIMUM WAGE LAW — SECTION 16, PARAGRAPH 'A' OF ACT 602 REQUIRING THE DECISION TO BE RENDERED WITHIN 15 DAYS FROM THE TIME THE CASE WAS SUBMITTED IS MERELY DIRECTORY. — Ruben Ramirez was prosecuted for violation of the Minimum Wage Law for underpaying his employees. Convicted, he appealed contending among others that the judgment rendered was without effect being rendered after 15 days from the time the case was submitted for decision, and therefore null and void under Section 16, paragraph 'A' of Act 602. **Held,** the argument is without merit as such period is only directory, its purpose being merely to impress the need of a speedy disposal of claims for underpayment. **People v. Ramirez,** (CA) G. R. Nos. 18870—R and 18871—R, May 30, 1958.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — CHILDREN OF LIVING PARENTS HAVE NO RIGHT OR INTEREST IN THEIR LEGITIME REGISTRABLE AS AN ADVERSE CLAIM UNDER SECTION 110 OF THE LAND REGISTRATION ACT. — The petitioner instituted this action to cancel the adverse claim annotated on the back of her title to two lots, in favor of four of her children, in order to transfer the lands to third persons. The oppositors claimed that the transfer impairs their legitime and therefore have the right to have their interest annotated. The trial court ordered the cancellation of the annotation. **Held,** to avail of the provisions of Section 110 of the Land Registration Act (Act 496), a claimant must have a right or interest in registered land adverse to the registered owner. The children of a living parent have no such right or interest. All that they have is an expectancy, contingent, inchoate and dependent entirely upon the death of the parent.. **Diaz v. Santos Diaz,** (CA) G. R. No. 19806—R, June 12, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE THE TRIAL COURT HAS ACTUALLY ACQUIRED KNOWLEDGE OF THE SERVICE OF SUMMONS, THERE IS NO NECESSITY FOR IT TO WAIT FOR THE PLAINTIFF TO FILE A MOTION TO DECLARE THE DEFENDANT IN DEFAULT. — Original action in the Court of Appeals for certiorari and mandamus. The respondent, Guzman, as administrator of the estate of the deceased spouses Miguel and Basilisa de Guzman, sought in an action to recover a land and a building thereon, appearing in the name of the couple, from the possession of one Eladia Guzman. The latter even after several extensions given her failed to file her answer. Acting on its own motion, the court declared the defendant in default and allowed the plaintiff to present his evidence in support of his claim. Judgment was subsequently rendered against her, after which she petitioned for this action on the ground that the court acted without or in excess of jurisdiction in declaring her in default, without motion to this effect by the plaintiff. **Held,** where the trial court has actually acquired knowledge of the service of summons, there is no necessity for it to wait for the plaintiff to file a motion to declare the defendant in default. Although the Rules of Court do not expressly provide that a judge may declare a party in default **motu propio,** no provision is found therein prohibiting him from doing so. A trial judge as dispenser of justice may exercise an act which he deems necessary for a sound and proper administration of justice. **Guzman v. Hon. Judge Bayona,** (CA) G. R. No. 22535-R, May 24, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — UNDER THE LIBERAL CONSTRUCTION RULE, A MOTION TO SET ASIDE AND/OR FOR NEW TRIAL FILED UNDER RULE 37 MAY BE CONSIDERED A MOTION FOR RELIEF UNDER RULE 38. — Original action in the Court of Appeals for certiorari and mandamus. Respondent Francisco Guzman, as administrator of the estate of the deceased spouses Miguel and Basilisa de Guzman, filed an action to recover a land and the improvements thereon appearing in the couple's name, from the possession of one Eladia Guzman. For the latter's failure to file her answer, she was declared in default on October 21, 1957, and judgment was entered against her on Novembr 5, 1957. She presented a motion to set aside and for new trial based on excusable negligence on December 6, 1957, but was denied on the ground that the judgment had already become final, 30 days having elapsed from entry of judgment. **Held,** the provisions of the Rules of Court must be liberally construed to afford the litigants the opportunity to ventilate their cases in court without being barred by technicalities. The motion to set aside and/or new trial under Rule 37 may be considered a motion for relief under Rule 38. **Guzman v. Hon. Judge Bayona,** (CA) G. R. No. 22535-R, May 24, 1958.

BOOK NOTES

CASES AND MATERIALS ON NEGOTIABLE INSTRUMENTS LAW.

By Jose C. Campos and Ma. Elena Lopez-Campos. Manila Community Publishers, Inc., 1959. Pp. XII, 775 ₱———.

"Negotiable instruments play an important role in the business world," for they "evidence not only a large part of the wealth of the country but furnish the means and basis in which and by which the greater part of the commerce and business of the nation is conducted." Thus, a book with up-to-date cases and materials on the Negotiable Instruments Law is always in need. This book answers the need.

Mechanically, the book is divided into eight chapters excluding the introduction. A case index is provided as a guide to the several cases digested in the book. The cases are presented by stating the facts, the contention of the parties, the issues and finally the ruling of the court. Our Negotiable Instruments Law being practically a verbatim reproduction of the Uniform Negotiable Instruments Law of the United States, which, in turn, was patterned after the English Bill of Exchange Act, American and English cases are amply provided on matters wanting of jurisprudence in this country. Included as appendices are the provisions of the Negotiable Instruments Law, the Code of Commerce, and some varieties of checks.

The functions and importance of negotiable instruments, the negotiability of various instruments, the origin and the applicability of the Negotiable Instruments Law are treated in the introductory part of the book. The first chapter deals with the requisites of Negotiability, the second with Transfers, the third with Holders in Due Course, and the fourth, with Defenses. Liabilities are extensively discussed in the fifth chapter. Chapter six, which treats of Discharge is divided into two — Discharge of the Instrument and Discharge of Secondary Parties. Other types of negotiable papers and negotiable documents of title are discussed in the last two chapters.

This book will be of much help to lawyers, businessmen, and students of law who do not have all the time for research work.

THE CONGRESSIONAL POWER OF INVESTIGATION.

By Joaquin R. Roces. Manila: 1959. Pp. 27 ₱———.

This is a legal treatise on legislative inquiries by the Chairman of the House Committee on Good Government, which exercises this important legislative function.