gatives of Philippine citizenship.

R.A. No. 1387. An Act providing for the establishment of the University of Mindanao in Dansalan City and authorizing the appropriation of funds therefor.

R.A. No. 1388. An Act converting the Pampanga Trade School in the Municipality of Bacolor, Province of Pampanga, into a regional school of arts and trades to be known as the Pampanga School of Arts and Trades, and to authorize the appropriation of funds for the purpose.

R.A. No. 1389. An Act creating the barrio of Bataan, Municipality of Rizal, Province of Zamboanga del Norte.

R.A. No. 1390. An Act appropriating the sum of 300,000 pesos as aid to the Philippine Tuberculosis Society for the improvement of its present buildings or the construction of new pavilions.

R.A. No. 1391. An Act appropriating the sum of 25,000 pesos as aid to the first Southeast Asia Music Conference to be held in the city of Manila in August, 1955.

CASE DIGEST

SUPREME COURT

CIVIL LAW — MARRIAGE — THE REGISTRATION OF AUTHORITY TO SOLEMNIZE MARRIAGE HAS A TWO-FOLD PURPOSE: (1) TO INFORM THE PUBLIC OF THE AUTHORITY OF THE MINISTER TO DISCHARGE HIS RELIGIOUS FUNCTIONS AND, (2) TO KEEP THE PUBLIC INFORMED OF ANY CHANGE IN HIS RELIGIOUS STATUS; IN ORDER TO LIFT THE INELIGIBILITY OF AN ECCLESIASTIC TO RUN FOR PUBLIC OFFICE, HIS OFFICIAL RESIGNATION FROM, AND THE ACCEPTANCE OF, HIS RELIGIOUS ORGANIZATION MUST BE REGISTERED — In the general elections of 1951, Paraiso garnered the greatest number of votes, and was duly proclaimed mayor-elect of Rizal, Nueva Ecija, by the municipal board of canvassers. Petitioner Vilar won the second greatest number, and subsequently filed quo warranto proceedings against Paraiso on the ground that Paraiso is an ecclesiastic, and therefore ineligible for public office. Paraiso pleads that he has officially resigned from the United Church of Christ, and such resignation was accepted by the cabinet of said church. This resignation and acceptance, however, were not registered with the Bureau of Public Libraries. *Held,* the importance of registration with the Bureau of Public Libraries serves a two-fold purpose, and cannot be underestimated. This is especially so with authority to solemnize marriage. It is no argument to say that the duty to secure the cancellation of the requisite registration devolves, not upon respondent, but upon the head of his religious organization. Furthermore, he failed to attach to his certificate of candidacy a copy of the alleged resignation as minister knowing fully well that a minister is disqualified by law to run for a municipal office. VILLAR *v.* PARAISO, G.R. No. L-8014, March 14, 1955.

CIVIL LAW — PROPERTY — WHERE THE ACTION TO RECOVER CHURCH PROPERTY SPRANG OUT OF A MERE DIVISION, NOT A SCHISM IN THE CHURCH, THE RULE OF DOCTRINAL ADHERENCE DOES NOT APPLY — Before the controversy, the Iglesia Filipina Independiente was a religious society adhering to a common, certain religious dogma under one supreme head who had the sole right to administer all the temporalities of the church. Rivalry ensued among the leaders of the church which culminated in a court proceeding, where bishop De los Reyes was confirmed the real and legal head of the religious society. This led to a bitter division among the members, out of which two factions emerged, each with a supreme head and governing body; each asserting rights over the temporalities of the original religious group. Petitioner, one of the leaders, contends that the faction led by bishop De los Reyes had adopted certain new doctrines and practices which are entirely different from that of the original Iglesia Filipina Independiente. They, therefore, have lost whatever rights they had to the properties of the original church. *Held,* in such cases, where there is a division which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority

of the members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere in the acknowledged organism by which the body is governed are entitled to the use of the property. The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body can claim no rights in the property simply because they had once been members of the church or congregation. This ruling admits of no inquiry into the existence of religious opinions of those who comprise the legal or regular organization, for if such was permitted, a very small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. FONANCIER *v.* CA, G.R. No. L-5917, Jan. 28, 1955.

CIVIL LAW — SALES — AN OFFER MADE IN APRIL 1946, PURSUANT TO A RESERVATION BY THE VENDOR OF THE RIGHT TO REPURCHASE THE PROPERTY WITHIN THREE MONTHS FROM AND AFTER THE TERMINATION OF THE WAR, IS VALID, SINCE WAR TERMINATES IN A LEGAL SENSE UPON OFFICIAL PROCLAMATION OF PEACE — Fabie delivered to defendant a piece of realty by virtue of a contract of pacto de retro, reserving the right to repurchase the same "three months from and after the termination of the war at present raging." On April 8, 1946, the plaintiff offered to repurchase the property but the defendant refused alleging that the plaintiff's right had already lapsed inasmuch as the war had terminated on September 2, 1945, when the document of formal surrender was signed by Japan. *Held*, war terminates upon official proclamation of peace and the period in contracts dependent on its termination must be computed from such time except where the parties to a contract intended otherwise, in which case, their intention shall be given effect. There is no indication that the parties intended mere cessation of hostilities as the termination of the war, and in April 1946 no formal declaration of peace had been published. President Truman issued his formal proclamation of peace in December 1946. FABIE *v.* CA, G.R. No. L-6386, March 29, 1955.

CIVIL LAW — AGENCY — WHEN AN AGENT ACTS IN HIS OWN NAME, THE THIRD PERSON WITH WHOM HE CONTRACTS HAS AN ACTION AGAINST HIS PRINCIPAL, IF THE CONTRACT INVOLVES THINGS BELONGING TO THE LATTER — Pajato purchased a lot from Arabejo & Company, an agent of Phil. Realty Corp., duly authorized and empowered by the latter to look for buyers and to sell the lots on the hacienda of the Archbishop of Manila in Malate. Subsequently, this same lot was sold to Jante with full knowledge of the contract in favor of Pajato, and through connivance of Jante and his co-defendants. Jante obtained a certificate of title to the land. In their joint motions to dismiss, the defendants allege that Arabejo & Co. is a mere agent and had no authority to conclude a sale with Pajato. Likewise, Arabejo & Co. moved to dismiss the complaint on the ground that there is no cause of action, it not being the real party in interest, having intervened only as an agent for its disclosed principal. *Held*, when an agent acts in his own name, he is not personally liable to the person with whom he enters into a contract when things belonging to the principal are the object thereof. The third person has a right of action not only against the agent, but also against the principal, when the rights and obligations which are the subject-matter of the litigation cannot be legally and juridically determined without hearing both of them. The Archbishop of Manila may deny the authority of his agent to act in its name, in which case the latter must be given the chance to prove that it really had such authority. The Phil. Realty Corp. is also a necessary party because it was the one which had given Arabejo & Co. the authority to enter into the sale in question. PAJATO *v.* JANTE, G.R. No. L-6014, Feb. 8, 1955.

CIVIL LAW — TORTS — ACQUITTAL OF THE ACCUSED IN THE CRIMINAL PROSECUTION DOES NOT BAR A RESERVED CIVIL ACTION BASED ON THE PRINCIPLE OF CULPA AQUILLIANA — Defendants were charged with double homicide and grave physical injuries as a result of a collision in 1937, between the train operated by them and a car belonging to Ibañez, in which the latter was killed. The defendants who were tried separately, were acquitted in separate decisions. The plaintiffs, who are the heirs of Ibañez, filed this civil action for damages which they had reserved in the course of the criminal action. The trial court held that the defendants, having been acquitted in the criminal cases, can no longer he held civilly liable. *Held*, the civil action will prosper, for it is based not on the civil liability arising from an alleged criminal act, but on the general law on negligence under the old Civil Code, that is, the action was based on the principle of culpa aquilliana and not on the civil liability arising from a criminal act under the Revised Penal Code. IBAÑEZ *v.* NORTH NEGROS SUGAR CO., G.R. No. L-6790, March 28, 1955.

COMMERCIAL LAW — CORPORATIONS — THE STATUS OF QUASI-NEGOTIABILITY GENERALLY ACCORDED TO AND AT PRESENT ENJOYED BY CERTIFICATES OF STOCK, UNDER OUR LAW, IS IN ITSELF A RECOGNITION OF THE FACT THAT THE CERTIFICATES ARE NON-NEGOTIABLE — During the Japanese occupation, the plaintiffs secretly purchased shares of an American corporation whose assets had been seized by the enemy invader. Risking Japanese wrath, they staked their funds on the eventual return of the American forces after liberation. The Phil. Alien Property Administration alleged that the plaintiffs had no valid title to the shares of stocks since the stocks were in the name of Madrigal and recorded in the books of the corporation as such; that when the shares were sold to the plaintiffs, it did not bind Madrigal who was not a party to said alleged transaction. Under the Corporation Law, no transfer shall be valid except as between the parties until the transfer is entered and noted upon the books of the corporation. However, the plaintiffs alleged that since the shares of stock were indorsed in blank by Madrigal, an innocent purchaser for value acquires them validly. *Held*, certificates of stock are not negotiable instruments. For this reason, although a stock certificate is sometimes regarded as quasi-negotiable, in the sense that it may be transferred by indorsement coupled with delivery, it is well settled that the instrument is non-negotiable, because the holder thereof takes it without prejudice to such rights or defense as the registered owner may have under the law, unless his own negligence has been such as to create an estoppel against him. The basis of the negotiability of stock certificates is the Uniform Act which incidentally is not in force in the Phil. In this connection, it should be noted that this special piece of legislation was adopted in some states as early as 1910. The failure of our govern-

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ment to incorporate its provisions in our statute books for almost 45 years is clear proof of the unwillingness of our legislators to change the policy set forth in § 35 of Act No. 1459, thus negating the court's authority to abandon it. DE LOS SANTOS *v.* MCGRATH, G.R. No. L-4818, Feb. 28, 1955.

COMMERCIAL LAW — CORPORATION LAW — A FOREIGN CORPORATION IS REQUIRED TO SECURE A LICENSE, BEFORE IT MAY SUE IN LOCAL COURTS, ONLY IF IT HAS TRANSACTED BUSINESS IN THE P.I.; A CONTRACT ENTERED INTO ABROAD AND AGREED TO BE CONSUMMATED THERE DOES NOT AMOUNT TO TRANSACTING BUSINESS IN THE P.I. — Defendant acting through a San Francisco broker sold to plaintiff 500 tons of copra at $142 per short ton, c.i.f. Pacific Coast, the agreed price to be covered by an irrevocable letter of credit. Defendant, having failed to deliver the copra, plaintiff filed this action for damages. The CFI dismissed the case, holding that, as the copra was to be delivered in the P.I. and the purchase price was to be paid in the P.I. the plaintiff had transacted business in the Philippines without a license having been previously obtained, and consequently, it had no personality to sue on the contract before local courts. *Held,* the lower court erred. The contract was undoubtedly entered into in the U.S. by the plaintiff and defendant, the latter acting thru his broker. With respect to the delivery of the copra, it appears that the price agreed on was $142. c.i.f. Pacific Coast. This means that the vendor was to pay not only the cost of the goods, but also the freight and insurance expenses, and this is taken to indicate that the delivery is to be made at the port of destination, Behn Meyer & Co. v. Yangco, 38 Phil. 605-06 (1918). The plaintiff then has not transacted business in the P.I. and is not therefore required to obtain a license before it could have personality to bring a court action. PACIFIC VEGETABLE OIL CORP. *v.* SINGZON, G.R. No. L-7917, April 29, 1955.

COMMERCIAL LAW — INSURANCE LAW — THE CAUSE OF ACTION OF THE INSURED UNDER AN INSURANCE CONTRACT ACCRUES FROM THE TIME HIS CLAIM IS FINALLY REJECTED BY THE INSURER — A shipment of 14 bales of assorted underwear from the United States to be delivered to the respondent was insured against all risks by the petitioner. Of the 14 bales, only 10 were delivered and three of those delivered were found damaged. Respondent brought an action under the insurance contract. The petitioner alleged that the right of plaintiff had prescribed under the stipulation in the policy that any action upon such contract must be brought within 12 months after the happening of the loss and that no action shall be commenced until the insured has fully complied with all the conditions in the policy. *Held,* the stipulation in the policy is void as being repugnant to § 61-A of the Insurance Act. It should be construed to harmonize it with said section and should be taken to mean that the action should be brought within 12 months from the time the cause of action accrues. The plaintiff's cause of action accrued when his claim was finally rejected by the insurance company, because before such time, there was no necessity of bringing suit. EAGLE STAR INSURANCE CO. *v.* CHU YU, G.R. No. L-5915, March 31, 1955.

COMMERCIAL LAW — TRANSPORTATION — THE OWNER OF A TPU JEEPNEY WHO LEASES IT TO ANOTHER WITHOUT SECURING THE APPROVAL OF THE P.S.C. STILL CONTINUES TO BE ITS OPERATOR IN COMTEMPLATION OF LAW, AND IS RESPONSIBLE FOR THE CONTRACTUAL OR TORTIOUS DAMAGES CAUSED BY THE NEGLIGENT ACTS OF THE DRIVER — While Villapando's 6 x 6 truck was parked, plaintiff's car bumped the rear of the truck. Subsequently, defendant's TPU jeepney, driven by one Sambrano, struck plaintiff's car from behind. Plaintiff filed this action based on quasi-delict against Sambrano and defendant. The trial court found that Sambrano was driving recklessly at the time of the accident and rendered judgment against him but dismissed the case against the defendant. From this, plaintiff appeals. *Held,* the lower court erred in dismissing the case against defendant. This case is on all fours with that of Montayo v. Ignacio, G.R. No. L-5868, wherein it was held that since a lease of a franchise or privilege must be with the approval of the P.S.C. in order to be valid, an operator who leases a TPU jeepney without the required approval still continues to be its operator in contemplation of law, and as such is responsible for the consequences incident to its operation. It is no argument to say that the *Montoya* case is different from the case at bar in that the cause of action of the plaintiff in that case was based on contractual negligence whereas the present one is based on *culpa aquiliana,* because the nature of the liability of the owner remains the same. TIMBOL *v.* OSIAS, G.R. No. L-7561, April 30, 1955.

CRIMINAL LAW — CRIMINAL INTENT — CRIMINAL INTENT IS NOT PRESUMED WHERE THE ACCUSED, AS A MILITARY SUBORDINATE, ACTED UPON ORDERS OF SUPERIOR OFFICERS — The accused, as military major of La Paz, received an order from guerilla headquarters, to appoint a jury to try persons accused of treason. Pursuant to such instructions, Borjal, was found guilty of treason and was sentenced to death. There was no doubt that the arrest, prosecution and trial of Borjal were done with the consent and under the express orders of superior guerilla officers. However, the prosecution stresses the point that the killing of Borjal was instigated by purely personal motives of the accused. *Held,* the accused was not motivated by malice (dolo). The arrest and trial of Borjal were made upon express orders of the higher command; he was allowed to be defended by counsel, and when the verdict of guilty was rendered and death imposed as a penalty, the records were sent to the headquarters for review and Borjal was not executed until the records were approved and returned eight days later. The accused, therefore, being a military subordinate, could not question, and therefore obeyed in good faith, the orders of the superior officers, without any fault or negligence on his part without being aware of the illegality of such orders. By these facts, criminal intent has not been established, nor can it now be presumed. PEOPLE *v.* BERONILLA, G.R. No. L-4445, Feb. 28, 1955.

CRIMINAL LAW — PRINCIPALS — A PERSON WHO MISREPRESENTS FACTS TO A PUBLIC EMPLOYEE, WHO WRITES THEM ON A PUBLIC DOCUMENT, IS GUILTY AS A PRINCIPAL BY INDUCEMENT OF THE CRIME OF FALSIFICATION OF A PUBLIC DOCUMENT, EVEN IF SAID PUBLIC EMPLOYEE BE FOUND INNOCENT OF THE OFFENSE — In obtaining his residence certificate, the accused misrepresented him-

self as a Filipino, born in Jaro, to an employee of the treasurer's office. Prosecuted for the crime of falsification of a public document committed by making untruthful statements in a narrative of facts, see art. 172 (2) in connection with art. 171 (4), he alleged that if there had been any falsification at all, it was committed by the employee who innocently wrote the allegedly untrue facts on the document, and relied on the opinion of J. Albert that the crime of falsification of a public document cannot be committed by a private person by the means stated in the information. *Held*, the opinion relied on plainly refers to direct falsification of a public document by a private person, and does not contemplate situations where the accused, though a private person, becomes a principal to the act of falsification committed by a public official or employee, by induction, cooperation or planned conspiracy, cf. Sent. Trib. Sup. Esp. 23 March 1885; 28 April 1905, 28 March 1893. In the present case, although it is true that it was the employee of the office of the treasurer who performed the overt act of writing the allegedly false facts on the defendant's residence certificate, it was however the defendant who induced him to do soy by supplying him with those facts. Consequently, the employee was defendant's mere innocent agent in the performance of the crime charged, while defendant was a principal by inducement. PEOPLE *v.* PO GIOK TO, G.R. No. L-7263, April 30, 1955.

CRIMINAL LAW — FALSIFICATION OF PUBLIC DOCUMENT — THE CRIME OF FALSIFICATION BY A PRIVATE PERSON OF A PUBLIC DOCUMENT UNDER ART. 172 (1) IS DISTINGUISHED FROM THE CRIME OF FALSIFICATION OF A PRIVATE DOCUMENT UNDER ART. 172 (2) IN THAT ART. 172 (1) REQUIRES NOT ONLY SUCH ACT BUT ALSO THE PRESENCE OF DAMAGE TO A THIRD PERSON OR THE EXISTENCE OF THE INTENT TO CAUSE INJURY — The accused was charged of having falsified a public document consisting of a residence certificate by misrepresenting therein his name, place of birth and citizenship. The accused filed a motion to quash on the ground that the information did not allege that the accused had the wrongful intent to injure a third party. The motion having been granted by the CFI, the fiscal appeals. *Held*, art. 171 (4) of the Penal Code punishes a public officer who, taking advantage of his position, falsifies a public document by making untruthful statements in a narrative of facts. Art. 172 (2) punishes a private person who falsifies a public document by any of the means enumerated in art. 171, and art. 172 (2) punishes a person who, *to the damage of a third person or with intent to cause such damage*, shall falsify any *private* document by any of the acts enumerated in art. 171. The distinction made by the law between falsification by private persons, first, of public documents, and second, of private documents, is clear; the first is committed by mere performance of any of the acts of falsification enumerated in art. 171; while the second is committed not only by the performance of any of the acts of falsification enumerated in art. 171, but it must likewise be shown that such act of falsification was committed to the damage of a third party or with intent to cause such damage. The accused is prosecuted for falsification of a *public* document under art. 172 (2), of which crime damage to a third party or intent to cause the same is not an essential element. PEOPLE *v.* PO GIOK TO, G.R. No. L-7263, April, 30, 1955.

CRIMINAL LAW — LIBEL — THE PUBLISHED ARTICLE MUST BE CONSTRUED AS

A WHOLE, INCLUDING THE HEADLINES. AS THEY MAY ENLARGE, EXPLAIN OR RESTRICT OR BE ENLARGED, EXPLAINED, STRENGTHENED OR RESTRICTED BY THE CONTEXT AND WHETHER OR NOT IT IS LIBELOUS DEPENDS UPON THE SCOPE, SPIRIT AND MOTIVE OF THE PUBLICATION TAKEN IN ITS ENTIRETY — Respondent Lopez, publisher of the Manila Chronicle was charged with libel committed in his paper's issue of November 7, 1947 bearing the following headline, "NBI Men Raid Offices of City Usurers." The news item was the result of a press release in connection with an official investigation of the Anti-Usury Division of the NBI. The petitioner claims that while the body of the news item may be considered as being a fair, impartial and accurate report of an official investigation, its headline, not forming part of the basic press release but merely added by the respondent, is libelous per se, because the petitioner had been branded thereby and condemned as a usurer when in fact no criminal charge has been filed against him. *Held*, the headline is not libelous per se. The article must be construed as an entirety including its headlines. The whole item, including display lines, should be read and construed together, and its meaning and signification thus determined. The word "usurer" simply means one who practices usury or even a mere money lender, but certainly not a usury convict. It is contended that often only the headline is read. If that is so, then the petitioner could not have been identified as the person referred to in the headline, and libel must be committed against somebody definite. QUISUMBING *v.* LOPEZ, G.R. No. L-6465, Jan. 31, 1955.

CRIMINAL LAW — PROFITEERING — INSTIGATION, NOT ENTRAPMENT, IS CONTRARY TO PUBLIC POLICY AND THEREFORE ILLEGAL; THERE IS NO ENTRAPMENT WHEN THE PRICE CONTROL AGENTS ONLY TRIED TO VERIFY THE ILLEGAL ACT OF PROFITEERING BY EMPLOYING SOMEONE TO PURCHASE OVER-PRICED ARTICLE — A certain Mrs. Villa sent her houseboy to buy Klim Milk at the store of Tiu Ua, telling him to pay no more than ₱1.80 a can, the price fixed by law. Tiu Ua, however, insisted on ₱2.20 for the can of milk. The boy went back and told Mrs. Villa he could not buy the milk. Thereupon Mrs. Villa sent for her son, who was an employee at the NBI. The houseboy was sent back to the store of Tiu Ua with a ₱5.00 bill, and told to buy the can of milk while two agents of the NBI waited at Mrs. Villa's house. The boy came back with the can of milk and ₱2.80 in change. The two agents, thereafter, went to the store and asked Tiu Ua if he sold the can of milk to the boy for ₱2.20, and he answered in the affirmative. After conviction for profiteering, Tiu Ua pleads that the agents employed entrapment which is against public policy and therefore illegal. *Held*, there is no entrapment when the accused, after having charged a customer a sum in excess of the price fixed by law for the articles sold was apprehended by the price control agents, who only tried to verify the illegal act by employing someone to purchase said article. Besides, it is instigation and not entrapment, which is contrary to public policy, and therefore is illegal and prohibited. PEOPLE *v.* TIU UA, G.R. No. L-6793, March 31, 1955.

CRIMINAL LAW — PARRICIDE — WHERE THE PISTOL HELD BY THE ACCUSED SUDDENLY EXPLODES, KILLING THE WIFE, HE IS GUILTY OF THE CRIME OF PARRICIDE COMMITTED THROUGH RECKLESS IMPRUDENCE — The accused, while intoxicated and lying down on the bench, was awakened by his son to go sleep in

the bedroom. While in the bedroom, he found a pistol in the fold of his wife's blanket and started asking who owned it. His sons, hearing him cock the pistol, rushed to him, to prevent him from firing the gun. While they were thus trying to wrest the gun away, it exploded and hit the accused's wife who was coming in from the sala. Death was instantaneous. *Held*, under the circumstances, the accused is guilty of the crime of parricide committed through reckless imprudence. It has not been shown that he had motive for committing the killing. The killing resulted from negligence (culpa) rather than from a criminal intent (dolo). PEOPLE *v.* RECOTE, G.R. No. L-5801 March 28, 1955.

CRIMINAL LAW—RAPE—FOR THE COMMISSION OF ATTEMPTED RAPE, IT IS SUFFICIENT THAT THE ACCUSED, THROUGH FORCE AND DESPITE THE RESISTANCE OF THE COMPLAINANT, LIFTS HER SKIRT, WITH THE INTENTION OF HAVING SEXUAL INTERCOURSE WITH HER — Tayting, a minor of nineteen years of age, was recruited by the Consuelo Employment Agency. While waiting for work, she stayed and slept at the agency with some girls and other employees. On the night of August 28, 1952, at about eleven o'clock, in the presence of four other persons, Mata, an employee of the agency, without warning, lifted the hem of Tayting's skirt who was then lying in bed. Despite her resistance, Mata continued to embrace her, and later succeeded in hugging and kissing her. Counsel for appellant does not dispute this attempt of Mata but claims that he apparently was under the influence of liquor when he embarked upon a bad joke on the person of Tayting by lifting her skirt, and embracing her, but from which he voluntarily desisted and went to bed peacefully thereafter. *Held*, the act of Mata was not an innocent joke. Any attempt on the honor of a woman, no matter how humble or lowly she may be, cannot be taken as a joke. And where the accused, through the use of force and with the intent to have carnal access upon her person, lifted the hem of her skirt, embraced her and later on succeeded in hugging and kissing her, desisting only when she screamed and stood up, he is responsible for the offense of attempted rape. PEOPLE *v.* CHING SUY SIONG, G.R. No. L-6174, Feb. 28, 1955.

LABOR LAW — WORKMEN'S COMPENSATION ACT — AN EMPLOYEE MAY RECOVER, UNDER THE WORKMEN'S COMPENSATION ACT, FOR INJURY SUSTAINED WHILE PERFORMING WORK IN VIOLATION OF THE EMPLOYER'S RULES AND REGULATIONS, IF THE PROHIBITED WORK WAS ORDERED TO BE DONE BY HIS SUPERIOR — Chavez, a mechanic in a subsidiary station of defendant bus company, was examining, on orders of the manager of the station, a car belonging to Gov. Triviño of Albay. Suddenly the grease rack, on which the car was placed, collapsed and crushed Chavez underneath. In the case brought by his heirs, under the Workmen's Compensation Act, the defendant company denied liability contending that, as it had an express ban against repairing in its shops machines not belonging to the company, the death of Chavez did not occur while he was in the performance of his duties and consequently, there could be no recovery under the law. The CFI's decision allowing recovery having been reversed by the CA, the heirs appealed to the Supreme Court. *Held*, the authorities cited in the decision of the CA are to the effect that under the Act, where injury is sustained by an employee while performing work outside the scope

of his employment and in wilfull violation of law, or rules and regulations promulgated by his employer, or where the work being performed was not in furtherance of the interests of his employer but solely of his own, said employee or his heirs may not recover compensation. We have no quarrel with said authorities. They might be applicable to this case if the repair were being done by the manager himself and he were the one who suffered the injury; but such authorities have no application in the case of Chavez. It was not he (Chavez) who accepted the repair job, but the manager, his superior. In conclusion, we hold that although the repair attempted to be made on the Gov.'s car was in technical violation of the rules of the company, such violation was committed not by Chavez but by the manager, and therefore the heirs of Chavez may recover, CHAVEZ *v.* A. L. AMMEN TRANS. CO., G.R. No. L-7318, April 2, 1955.

POLITICAL LAW — CONSTITUTIONAL LAW — UNDER THE ROTATIONAL PLAN OF THE COMMISSIONERS' APPOINTMENTS, THE TERMS OF THE FIRST THREE COMMISSIONERS SHOULD BE HELD TO HAVE STARTED ON A COMMON DATE AND THAT ANY VACANCY DUE TO DEATH, RESIGNATION OR DISABILITY BEFORE THE EXPIRATION OF THE TERM SHOULD BE FILLED ONLY FOR THE UNEXPIRED BALANCE OF THE TERM — Hon. Jose Lopez Vito, Francisco Enaje and Vicente Vera were appointed as chairman and members, respectively, of the Commission on Elections. Hon. Lopez Vito died in 1947 and Hon. Vera was promoted chairman, and when the latter died in 1951, Hon. Domingo Imperial was appointed chairman of the Commission. Hon. Rodrigo Perez succeeded Hon. Francisco Enaje when the latter retired in 1949. The Solicitor General maintained that though the respondents, Hon. Domingo Imperial and Rodrigo Perez, were appionted to a term of nine years, they could legally hold office only until the expiration of the terms of their predecessors. Hon. Imperial contended that since Hon. Lopez Vito was first appointed chairman on May 12, 1941 for a term of nine years and again appointed in July 1945, his nine year term of office should be counted from the former date and that therefore when he was appointed, the term of office of Hon. Lopez Vito had already expired. Consequently he must serve the nine year term according to his appointment. Hon. Perez claimed that since chairman Lopez Vito was appointed in May 13, 1941, his predecessor's term of office must also be reckoned from that date and that therefore, when he was appointed in 1949, the term of office of Hon. Enaje had already expired. Therefore he must serve nine years as appointed. *Held*, the terms of the first three commissioners should be held to have started at the same moment, irrespective of the variations in their dates of appointment in order that the expiration of the first terms of nine, six and three years should lead to the regular occurence of the three-year intervals between the expiration of the terms, intended by the Constitution. The terms of the first commissioners appointed should be reckoned from the organization of the Commission on Elections on June 21, 1941. Therefore, when the respondents were appointed, the terms of office of their predecessors had expired and respondents should serve for nine years. While the general rule is that a public officer's death or other permanent disability creates a vacancy in the office, so that the successor is entitled to hold office for a full term, such rule is recognized to suffer exception in those cases where the clear intention is to have vacancy appointments at regular intervals. REPUBLIC *v.* IMPERIAL, G.R. No. L-8684, March 31, 1955.

POLITICAL LAW — CONSTITUTIONAL LAW — THE EXERCISE OF POLICE POWER INCLUDES THE RIGHT TO REGULATE THE PRESENT BUSINESS OR PARTICULAR MODE OF EARNING A LIVING OF SOME INDIVIDUALS IN THE COMMUNITY BY THE ENFORCEMENT OF AN ORDINANCE ENACTED IN THE INTEREST OF PUBLIC HEALTH — At the time the new ordinance in question was enacted, there was already Ordinance No. 355, forbidding the sale of fresh meat around the city markets, within 200 meters from the boundaries thereof. To comply with that ordinance plaintiffs had their stores located at more than that distance from any city market. But this new ordinance repeals that other ordinance and prohibits the sale of fresh meat anywhere outside the city markets in order that the menace posed by the clandestine sale of meat from deceased animals be minimized if not totally suppressed. The plaintiffs alleged, however, that the selling of meat may be regulated but not entirely prohibited since the power to regulate does not include the power to prohibit. *Held*, it is obvious that the new ordinance does not prohibit business of selling fresh meat. What it does prohibit is the sale of commodity outside the public markets. By confining the sale of meat within the public markets, inspection is facilitated and trafficking in meat that is unfit for human consumption will be suppressed. And the mere fact that some individuals in the community may, by the enforcement of the new ordinance, enacted in the interest of public health, be deprived of their present business, cannot prevent the exercise of police power. As was said in a case, persons licensed to pursue occupations which may in the public need and interest be affected by the exercise of the police power, embark in those occupations subject to the disadvantages which may result from the legal exercise of that power. CO KIAM *v.* MANILA, G.R. No. L-6762, Feb. 28, 1955.

POLITICAL LAW — CONSTITUTIONAL LAW — WHERE A PERSON HAS APPLIED FOR OR INVOKED THE BENEFITS FOR THE EXPORTATION OF SCRAP METALS UNDER C.A. No. 728, HE IS THEREBY ESTOPPED FROM CONTESTING THE VALIDITY OR CONSTITUTIONALITY OF SAID ACT — On several occassions, petitioners exported large amounts of scrap metal for which they paid by way of license fees and royalties the sum of ₱248,634.85. This amount was collected by the Sugar Quota Office under the authority granted to it by the Office of the President and the resolution of the Cabinet under C.A. No. 728. This Act was passed by Congress on July 2, 1946, while the Philippines was under the soverignty of the United States. No evidence was presented to show whether the approval of the President of the United States, then necessary to give it validity, was actually secured. In 1952, petitioners filed formal claims with the respondent for the refund of said license fees and royalties, claiming said Act was invalid. *Held*, C.A. No. 728 is valid. No evidence has been presented to prove the fact that the Act was not actually approved by the President of the United States. On the other hand, it appears that C.A. No. 728 was approved on July 2, 1946 and the Executive Orders of the President of the Philippines implementing said Act were issued long after the proclamation of the Philippine Republic. It is to be presumed that the President has acted on the matter knowing that the law has been complied with. It has been shown that the petitioners have applied for, accepted together with its attendant benefits, a license voluntarily. They cannot afterwards question the constitutionality or validity of the Act when the license is sought to be revoked. PHIL. SCRAPPERS *v.* AUDITOR GENERAL, G.R. No. L-5670, Jan. 31, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — WHEN THE COURT BELIEVES THAT THE EVIDENCE SUPPORTING THE CLAIM OF CITIZENSHIP IS SUBSTANTIAL, THE RIGHT TO A JUDICIAL DETERMINATION OF ALIENAGE SHOULD BE GRANTED TO ONE WHO CLAIMS CITIZENSHIP IN DEPORTATION PROCEEDINGS — Chua Hiong was tried before the deportation board for alleged fraudulent cancellation of his alien certificate of registration with the Bureau of Immigration (in claiming to be an illegitimate child of a Filipino mother named Tita Umandap when in fact he is the legitimate child of a Chinese woman by the name of Sy Mua), and having maliciously and illegally exercised rights belonging to citizens of the Philippines, such as suffrage, acquisition of real estate and lumber concessions. Chua Hiong moved to dismiss the deportation proceedings, claiming that he has substantial evidence to prove his citizenship, and that the issue of his citizenship should be decided in a separate judicial proceeding, before the deportation board can acquire jurisdiction over his case. *Held*, a mere plea of citizenship does not divest the Deportation Board of its jurisdiction over deportation cases. But, if the respondent is admittedly a citizen, or conclusively shown to be such, the Board lacks jurisdiction, and its proceedings are null and void ab initio and may be enjoined by the courts. If the respondent is a citizen, and he has satisfactory evidence to prove it, there is no justice in allowing the deportation proceedings to continue. The legal basis for the prohibition is the absence of the jurisdictional fact of alienage. CHUA HIONG *v.* DEPORTATION BOARD, G.R. No. L-6038, March 19, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — A VICE MAYOR, APPOINTED BY THE PRESIDENT UNDER § 10 OF THE REVISED ELECTION CODE, WHO UPON THE DEATH OF THE MAYOR, SUCCEEDS THE LATTER IN HIS OFFICE, IS ENTITLED TO HOLD SUCH OFFICE UNTIL HIS SUCCESSOR IS ELECTED AT THE NEXT REGULAR ELECTION — The President created the municipality of Balingoan, Misamis Or. and appointed as mayor one Mercado and the petitioner as vice-mayor. Mercado died and the petitioner succeeded him in office. The President relieved the petitioner and appointed the respondent in his stead. The petitioner contested the legality of such appointment. *Held*, the appointment is unauthorized and illegal. Under § 21 (b) of the Revised Election Code, an appointed vice-mayor is not precluded from succeeding the mayor upon the latter's death. The term "elective" is used in the section because the office of mayor is elective and becomes appointive only if the President chooses to appoint and does not order the holding of a special election. SANTOS *v.* LEAÑO G.R. No. L-7642, March 28, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — THE DISABILITY OF PUBLIC OFFICERS TO HAVE A PECUNIARY INTEREST IN THE PURCHASE OF REAL ESTATE BELONGING TO THE MUNICIPAL CORPORATION, UNDER § 2761 REV. ADM. CODE, EXTENDS TO EXCHANGES OF REAL PROPERTIES: IN ORDER THAT A VIOLATION OF SAID § MAY BE HELD TO EXIST, NEITHER ECONOMIC ADVANTAGE TO THE TRANSGRESSOR NOR PERFECTION OF THE CONTRACT IS REQUIRED, PECUNIARY INTEREST AND THE TAKING OF STEPS TO BRING ABOUT PERFECTION BEING SUFFICIENT — Navarra, councilor of the Municipality of Miagoa, and her husband leased a lot in Calle Osmeña belonging to the municipality and built thereon their residence. Learning that the municipality needed a lot belonging to her husband, situated in barrio Igtuba, on which to build a high school, Navarra proposed to the munici-

pal council an exchange, her husband's Igtuba lot for the municipality's Osmeña land. The exchange was approved by the council over the objection of the mayor. However, the provincial board disapproved the exchange. Later, the mayor instituted a criminal action against Navarra for having taken a direct interest in the approval of the contract of exchange in violation of §§ 2176 and 2761 of the Rev. Adm. Code. Navarra denies that there had been a violation because, (1) § 2761 applies to "purchase of real property", and not to a contract of exchange, (2) the exchange did not result in any economic advantage to her, and (3) there was no contract, since the provincial board did not approve the exchange. *Held*, (1) although § 2761 of the Code does not use the term exchange, it is encompassed in the terms "municipal contract", and "purchase of real estae" found in § 2761, for exchange is equivalent to purchase, the only differnce being that instead of paying money for the price, property is given in lieu thereof; (2) the prohibition of the law does not require that the contract of exchange must result in an economic or pecuniary advantage to the municipal official. It is enough that the latter be pecuniarily interested in the municipal contract. And (3) although approval of contracts of sale and exchange or real property by the provincial board is required by the Rev. Adm. Code, it does not mean that if the deed is not approved by the board the prohibition is is not violated. Just as under the Revised Penal Code the transgresor may be convicted not only when the crime is consummated but also when it is frustrated or attempted, so also under the provisions referred to, steps taken by a municipal official which would lead to the perfection of a municipal contract are included in the prohibition. NAVARRA *v.* PEOPLE, G.R. No. L-6469, April 29, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — A VICE-MAYOR, WHO WHILE NOT ACTING AS MAYOR, RENDERS SERVICE AS FOREMAN-TIMEKEEPER IN THE CONSTRUCTION OF ROADS AND STREETS FINANCED BY THE NATIONAL GOVERNMENT, THROUGH THE AGENCY OF THE MUNICIPAL COUNCIL, DOES NOT VIOLATE THE DISABILITY PROVISIONS OF THE REV. ADM. CODE § 2761 — Villanueva was vice-mayor of Malinao, Capiz. In 1952, the municipality received the amount of ₱1,802.50 from the National Government as its share of the so-called "gasoline funds for the purpose of repairing such roads and bridges as might be designated by the municipal council. The council in its Res. No. 35, appropriated said amount for the maintenance of various streets and roads in the municipality. The mayor employed the defendant as a foreman-timekeeper of the laborers receiving a daily wage of ₱2.50. The Solicitor General contends that the vice-mayor comes under the purview of § 2176 Rev. Adm. Code, prohibiting any municipal officer from having any pecuniary interest in any municipal contract, work or other municipal business. *Held*, the services rendered by the vice-mayor as foreman-timekeeper was of national and not of municipal character for the reason that the funds were national funds and the municipal council acted only as an agent for the National Government in disposing of the funds for the maintenance of the streets and roads. The vice-mayor was not engaged in any contract or contract work for the municipality, but a person who rendered services in his personal capacity. PEOPLE *v.* VILLANUEVA, G.R. No. L-6973, Jan. 12, 1955.

POLITICAL LAW — ADMINISTRATIVE LAW — THE TEMPORARY DETAIL OF A PUBLIC OFFICER IN THE CIVIL SERVICE TO ANOTHER POSITION, PURSUANT TO A CONTRACT VOLUNTARILY ENTERED INTO BY SUCH OFFICER, IS NEITHER REMOVAL, SUSPENSION OR TRANSFER IN VIOLATION OF THE CONSTITUTION — The respondent was City Health Officer of the City of Baguio prior to his departure for the U.S. under an FOA training grant on May 15, 1953. In his absence, the petitioner was appointed acting City Health Officer which office she held until the arrival of Angara on Aug. 26, 1954, who insisted on taking back his old office notwithstanding his apointment as technical assistant in the Dept. of Health. Evidently laboring under the impression that he had been ousted from his post of City Health Officer, Angara commenced quo warranto proceedings against petitioner alleging usurpation by petitioner of the functions of his office. *Held*, it has been established that the temporary detail of Angara as technical assistant in the Dept. of Health, pursuant to the training contract voluntarily entered into by him, is neither a removal nor a transfer in violation of the Constitution, in the absence of a showing of manifest abuse of discretion, or that the detail is due to some improper motive or purpose. His claim that the agreement is void in so far as it binds him to serve away from the City of Baguio is untenable, for respondent is now estopped to urge the nullity of his training agreement after voluntarily applying for and obtaining special training for a position most advantageous to the government. The selection of such position is in the discretion of the government representatives. GOROSPE *v.* DE VEYRA, G.R. No. L-8408, Feb. 17, 1955.

POLITICAL LAW — CITIZENSHIP & NATURALIZATION — WHERE THE VENDEE WAS AN ALIEN AT THE TIME OF THE CONVEYANCE OF REAL PROPERTY AND WAS THEREFORE INCAPABLE OF HOLDING IT, HIS SUBSEQUENT NATURALIZATION AS A FILIPINO CITIZEN VALIDATES SUCH ACQUISITION, IT RETROACTING TO THE DATE OF CONVEYANCE — Li Seng Giap, a Chinese citizen, bought a parcel of land from Vasquez, the petitioner. Li Sen Giap, in turn sold the same land to Li Seng Giap & Sons, Inc., a corporation dulv organized and existing by virtue of and under the laws of the Philippines. Subsequently thereafter, Li Seng Giap was duly naturalized as a Filipino citizen, and Ii Seng Giap & Sons, Inc. became a Filipino corporation, ninety-six per centum of its stock being owned by Filipinos and duly authorized by its articles of incorporation to own, acquire or disposed of real properties. Vasquez now seeks to rescind the sale on the ground that at the time of the sale Li Seng Giap was an alien, and therefore incapable of acquiring real property; that the same was therefore null and void, or at least voidable. *Held*, the subsequent naturalization as a Filipino citizen of the vendee retroacts to the date of the conveyance, and makes the sale valid. The ban on aliens against acquiring not only agricultural but also urban lands, as construed in the Krivenko case, is to preserve the nation's lands for future generations of Filipinos, and that aim would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who become Filipino citizens by naturalization. In transactions involving the sale of real property to aliens, the vendor divests himself of the title to such real estate, and he has no recourse against the vendee despite the latter's disability on account of alienage, to hold title to such real estate. The vendee may hold it against the whole world except as against the State. Only the State is entitled to have a forfeiture or escheat declared against the vendee. If the State does not commence such proceedings and in the meantime the alien be-

comes naturalized as a citizen, the State is deemed to have waived its right to escheat the real property as of the date of its conveyance. VASQUEZ *v.* SENG GIAP, G.R. No. L-3676, Jan. 31, 1955.

POLITICAL LAW — CITIZENSHIP & NATURALIZATION — THE PHRASE "GOVERMENT PROMULGATED RULES" MENTIONED IN § 1 R.A. NO. 530 INCLUDES MUNICIPAL ORDINANCES PROMULGATED IN THE EXERCISE OF GOVERNMENTAL FUNCTIONS: THUS, A CONVICTION OF AN APPLICANT FOR CITIZENSHIP FOR ITS VIOLATION WITHIN TWO YEARS FROM THE DECISION AUTHORIZING HIS NATURALIZATION, BARS THE ISSUANCE OF THE NATURALIZATION CERTIFICATE — On July 13, 1950, the CFI rendered a decision authorizing the naturalization of petitioner. On April 25, 1952, petitioner was convicted of a violation of a municipal zoning ordinance of Lucena, Quezon. On May 25, 1953, petitioner filed a petition praying that his certificate of naturalization be issued. The CFI denied the petition because of petitioner's conviction. In this appeal, petitioner maintains that a municipal ordinance is not a "government promulgated rule" the violation of which bars the issuance of the naturalization certificate, and that § 1 R.A. No. 530 contemplates offenses *mala in se* and not felonies only *mala prohibita*. *Held*, the first argument is untenable, for municipal corporations perform dual functions, one governmental and another corporate. In the exercise of its governmental powers and duties, a municipal corporation is an agency of the national government. Hence, the zoning regulation violated by petitioner partakes of the nature of a "government promulgated rule", although limited in its application to some locality. The last contention is equally devoid of legal foundation for R.A. No. 530 makes no distinction between acts *mala in se* and those *mala prohibita*. TIU SAN *v.* REPUBLIC, G.R. No. L-7301, April 20, 1955.

LAND REGISTRATION — PUBLIC LANDS — ALL PUBLIC LANDS SUBJECT TO ADJUSTMENT PURSUANT TO THE RULES OF JUNE 25, 1880, WERE DIVIDED INTO TWO GROUPS: (1) THOSE BOUNDED AT ANY POINT BY OTHER LANDS AND THOSE CONTAINING AN AREA IN EXCESS OF 30 HA., ALTHOUGH BOUNDED ON ALL SIDES BY PRIVATE LANDS, AND (2) THOSE CONTAINING NOT MORE THAN 30 HA. AND BOUNDED ON ALL SIDES BY PRIVATE LANDS — De la Rosa applied for the registration of six parcels of land under the Land Registration Act, which was opposed by the defendants on the ground of res judicata, because the lands sought to be registered were the same lots already declared public lands in a previous case. However, the applicant alleges that the prior application was only for the confirmation of the imperfect title which was granted to his father by the Junta Provincial de Composicion de Terrenos. *Held*, in this connection, it would be practical to explain art. I, Royal Decree of Aug. 31, 1888. If by "imperfect title", the applicant means a Composicion con el Estado title issued by the chief of the province, such title has no foundation in law and in fact, because all public lands in the Phil. (crown lands or baldios y realengos) which were subject to adjustment with the government pursuant to the rules of June 25, 1880, were divided into two groups: firstly, those bounded at any point by other public lands and those containing an area in excess of 30 ha., although bounded on all sides by privately owned lands, and, secondly, those containing not more than 30 ha. and bounded on all sides by privately owned

lands. The adjustment of public lands under the first group was to continue as provided for in the rules of June 25, 1880, while the adjustment under the second group was delegated to a provincial board according to the procedure outlined in the said Royal Decree. Going over the technical description of the lots in the application, they adjoin one another and the total area is very much in excess of 30 ha. Furthermore, there is no doubt that the defense of res judicata is well taken. DE LA ROSA *v.* DIR. OF LANDS, G.R. No. L-6311, Feb. 28, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — JURISDICTION TO ENFORCE A JUDGMENT, UNLIKE THAT TO REVOKE OR MODIFY IT, DOES NOT TERMINATE UPON THE FINALITY OF THE JUDGMENT; THUS, WHERE THE PARTIES ENTER INTO A NEW AGREEMENT, APPROVED BY THE COURT, WITH RESPECT TO RENTS FALLING DUE AFTER THE PROMULGATION OF A FORMER JUDGMENT, THE COURT HAS JURISDICTION TO ISSUE EXECUTION IN ACCORDANCE THEREWITH — Miranda was sublessee of certain lots belonging to Tiangco. Upon default in the payment of the monthly rents, Tiangco filed an action for ejectment. In the trial in 1947, the parties entered into a stipulation of facts, which the court approved, enjoining the parties to comply therewith. Upon Miranda's failure to do so, the court entered an order of execution. However, before the order could be executed, the parties submitted a new compromise agreement, which the court also approved in 1948. Miranda again failed to comply with the new agreement, and the court issued a second order of execution, this time based on the new agreement. On appeal, Miranda contends that the second order of execution was null and void, the same having been entered after the first judgment of 1947 had become final. *Held*, the order of execution is valid. Miranda's contention is based on a failure to distinguish between two concepts in the law of procedure, *viz.*, the jurisdiction of the court over its judgment — to change, alter, or modify it — and its jurisdiction over the same, to enforce or execute said judgment. The former terminates when the judgment becomes final; the latter continues even after the judgment has become final for the purpose of execution. The parties cannot be prevented from submitting a new compromise agreement provided the new agreement embraces the same subject of the original judgment (the rents ordered to be paid), and is intended to include the rents that have become due after the promulgation of the former judgment. MIRANDA *v.* TIANGCO, G.R. No. L-7044, Jan. 31, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — UNDER R.A. NO. 732, IN PRELIMINARY INVESTIGATIONS CONDUCTED BY PROVINCIAL FISCALS, THE ACCUSED IS NOT ENTITLED TO NOTICE THEREOF AND HIS PRESENCE THEREIN IS NOT REQUIRED UNLESS, DURING THE INVESTIGATION AND PRIOR TO THE FILING OF THE INFORMATION, HE REQUESTS TO BE PRESENT — The provincial fiscal of Negros Occ. filed an information against Monteverde for dereliction of duty, with the certification that a preliminary investigation of the case had been conducted. Later, the accused moved to quash the information on the ground that the fiscal did not notify the accused of the investigation. The CFI sustained the motion, declaring that the accused has the right to be notified of the investigation so that he may take advantage of his privilege to request for his presence thereat. *Held*, § 1687 of R.A. No. 732 provides that "if the offense charged falls

within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation." If a preliminary investigation is not a matter of right of the accused, his presence thereat is not also a matter of right, nor is he entitled to notice. We therefore hold that it is not the duty of the provincial fiscal conducting a preliminary investigation under R.A. No. 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation. We hold, however, that if during the investigation and prior to the filing of the information, the accused requests to be present, the fiscal must conduct the investigation in his presence. RODRIGUEZ *v.* ARELLANO, G.R. No. L-8332, April 30, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — A CIVIL ACTION FOR THE CANCELLATION OF COPYRIGHTS ALLEGED TO HAVE BEEN OBTAINED FRAUDULENTLY DOES NOT CONSTITUTE A PREJUDICIAL QUESTION IN THE CRIMINAL ACTION FOR THE VIOLATION OF SUCH COPYRIGHTS — Petitioner Ocampo was charged with violation of the Copyright Law. Subsequently, Ocampo filed a civil action against Cochingyan and the Dir. of Public Libraries praying for the cancellation of the copyrights issued to Cochingyan on the ground that the same were obtained through fraud. The copyrights were the bases of the criminal complaint against the accused. At the hearing of the criminal case, Ocampo moved for the postponement of the criminal case, alleging that a prejudicial question was involved, and that the action for cancellation should be given due course before the criminal action could be heard. *Held,* the action to cancel respondent's copyrights is not a prejudicial question. Until cancelled, the copyrights issued to respondent are presumed to have been duly granted in accordance with law. Such an action therefore is separate and independent of the criminal prosecution for the violation of the copyrights. OCAMPO *v.* TANCINCO, G.R. No. L-5967, Jan. 31, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE RULE THAT THE STATE IS PRECLUDED FROM SUING ON THE CIVIL ACTION WHEN THE ISSUES THEREIN HAVE BEEN DETERMINED IN A CRIMINAL ACTION DOES NOT APPLY WHEN THE JUDGMENT IN THE LATTER IS ONE OF ACQUITTAL — Respondent Assad, after the decision granting him naturalization had become final, took the oath of allegiance and was granted the corresponding certificate of naturalization. Subsequently, on the ground that the certificate was obtained fraudulently, the Sol.-Gen. moved for the cancellation thereof. The Sol.-Gen. supports his motion by stressing the point that in a criminal prosecution against Assad, the mun. court acquitted him of the crime of physical injuries, and that this acquittal did not preclude Government from re-litigating on the same offense in a civil action. *Held,* the great weight of authority supports the rule that a judgment of acquittal is not effective, under the doctrine of res adjudicata, in a later civil proceeding, and does not constitute a bar to a subsequent action involving the same object matter. This has even been held true in regard to civil actions brought against the defendant by the State, although in order to recover, it must prove him to have been guilty of the offense of which he has been acquitted. An acquittal in a criminal action is not admissible in evidence against the people in a civil suit against the defendant, as for in-

stance on a liquor tax bond, because of the different degrees of proof required. The cause of action in a proceeding to cancel a certificate of naturalization is not the same cause of action in a criminal prosecution but is an additional remedy for correcting an error in the original proceeding granting the naturalization. It is designed to afford cumulative protection against fraudulent or illegal naturalization. REPUBLIC *v.* ASSAD, G.R. No. L-4566, Jan. 24, 1955.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — IN AN ACTION FOR ILLEGAL DETAINER, A DEMAND TO VACATE THE PREMISES FOR VIOLATION OF THE LEASE CONTRACT IS INDISPENSABLE IN ORDER TO DETERMINE WHETHER THE TENANT'S POSSESSION HAS BECOME ILLEGAL — Upon failure of the defendant Vivas to deliver to the plaintiff Santos, the latter's share in the harvest by virtue of a tenancy contract between them, the plaintiff filed an action for unlawful detainer, praying that Vivas be order to vacate the land and to deliver to plaintiff his share in the crops harvested, plus damages. The defendant filed a motion to dismiss for lack of jurisdiction, pointing out that the complaint did not allege that a demand had been made in accordance with § 2, Rule 72. *Held,* it is apparent from § 2, Rule 72 that a demand is a pre-requisite to an action for unlawful detainer when the action is for failure to pay rent due, or to comply with the conditions of his lease in order to determine whether the tenant's possession has become illegal. Such demand is jurisdictoinal, and if none is made, the case falls within the jurisdiction of the CFI. DE SANTOS *v.* VIVAS, G.R. No. L-5910, Feb. 8, 1955.

REMEDIAL LAW — EVIDENCE — A WRITTEN STATEMENT PRESENTED IN EVIDENCE, AS PART OF THE RES GESTAE AND ACCEPTED BY THE TRIAL COURT AS SUCH, MAY STILL BE CONSIDERED ON APPEAL AS AN ANTE-MORTEM DECLARATION IF THE GROUNDS FOR ITS ADMISSIBILITY ARE PRESENT — Ananias was charged with murder in the CFI for having stabbed and killed one Gabriel. Minutes before his death, Gabriel made a written dying declaration. This declaration was presented as evidence, under the rule of res gestae, in the trial court and was accepted in this concept. The accused assailed the competency and probative value of the ante-mortem declaration stating that the prosecution did not clearly establish the circumstance that the deceased was conscious of his impending death when he made the declartion. *Held,* the fact that the declaration was presented in evidence as part of the res gestae does not preclude its being considered as an ante-mortem declaration if the grounds for its admissibility are present. A piece of evidence may be competent for two or more purposes under different rules of law and the evidence will be received if it satisfies all the requirements prescribed by law in order that it may be admissible for the purpose for which it is presented, even if it does not satisfy the other requirements for its admissibility for other purposes. PEOPLE *v.* ANANIAS, G.R. No. L-5591, March 28, 1955.

COURTS OF APPEALS

CIVIL LAW — PERSONS — EVIDENCE OF ACTUAL DEATH NOT NECESSARY TO ESTABLISH PRESUMTION OF DEATH — Jacosalem seeks to recover from Javellana compensation and attorney's fees for the death of her husband Estoper, patron