R.A. No. 3007. An Act granting the Ramirez Telephone Corporation a telephone franchise.

R.A. No. 3008. An Act granting Jose S. Rustia a radio franchise.

R.A. No. 3009. An Act authorizing the sale of the government land situated at the Northeast and Southeast intersection of Quezon Boulevard and C. Lerma.

R.A. No. 3010. An Act increasing the salaries of City Fiscals and Assistant City Fiscals of Manila.

R.A. No. 3011. An Act granting the Municipalities of Calamba, Los Baños, Bay, Victoria, Pila, and Alaminos, Province of Laguna, an Electric Francise.

R.A. No. 3012. An Act amending heading 73.14, Chapter 73, Schedule XX, section One hundred and four of the Tariff and Customs Code, re ad. val. duty on iron or steel wire.

R.A. No. 3013. An Act granting the Gapan Electric Corporation, an electric franchise.

R.A. No. 3014. An Act granting Romulo V. Ramos an electric franchise in the Municipalities of Sta. Cruz, Dignos, Bansalan, Padada, Lalag, Hagonoy and Lower Matanao, Province of Davao.

R.A. No. 3015. An Act granting retired officers and enlisted men of the Philippine Constabulary the same rights and privileges enjoyed by retired officers and enlisted men of the Philippine Army.

R.A. No. 3016. An Act providing gratuity for the Governor of the Central Bank.

R.A. No. 3017. An Act amending the Sugar Limitation Act.

R.A. No. 3018. An Act nationalizing the Rice and Corn Industry.

R.A. No. 3019. The Anti-graft and Corrupt Practices Act.

R.A. No. 3020. An Act appropriating funds for the rehabilitation of damages caused by typhoons and flood.

SUPREME COURT CASE DIGEST

CIVIL LAW—CONTRACTS—THERE IS LEGAL PRESUMPTION OF SUFFICIENT CONSIDERATION TO CONTRACTS EXECUTED IN DUE FORM.—Respondent Cenen Cajucom executed a deed of real estate mortgage in favor of Paz Samanilla, the petitioner. Before the mortgage could be annotated and registered, the respondent borrowed the original certificate of title from petitioner to whom it had been delivered during the execution of the mortgage. Later the mortgagor refused to deliver said title to the mortgagee for the proper annotation of the latter's right, contending that the mortgage was void ab initio for want of consideration. The mortgagee petitioned the CFI of Nueva Ecija to order the mortgagor to surrender the title either to the Register of Deeds or to the Court for the proper annotation of the real estate mortgage. Respondent-mortgagor appealed. *Held*, the contention of appellant is untenable. There is a legal presumption of sufficient cause or consideration supporting a contract even if such cause is not stated therein. To overcome this presumption, appellants must show the alleged lack of consideration in a separate action and ask for cancellation of its registration. Appellant cannot refuse registration because, once a mortgage has been signed in due form, the mortgagee is entitled to its registration as a matter of right. SAMANILLA *v.* CAJUCOM, G.R. No. L-13683, March 28, 1960.

CIVIL LAW—CONTRACTS—POLITICAL RIGHTS SUCH AS THE RIGHT TO VOTE AND BE VOTED UPON ARE OUTSIDE THE COMMERCE OF MAN.—Ramon E. Saura and Estela Sindico were contestants for the official candidacy of the Nacionalista Party in the fourth district of Pangasinan. On August 23, 1957 they entered into a written agreement stating that: "Each aspirant shall respect the result of the aforesaid convention, i.e., no one of them shall run as a rebel or independent candidate after losing in said convention." In the convention, Saura was proclaimed the Party's official congressional candidate for the said distric of Pangasinan. Sindico, disregarding the covenant, filed a certificate of candidacy for the same office and actively campaigned for her election. Saura commenced this suit for recovery of damages. *Held*, the agreement is null and void. Among those that may not be the subject-matter of contracts are certain rights of individuals which the law and public policy have deemed wise to exclude from the commerce of man. Among them are the political rights conferred upon citizens including, but not limited to, one's right to vote, the right to present one's candidacy to the people, and to be voted to public office. Such right may not be bargained away or surrendered for consideration, for they are conferred not for individual

or private benefit but for the public good and interest. SAURA *v.* SINDICO, G.R. No. L-13403, March 23, 1960.

CIVIL LAW—OBLIGATIONS—AN EQUITABLE MORTGAGOR MUST ADD CONSIGNATION TO HIS TENDER OF PAYMENT TO PRODUCE THE EFFECT OF PAYMENT.—A deed, denominated "compraventa con pacto de retro", was executed by Capalungan in favor of the defendant for ₱1,200.00 with the right to repurchase the land within 10 years. In a subsequent litigation this contract was declared by final judgment to be one of equitable mortgage. Capalungan brought this present action alleging that the defendant refused the tender of ₱1,200.00 for the redemption of the land, and prayed the court to compel the defendant to accept said amount, and to deliver the palay from the time the tender was made. *Held,* the contract was declared by final judgment as an equitable mortgage. Unlike a vendor a retro, for whom tender of payment without consignation suffices, an equitable mortgagor must add consignation to his tender of payment, the reason being that a vendor a retro exercises a privilege, whereas the equitable mortgagor discharges an obligation. As no consignation was made by the plaintiff-mortgagor, his tender of payment did not produce the effect of payment. Consequently, the defendant is not bound to deliver the property nor the fruits thereof. CAPALUNGAN *v.* MEDRANO, G.R. No. L-13783, May 18, 1960.

CIVIL LAW—OBLIGATIONS—THE PAYMENT OF A BONUS, WHEN NOT MADE PART OF THE WAGE OR SALARY, IS UNENFORCEABLE. —The plaintiffs filed a complaint in the Court of First Instance of Manila praying for the twenty percent Christmas bonus for 1954 and 1955 against the National Development Company. They admitted, however, that the defendant was under no legal duty to give such bonus to them, the obligation being merely moral. The Court of First Instance dismissed the case. *Held,* order of dismissal affirmed. The court cannot order performance, it being merely a natural obligation, and under art. 1423 of the New Civil Code, such obligation is cognizable by the court only when there has been voluntary fulfillment by the obligor authorizing thereby the retention of what has been delivered or rendered. But a bonus may be demandable when made part of the wage or salary. ANSAY *v.* BOARD OF DIRECTORS OF NATIONAL DEVELOPMENT COMPANY, G.R. No. L-13667, April 29, 1960.

CIVIL LAW—OBLIGATIONS—IN OBLIGATIONS WITH A PENAL CLAUSE, THE PENALTY SUBSTITUTES THE INDEMNITY FOR DAMAGES AND INTEREST UNLESS IT FALLS UNDER THE EXCEPTIONS IN ARTICLE 1226 OF THE NEW CIVIL CODE.—Antonia A. Cabarroguis and Telesforo B. Vicente entered into a compromise agreement whereby the latter obligated himself to pay the former the sum of ₱2,500.-00 as damages for physical injuries she sustained in an accident while a passenger in the latter's jeepney. The agreement also stipulated for an "additional amount" of ₱200.00 as liquidated damages should the defendant fail to complete payment within a period of sixty days. Because the defendant paid only ₱1,500.00 the plaintiff brought the present action. The Court of First Instance decided for the plaintiff, sentencing the defendant to pay the amount of ₱1,200.00 with interest on the amount of the judgment. *Held,* in obligations with a penal clause, as provided in art. 1226 of the New Civil Code, the penalty shall substitute the indemnity for damages and the payment of interest except: (1) When the contrary is stipulated; (2) When the debtor refuses to pay the penalty imposed in the obligation, in which case the creditor is entitled to interest on the amount of the penalty; and (3) When the obligor is guilty of fraud in the fulfillment of the obligation. In the instant case, no stipulation to the contrary was made, and while the defendant was sued for breach of the compromise agreement, the breach was not occasioned by fraud. Therefore, no interest can be awarded on the principal obligation, the penalty agreed upon having taken the place of the interest and the indemnity for damages. But with respect to the penalty attached, since the defendant refused to pay the same upon demand by the plaintiff, the latter is entitled to interest on the amount of the penalty. CABARROGUIS *v.* VICENTE, G.R. No. L—14304, March 23, 1 960

CIVIL LAW—PARTNERSHIP—PROPERTY CONTRIBUTED TO THE PARTNERSHIP BELONGS TO THE LATTER AND CANNOT BE DISPOSED OF BY A PARTNER WITHOUT THE APPROVAL OF THE PARTNERSHIP.—On November 16, 1954, plaintiff and defendant entered into a contract of partnership wherein they agreed to maintain, operate and distribute electric light and power in Dumangas, Iloilo under a franchise issued to Mrs. Piadosa Buenaflor. However, the franchise issued to said Mrs. Buenaflor was cancelled and revoked by the Public Service Commission. On November 15, 1955 plaintiff brought an action against the defendant for the recovery of a generator and 70 wooden posts, alleged to be in the possession of the latter. This action was brought because the plaintiff had sold said generator to a third party. In his answer, defendant denied that the generator and 70 posts belong to the plaintiff and alleged that the same had been contributed by the plaintiff to the partnership in the same manner that defendant had contributed equipment to the partnership. After hearing, the court entered a decision declaring plaintiff the owner of the generator and posts and entitled to the possession thereof. *Held,* the record discloses that the plaintiff and the defendant had entered into a contract of partnership, contributing thereto equipment. Among other things plaintiff contributed the engine and 70 posts in question. As it does not appear that there has been a liquidation of the partnership assets, it follows that the equipment contributed by the plaintiff are still the property of the partnership. Hence, they can not be disposed of by the party contributing the same without the consent or approval of the partnership or of the other partner LOZANA *v.* DEPAKAKIBO, G.R. No. L-13680, April 27, 1960.

CIVIL LAW—PERSONS—AN ACTION FOR RECOGNITION AND SUPPORT UNDER FACTS CONSTITUTING RAPE CAN PROCEED EVEN WITHOUT A PRIOR CONVICTION. — The minor Gilbert Rillon, assisted

by his mother, Marcelina Rillon, as his guardian ad litem, filed a civil action against the defendant for recognition as a natural child, support, and recovery of damages. The complaint alleged, among other things, that said defendant, through force and intimidation, had carnal knowledge of Marcelina resulting in the birth of said minor; that at the time of the act, both Marceiina and the defendant were single and free to enter marriage without any legal impediment; and that the said minor was born after 180 days from the sexual intercourse and within 300 days. The defendant contended that the action was premature, there being no final judgment of conviction for rape against him. *Held,* contrary to art. 135 of the Civil Code of Spain, art. 283 of the New Civil Code does not make the civil liability of the offender in a case of rape determinable in a criminal action only. This can also be inferred from art. 30, which provides that "when a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of." This last article implies the right of an offended party to bring a separate civil action. The provisions of rule 107 of the present Rules of Court promulgated in 1940 are, therefore, considered repealed or modified pro tanto by said arts. 30 & 283 of the Civil Code. RILLON *v.* RILLON, G.R. No.—13172, April 28, 1960.

CIVIL LAW—PROPERTY—THE WATERWORKS SYSTEM OWNED BY A CITY IS PATRIMONIAL PROPERTY.—The City of Cebu filed an action for declaratory relief in the Court of First Instance of Cebu praying for a clear interpretation of R.A. 1383 which provides for the taking over of the ownership of the Osmeña Waterworks System by the Nawasa. The lower court declared the statute to be unconstitutional in so far as it deprived the plaintiff of its property rights in the waterworks system without due process of law. Defendant contended that the waterworks system is property held by the city for public use and consequently falls within the control of the Legislature. *Held,* the mere fact that the system was created to serve the needs of the residents of said city does not affect the proprietary nature of the city's ownership because this contention overlooks the fact that only those of the general public who pay the required rental or charge can make use of the water. The term "public works for public service" in art. 424 of the New Civil Code must be interpreted following the principle of ejusdem generis, in the concept of the preceding properties, which are used freely by all without distinction. The water system of a city, not being property held for governmental purpose, is not subject to legislative control, but merely to legislative regulation. CEBU *v.* NAWASA, G.R. No. L—12892, April 30, 1960.

CIVIL LAW—PROPERTY—ALLUVION IS NOT APPLICABLE TO ACCRETIONS TO SEASHORE.—Ignacio filed an application to register a piece of land which according to him he owned by right of accretion. This land was formed by the action of the Manila Bay. Registration was denied. *Held,* art. 457 of the New Civil Code in conjunction with the Spanish law of Waters of August 3, 1866, applies to accretion on banks of creeks, torrents, lakes and rivers, but not to those formed by the sea. The contention of the plaintiff that the Bay is not part of the sea is untenable. Hence, the land belongs to the public domain. IGNACIO *v.* DIRECTOR OF LANDS, G.R. No. L—12958, May 30, 1960.

CIVIL LAW—QUASI-DELICTS—WHERE THE INJURED PASSENGERS DO NOT DIE, MORAL DAMAGES ARE NOT RECOVERABLE WITHOUT PROOF OF BAD FAITH.—Soledad V. Verzosa was the duly authorized operator of passenger buses under the style of Try V. Tran. On Sept. 4, 1953, the plaintiffs boarded one of Verzosa's buses bound for Manila driven by Silvino Manglicmot. Upon reaching Sitio Longos, Malolos, Bulacan, the said bus collided with a freight truck resulting in injuries to the plaintiffs. Aside from the criminal action taken against the driver, a complaint was filed with the CFI of Manila for actual as well as moral damages and attorney's fees. The lower court included moral damages in its award. Hence, this petition for certiorari. *Held,* in cases of breach of contract (including one of carriage), proof of bad faith or fraud, *i.e.*, wanton or deliberately injurious conduct, is essential to justify the award of moral damages. VERZOSA *v.* BAYTAN, G.R. No. L—14092, April 29, 1960.

CIVIL LAW—QUASI-DELICTS—IN ORDER THAT THE SUBSIDIARY RESPONSIBILITY MAY PASS FROM THE PARENTS TO THE TEACHER, THE PUPIL MUST LIVE AND BOARD WITH THE TEACHER.—Manuel Quisumbing, Jr. and Augusto Mercado were classmates in the Lourdes Catholic School. Augusto was nine years old, and it appears that during the recess time, he and Manuel, Jr. quarreled over a "pitugo" nutshell as a result of which the former wounded the latter on the right cheek with a piece of razor. Manuel, Jr. and his father filed a complaint against the petitioner herein, father of Augusto. The petitioner attributed the liability to the teacher or head of the school since the incident occured in school through no fault of the petitioner. *Held,* where it appears that pupils go to school during certain hours and go back to their homes after school is over, the situation contemplated in the clause "so long as they remain in their custody" in the last paragraph of art. 2180 of the New Civil Code is not present, because said clause intends a situation where the pupil lives and boards with the teacher, such that the control, direction and influence on the pupil pass from the parents to the teacher, together with the responsibility for the torts of the pupil. MERCADO *v.* COURT OF APPEALS, G.R. No. L-14342, May 30, 1960.

CIVIL LAW—SALES—RESCISSION IS NOT POSSIBLE WHEN THE ONE RESCINDING IS TOTALLY UNABLE TO RETURN WHAT HE HAS RECEIVED, AS IN THE CASE OF TOTAL EVICTION.—On June 9, 1948 Manansala sold to the plaintiffs the land in question with an express warranty against eviction. Subsequently, by final judgment, plaintiffs were evicted out of the land by Eustaquia Llanes. Plaintiffs brought an action

against Manansala to recover damages by reason of the latter's warranty of eviction contained in the contract of sale. The lower court held that the warranty was only *pro forma*, not really intended, for the reason that the vendee knew fully well that the property was then pending litigation. However, it also held that rescission took place by virtue of the eviction and ordered the defendant to pay the plaintiffs ₱750.00, *i. e*, one-half of the purchase price. From this judgment, only the defendant appealed. *Held,* no rescission took place. The remedy of rescission contemplates the ability of the one rescinding to return what he received, which cannot be done in case of total eviction, as in this case. Hence, the law on Sales makes this remedy available only when the vendee "loses a part of the thing sold of such importance in relation to the whole as he would not have purchased it without such part" (art. 1556 NCC). Besides, having assumed the risks of eviction, plaintiffs are estopped from rescinding the contract, were it possible for them to restore. ANDAYA *v.* MANANSALA, G.R. No. L-14714, April 30, 1960.

COMMERCIAL LAW—INSURANCE—FOR THE PURPOSE OF EXEMPTION FROM EXECUTION, THE TERM"LIFE INSURANCE" INCLUDES ACCIDENT INSURANCE AGAINST LOSS OF LIFE.—The court of First Instance of Manila rendered judgment ordering the defendant to pay the plaintiff the sum of ₱7,000.00. A corresponding writ of execution was issued, pursuant to which, the Sheriff garnished and levied execution upon the sum of ₱50,000.000 due from the Capital Insurance and Surety Co. to the defendant, as beneficiary, under a personal accident policy issued by the said company to her husband who died by assasination. The defendant prayed that the garnishment and levy on execution be quashed on the ground that the amount is exempt from execution under rule 39, sec. 12 subdiv. (k) of the Rules of Court. *Held,* a life insurance is, generally speaking, distinct and different from an accident insurance, the former being an investment contract, while the latter being an indemnity or casualty contract. Still, when one of the risks insured in the accident insurance is the death of the insured, there are authorities who hold that such insurance may also be regarded as a life insurance. For this reason, and because rule 39, sec. 12, par. (k) makes a reference to "any life insurance", the exemption therein established applies to ordinary life insurance contracts, as well as to those which, although intended primarily to indemnify for risks arising from accident, likewise insure against loss of life due, either to accidental causes, or to willful and criminal acts of another. GALLARDO *v.* MORALES, G.R. No. L-12189, April 29, 1960.

COMMERCIAL LAW—PRIVATE CORPORATIONS—A CORPORATION TO WHOM THE CERTIFICATE OF PUBLIC CONVENIENCE OF AN EXPIRED CORPORATION HAS BEEN CONVEYED IS AT MOST A TRANSFEREE OF THE LATTER.—On June 25, 1957, Jaime T. Buenaflor filed an application with the Public Service Commission for authority to install and operate a 5-ton ice plant in Sabang, Camarines Sur, to establish a cold storage and refrigeration service. On October 1, 1957, the Camarines Sur Industry Corporation submitted its own application to

construct and manage a 5-ton ice plant and to operate a cold storage and refrigeration system in the same municipality. Buenaflor challenged the personality of the said corporation inasmuch as its corporate life had expired in November of 1953, in accordance with its articles of incorporation. The corporators of the said Corporation immediately registered new articles of incorporation, and at the same time, assigned to the new corporation all the assets of the expired corporation, together with its existing certificates of public convenience to operate ice factories. The Commission awarded the privilege of operating a 5-ton ice plant to the new corporation on the ground that it (the old corporation) had been serving ice in Sabang up to the time of Buenaflor's application, and consequently had preference over Buenaflor. *Held,* the appealed decision is revoked. Under sec. 77 of the Corporation Law as amended, a corporation whose corporate life has expired in accordance with its articles of incorporation, cannot lawfully continue the business for which it had been established, nor invoke any protection or preference. Consequently, where the expired corporation conveys all its assets together with its certificates of public convenience to a new corporation, the latter is at most a transferee of the former and not its continuation. BUENAFLOR *v.* CAMARINES SUR INDUSTRY CORPORATION, G.R. No. L-14991 to 14994, May 30 1960.

COMMERCIAL LAW—TRANSPORTATION—THE ONE-YEAR PRESCRIPTIVE PERIOD IN THE "CARRIAGE OF GOODS BY SEA ACT" DOES NOT APPLY TO AN ARRASTRE CONTRACTOR.—A shipment of one case of machine knives from Henry W. Peabody & Co. of California consigned to the Central Sawmill Inc. of Manila was insured by plaintiff. Discharged into the custody of defendant contractor and operator of the arrastre service at the Port of Manila, the shipment was not delivered to tne consignee, as a result of which the insurance company was held answerable therefor. The company filed the present case. The defendant filed a motion to dismiss on the ground of prescription of cause of action pursuant to the provisions of "CARRIAGE OF GOODS BY SEA ACT." The motion was granted. Appeal. *Held,* the provisions of the "Carriage of Goods by Sea Act", to the effect that the carrier and the ship shall be discharged from all liability in respect to loss and damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered, does not apply and cannot be invoked by a contractor and operator of an arrastre service for the reason that it is not a carrier. INSURANCE COMPANY OF NORTH AMERICA *v.* PHILIPPINE PORTS TERMINAL, Inc. G.R. No. L-14233, April 18, 1960.

CRIMINAL LAW—COMPLEX CRIMES—WHERE THE RAPE AND MURDER ARE THE RESULT OF ONE SINGLE CONTINUOUS ACT, THE CRIME IS COMPLEX.—Lopez was charged and convicted of rape with murder for having carnal knowledge of Estelita Fajordo Vda. de Caballero and for having fatally stabbed her after coition in order to conceal the rape. Sentenced to death, the accused appealed on the ground that the crime committed was not a complex one but two distinct offenses of rape and murder. *Held,* since the act of the accused in rendering the deceased

unconscious with his fist blows, and in killing her after coition flowed from one single continuous act, the accused is guilty of a complex crime. For lack of the requisite number of votes, the accused was sentenced to reclusion perpetua. PEOPLE *v.* LOPEZ, G.R. No. L-14347, April 29, 1960.

CRIMINAL LAW—FALSIFICATION—A PERSON ACTING UNDER AN HONEST MISTAKE OF JUDGMENT CANNOT BE HELD LIABLE FOR FALSIFICATION.—In the general elections of Nov. 8, 1955, Patricia Yanza was elected municipal councilor. Subsequently, a quo warranto proceeding was filed against her on the ground that in Nov. of 1955, she had not yet completed her 23rd birthday as required by sec. 2174 of the Election Law. The proceeding was however, dismissed because it was not filed within a week after her proclamation. Thereafter, the Provincial fiscal filed an information charging her with falsification for making an untruthful statement in a narration of facts for having stated in her certificate of candidacy that she was eligible for the office of municipal councilor, when she knew fully well that she was not. *Held,* the contention that a candidate for a municipal office must be on the day of the election, not less than 23 years of age accords with the majority opinion of the court. However, in the case of *Feliciano v. Aquino,* G.R. No. L-10201, Sept. 23, 1957, five members contended that it is sufficient that the candidate be 23 years old on the day he should take or actually takes his oath of office. Evidently, when the defendant declared her eligibility, she thought that the 23 years requirement could be adequately met if she completed her 23rd birthday upon assumption of office. Being an honest mistake of judgment, she cannot be held thereby to have intentionally made a false statement of fact in violation of art. 171 of the Revised Penal Code. PEOPLE *v.* YANZA, G.R. No. L-12089, April 29, 1960.

CRIMINAL LAW—ILLEGAL POSSESSION OF FIREARMS—REBELLION ABSORBS THE CRIME OF ILLEGAL POSSESSION OF FIREARMS.—With fifteen others, Rodriguez was accused with the complex crime of rebellion with murder, arson, and kidnapping. A cal. .45 pistol and ammunition were introduced as evidence against the accused. Subsequently, the accused was charged with illegal possession of the same firearm that was offered in evidence in the rebellion case. On arraignment, the accused filed a motion to quash, alleging double jeopardy. *Held,* the crime of illegal possession of firearms is absorbed as a necessary element or ingredient in rebellion. PEOPLE *v.* RODRIGUEZ, G.R. No. L-13981, April 25, 1960.

CRIMINAL LAW—KIDNAPPING—WHEN THE PERSON DETAINED DOES NOT HAVE THE FREEDOM TO LEAVE THE PLACE AT WILL, RESTRAINT IS PRESENT.—Apolinar Acosta and Consolacion Bravo were sentenced to death for having connived to kidnap the latter's godson, Juan Albaira, Jr., for the purpose of extorting a ransom of ₱75.00 from the parents. Consolacion Bravo took the boy away from the house of his parents and brought him to a house in Camp Murphy. He was left there

crying while Consolacion was away because the latter did not want to bring him home. Although the boy wanted to go home, he could not do so because he did not know his way and was warned not to leave. When Consolacion arrived at the house the following morning, she told him that they were going home, but instead they went to the sea where he was asked to take a bath. They proceeded to the house of Mrs. Viernes in Tondo where the boy was left behind with a warning not to leave the house. While alone, the boy kept on crying until he was brought to the police precinct by the two elder children of Mrs. Viernes. The issue now is whether there was restraint. *Held,* restraint is present as to constitute the crime of kidnapping. Although the boy could play in the house, he was under the control of the accused and could not leave the house without her. Being young, and not knowing his way home, he was then and there deprived of his liberty. It is like putting him in prison or in an asylum where he may have freedom of locomotion but not freedom to leave the place at will. PEOPLE *v.* ACOSTA, G.R. No. L-11954, March 24, 1960.

CRIMINAL LAW—MITIGATING CIRCUMSTANCES—LACK OF EDUCATION IS NOT MITIGATING IN CRIMES AGAINST PROPERTY.—Sabuero and Murrion were accused of robbery with homicide. The lower court convicted the accused, but found in their favor the mitigating circustance of lack of education or instruction. *Held,* lack of education or instruction cannot be invoked in crimes against property, such as robbery. PEOPLE *v.* SABUERO, G.R. No. L-13372, May 20, 1960.

CRIMINAL LAW — MITIGATING CIRCUMSTANCES — A PLEA OF GUILTY TO BE MITIGATING MUST BE IN OPEN COURT, SPONTANEOUS, AND PRIOR TO THE PRESENTATION OF EVIDENCE FOR THE PROSECUTION.—Charged with frustrated homicide, Vicente Quesada pleaded not guilty on arraignment. After the testimony of the first prosecution witness, the accused petitioned that he be allowed to change his plea. The petition was granted by the court. Because of the court's refusal to consider the plea of guilty as a mitigating circumstance, the accused appealed. *Held,* the contention of the accused has no merit. For a plea of guilty to be considered mitigating, it must be made (1) in open court, (2) spontaneously, (3) and prior to the presentation of evidence for the prosecution. PEOPLE *v.* QUESADA, G.R. N. L-15372, April 29, 1960.

CRIMINAL LAW—MITIGATING CIRCUMSTANCES—THE RARE AND UNUSUAL BEHAVIOUR OF THE ACCUSED IN NOT ABUSING THE WIDOW AND YOUNG DAUGHTERS OF THE DECEASED IS NOT A MITIGATING CIRCUMSTANCE.—Sabuero and Murrion were accused of robbery with homicide. The lower court convicted the accused, but found in their favor "the rare and unusual behaviour in not abusing the

widow and young daughters of the deceased and of not inflicting bodily harm to them and to the two small children." *Held,* such circumstance is not among those enumerated by art. 13 of the Revised Penal Code. PEOPLE *v.* SABUERO, G.R. L-13372, May 20, 1960.

CRIMINAL LAW—PRESCRIPTION OF CRIMES—THE CRIME OF PERJURY PRESCRIBES IN TEN YEARS. — On Oct. 19, 1948, the accused filled up an application blank for the patrolman examination given by the Bureau of Civil Service. The application was signed and sworn to by him before the Mayor of Cainta, Rizal. In the application this question appeared: "Have you ever been accused of, indicted for, or tried for the violation of any law, ordinance, or regulation before any court?" The accused answered: "No, I have never been accused of any crime whatever." It was shown that the accused made his answer knowing fully well that he had previously been charged before the Justice of the Peace of Cainta for the crimes of *"atentado contra la autoridad", lesiones menos graves",* and physical injuries. The accused raised prescription of the crime as a defense. *Held,* the crime committed is perjury. The crime has not yet prescribed because according to art. 90 par. 3, where the penalty fixed by law is compound one, the highest penalty shall be made the basis of the application of the rules contained therein. The penalty for perjury being a compound one, the highest of which is correctional, said crime prescribes in 10 years. PEOPLE *v.* CRUZ, G.R. No. L-15132, May 25, 1960.

CRIMINAL LAW—SUBSIDIARY CIVIL LIABILITY—PARENTS OF A MINOR CONVICTED OF A CRIME ARE SUBSIDIARILY LIABLE.— Plaintiffs are legitimate parents of Carlos Salem who died from wounds caused by Gumersindo Balce, then a minor and a legitimate son of the defendant. Gumersindo was convicted and sentenced to imprisonment and to indemnify the heirs of the deceased. Upon petition of plaintiffs, a writ of execution was issued for the payment of the indemnity but it was returned unsatisfied because Gumersindo had no property in his name. Thereupon plaintiffs demanded upon the defendant but the latter refused. *Held,* it is true that under art. 10, of the Revised Penal Code, the father is made civilly liable for acts committed by his son only if the latter is an imbecile, or an insane, or under 9 years of age, or over 9 but under 15 years of age but acting without discernment, unless it appears that there is no fault or negligence on the parent's part. But a minor over 15 who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In this case, resort should be made to the general law which is the Civil Code. The particular law that governs this case is art. 2180. To hold that this provision does not apply to the instant case because it only covers obligation which arise from quasi-delicts, and not obligation which arise from criminal offenses, would result in the absurdity that while, for an act where mere negligence intervened, the father or

mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. SALEM *v.* BALCE, G.R. No. L-14414, April 27, 1960.

LABOR LAW — CLOSED SHOP AGREEMENT — DOUBTS ARE RESOLVED AGAINST THE EXISTENCE OF "CLOSED SHOP."—A collective bargaining and closed shop agreement was entered into between Anakan Lumber Co. and the United Workers' Union. Among the stipulations in the contract was article II which states that the union has the exclusive right and privilege to supply the company with such laborers, employees and workers as may be necessary for the activities specified therein, and that the company will employ or hire in any of its departments only such persons who are members of the union. Subsequently, forty six members of said union employed in the company joined the petitioner union, Confederated Sons of Labor. United Workers Union expelled said employees and asked for their dismissal from the Anakan Lumber Company pusuant to its contract. The company dismissed the forty-six employees. *Held,* the action of the company was erroneous. A closed shop agreement is one whereby an employer binds himself to hire only members of the contracting union *who must continue to remain members in good standing,* in order to keep their jobs. This was not embodied in article II of said contract. Article II in no way affected the right of the company to retain those already working on or before the date of the signing nor those hired or employed subsequently thereto who thereafter resign or are expelled from the respondent union. An understanding of this nature is so harsh that it must be strictly construed and doubts must be resolved against the existence of closed shop. CONFEDERATED SONS OF LABOR *v.* ANAKAN LUMBER CO., G.R. No. L-2503, April 29, 1960.

LABOR LAW—COLLECTIVE BARGAINING—AN EMPLOYER—EMPLOYEE RELATION EXISTS BETWEEN A COMPANY AND ITS COMMISSION SALESMEN. — The Court of Industrial Relations certified the Ysmael Steel Salesmen's Union as the sole and exclusive bargaining representative of all salesmen working for Ysmael Steel Co., Inc. The company assailed the petition on the ground that the salesmen were mere commission agents whose conduct was not subject to the control or supervision of the company and over whom the latter had no power of dismissal, and consequently said salesmen were not employees of the company. *Held,* from the evidence presented, there exists an employer-employee relation between the salesmen and the company. The salesmen had to file an application, undergo a two-month probationary period, check in daily at 8:00 A.M. They enjoyed drawing and transportation allowances. The company exercised the power of dismissal over them either by withdrawing their authority to sell in case of disloyalty or by cutting off their drawing and transportation allowances. YSMAEL *v.* CIR. G.R. No. L-14280, May 30, 1960.

LABOR LAW—COURT OF AGRARIAN RELATIONS—LOANS MADE WITH USURIOUS INTEREST IN CONNECTION WITH THE CULTIVATION OF LANDHOLDINGS COME WITHIN THE JURISDICTION OF THE COURT OF AGRARIAN RELATIONS.—Herein respondents were complainants in the Court of Agrarian Relations, wherein they alleged that they obtained usurious loans from their landlord by way of the "alili" system, paying the same with palay after every harvest. The petitioner claims that the CAR has no jurisdiction over usurious loan cases. *Held*, there is no merit in the contention. The loans herein involved were obtained under sec. 15 of R.A. No. 1199 (Tenancy Act) in connection with the cultivation of landholdings. The usurious interest by way of overpayment under the "alili system" is violative of sec. 18 of said Act, and sec. 21 of said Act confers upon the CAR the original and exclusive jurisdiction over cases involving violations of any of the provisions of said Act. YUSAY *v.* ALOJADO, G.R. Nos. L-14881 and 15001-7, April 30, 1960.

LABOR LAW—COURT OF INDUSTRIAL RELATIONS—WHERE THE EMPLOYER-EMPLOYEE RELATIONSHIP STILL EXISTS OR IS SOUGHT TO BE REESTABLISHED BECAUSE OF ITS WRONGFUL SEVERANCE, THE COURT OF INDUSTRIAL RELATIONS STILL HAS JURISDICTION OVER ALL CLAIMS ARISING OUT OF THE EMPLOYMENT.—On February 15, 1955 the respondent PRISCO Workers' Union filed with the Court of Industrial Relations a petition praying that the petitioner-employer PRISCO be ordered to pay its present employees, members of the respondent Union, their basic salary and additional compensation for overtime work. On December 27, 1957 the Court of Industrial Relations granted the petition and issued an order requiring the petitioner to pay the claimants their basic salary and additional compensation for overtime work. One of the issues raised was whether or not the respondent court had jurisdiction over the claim for overtime pay filed by the respondent Union. *Held*, where the employer-employee relationship is still existing or is sought to be reestablished because of its wrongful severance, the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with the employment. After the termination of the relationship and no reinstatement is sought, such claims become mere money claims and come within the jurisdiction of the regular courts. It appearing that in the present case, the respondent-claimants are, or at least were at the time of presenting their claims actually in the employ of herein petitioner-corporation, the Court of Industrial Relations correctly took cognizance of the case. PRISCO *v.* CIR, G.R. No. L-13806, May 23, 1960.

LABOR LAW — INDUSTRIAL PEACE ACT — THE INDUSTRIAL PEACE ACT APPLIES ONLY TO INDUSTRIAL EMPLOYMENT.—An action for unfair labor practice was filed in the CIR against the petitioners, University of the Philippines and Concepcion Anonas, matron of the U.P. South Dormitory. The complaint alleged that the petitioners discriminated against the three union members with regard to their hire and tenure of employment by not re-appointing them in retaliation to their demands for

better working conditions. The petitioners filed a motion to dismiss on the ground that the University of the Philippines is an agency of the State performing governmental functions and that, at any rate, it is a non-profit organization and therefore not subject to the operation of R.A. 875. *Held*, the University of the Philippines is an institution of higher education. It declares no dividends and is obviously not a corporation created for profit. The Industrial Peace Act was intended by the Legislature to apply only to industrial employment and to govern the relations between employers engaged in industry and occupation for the purpose of profit, and their employees. It is obvious that the CIR has no jurisdiction to hear and determine the complaint for unfair labor practice filed against the petitioners. U.P. *v.* CIR, G.R. No. L-15416, April 28, 1960.

LABOR LAW—JURISDICTION OF COURT OF INDUSTRIAL RELATIONS—THE COURT OF INDUSTRIAL RELATIONS HAS JURISDICTION TO TAKE COGNIZANCE OF MONETARY CLAIMS FOR OVERTIME WORK.—On April 15, 1957 Jose Abiday and 38 other persons, all employees of NASSCO filed with the Court of Industrial Relations a petition for additional compensation due to overtime services rendered. They alleged that they had been required by the corporation to work on Sundays and legal holidays, at nighttime, and more than eight hours a day without receiving extra wages. Resisting the claim, the corporation challenged the court's jurisdiction. *Held*, the CIR has jurisdiction to take cognizance of the monetary claims for overtime work since it is practically a labor dispute that may lead to a conflict between the employees and the management. If the claimants were no longer employees of the NASSCO —they have resigned or were dismissed, without seeking reinstatement— their claim for overtime compensation would become simply a monetary demand properly cognizable by the regular courts. NASSCO *v.* CIR, G.R. No. L-13888, April 29, 1960.

LABOR LAW—LABOR DISPUTES—THE COURT OF FIRST INSTANCE HAS NO JURISDICTION TO ENTERTAIN A PETITION FOR DECLARATORY RELIEF ARISING OUT OF AN UNFAIR LABOR PRACTICE CASE PENDING BEFORE THE COURT OF INDUSTRIAL RELATIONS.—The members of the GSIS Employees Association declared a strike because of some alleged unfair labor practices on the part of the GSIS. The GSIS instituted an action for declaratory relief in the Court of First Instance joining the GSIS Employees and the GSIS Supervisors Union as party respondents. In the meantime, a prosecutor of the Court of Industrial Relations after a previous preliminary investigation filed with the CIR a complaint for unfair labor practices in violation of sec. 4 (a) of R.A. No. 875. The GSISEA and the GSISSU filed a motion to dismiss the petition for declaratory relief on the ground of lack of jurisdiction calling the attention of the court to the pendency of the unfair labor practice case. The respondent judge, however, denied the motion and granted the writ of preliminary injunction prayed for. *Held*, it being apparent that the present proceeding are closely interwoven with, if not actually arising out of an unfair labor practice case which is within the exclusive jurisdic-

tion of the Court of Industrial Relations, the court below clearly had no jurisdiction to entertain the petition for declaratory relief, much less issue the temporary restraining order prayed for therein. GSIS EMPLOYEES ASSOCIATION *v.* ALVENDIA, G.R. No. L-13614, May 30, 1960.

LABOR LAW—MESADA—THERE BEING NO SPECIAL LAW GOVERNING THE DISMISSAL OR SEPARATION OF PROFESSORS FROM COLLEGES OR UNIVERSITIES, R. A. 1052 AS AMENDED BY R. A. 1787 SHOULD BE APPLIED.—Marcelino Manalo was taken as an instructor in College Physics by the Mapua Institute of Technology on August 1, 1947 without any definite period or written contract of employment. In June, 1956 he was dismissed by the school authorities due to his failure to convince his aunt to drop the charges against the school librarian. Manalo filed an action before the Court of First Instance to order the institute to reinstate him as professor and to pay him back wages until reinstated. The lower court rendered judgment in his favor which was affirmed by the Court of Appeals. Mapua Institute filed a petition for review contending that under R. A. 1052 they should only have been, made to pay the respondent one month salary in lieu of the lack of notice of dismissal. Respondent contended that said act should not be applied because it refers only to commercial, industrial or agricultural establishments. *Held,* without declaring that a private college or university like the MIT is a commercial, industrial, or agricultural establishment, this court believes that there being no special law governing the dismissal, or separation of professors from colleges or universities, the provisions of R. A. 1052 as amended by R. A. 1787 should be applied. MAPUA INSTITUTE OF TECHNOLOGY *v.* MANALO, G.R. No. L-14885, May 31, 1960.

LABOR LAW—STRIKES—THE PROHIBITION AGAINST THE DECLARATION OF STRIKES IS NOT APPLICABLE TO EMPLOYEES OF THE NARIC. — The Naric filed a complaint against the Naric Workers Union and its officers for the alleged blocking and obstruction of the gates of the company's offices by the striking workers. The union filed a petition to dismiss the complaint. The respondent Naric argued that since it performs governmental functions, the petitioners are precluded from declaring a strike against it. *Held,* while the Naric has been expressly declared by law as an instrumentality of the government, yet its activities are not purely or exclusively governmental in nature. Since the work of the members of the petitioning union consists mainly in bringing goods to the respondent's warehouse, barges and piers, the same bears only a remote relation to the governmental functions and the union members are not covered by the prohibition against strikes. NARIC WORKERS UNION *v.* NARIC, G. R. No. L—14439, March 25, 1960.

LABOR LAW—TENANCY—THE NEW TENANCY LAW IS A REMEDIAL LEGISLATION. IN ITS INTERPRETATION AND ENFORCEMENT, ALL GRAVE DOUBTS MUST BE RESOLVED IN FAVOR OF THE TENANT.— Fifteen tenants of landholder Canuto Pagdanganan during the harvesting season for the agricultural year of 1955-56, reaped their palay crops without his permission; they stacked their harvest in a place other than that designated by him; and later on appropriated the loose grains for their own use and advantage without informing him or his authorized representative. Canuto Pagdanganan filed a petition for ejectment in the Court of Agrarian Relations alleging violation of sections 39 and 37 of Rep. Act 1199. *Held,* sec. 39 of R. A. 1199 is not applicable for the obvious reason that it refers only to the reaping of a portion of the crop prior to the reaping of the whole harvest. Here the whole crop was harvested. Furthermore under sec. 36, the tenant shall have the right to determine when the reap the harvest provided it shall be in accordance with the proven farm practices and after due notice to the landholder. Here there is no claim that the reaping or the date thereof was not in accordance with proven farm practices. Under section 37, it is apparent that the landholder is not given absolute authority to determine the place of stacking of the harvest because the court shall determine "whatever may be in the interest of both parties." As to who shall seek the intervention of the court in case of disagreement, the law is silent. The refusal of a tenant to sign a tenancy contract with his landlord is not among those enumerated in section 50 of R. A. 1199 as grounds for dispossession. The enumeration is exclusive. PAGDANGANAN *v.* COURT OF AGRARIAN RELATIONS, G. R. No. L—13858, May 31, 1960.

LABOR LAW—WORKMEN'S COMPENSATION ACT—SECURITY WATCHMEN OF SHIPPING COMPANIES ARE NOT CASUAL EMPLOYEES AND THEREFORE ARE ENTITLED TO WORKMEN'S COMPENSATION.—Compañia Maritima contracted with the Pablo Velez Watchmen's Agency for the latter to give security to the officers of the said petitioner, who did not join the strike. Among the members of the Pablo Velez Watchmen's Agency detailed with the company was the late Dionisio Hio. On Sept. 4, 1954 the said Dionisio Hio, who was then on the night shift duty as a gangwayman of a vessel owned by the petitioner, and several others were picked up by the engineer of a vessel in order to escort him to his house. The watchmen left the engineer's house and arrived at their respective posts at about 2:00 A.M. the following day. At six o'clock in the morning, the body of Dionisio Hio was found floating near the side of "M/V Basilan" along the gangway where he was assigned for duty. The Workmen's Compensation Commission held the Compañia Maritima liable under Sec. 55 of the Workmen's Compensation Act. *Held,* there is nothing to the contention that the deceased was but a casual employee whose services were engaged only for the duration of the strike and therefore not entitled to compensation. The casual service which the law speaks of must be construed by the occupation or business of the employer. Undoubtedly the services of the deceased were in connection with the business of the petitioner because without security, no shipping company can possibly go on with the shipping maritime business. CIA. MARITIMA *v.* CABANAT, G. R. No. L—10675, May 29, 1960.

LAND REGISTRATION—FRIAR LANDS ACT—A PURCHASER OF FRIAR LANDS UNDER ACT 1120 IS CONSIDERED BY LAW THE ACTUAL OWNER OF THE LOT PURCHASED EVEN BEFORE THE EXECUTION OF THE FINAL DEED OF CONVEYANCE, THE GOVERNMENT BEING A MERE LIEN HOLDER OR MORTGAGEE AS TO THE UNPAID INSTALLMENTS. — On March 19, 1917 Carmiano Bacalzo purchased the Talisay Minglanilla Estate originally forming part of the Friar Lands for ₱200.00 payable in installments. His wife, Carmelina Padilla, died in 1922 survived by Carmiano and their children, the herein petitioners. In 1924, Carmiano married the herein respondent. The payment of the installments to said lands were completed on June 17, 1947, during the second marriage. Carmiano died on Nov. 5, 1948 without the certificate of title being issued to him. The respondent subsequently petitioned the CFI of Cebu to order the register of deeds to issue to her the certificate of title. The court by its order directed the register of deeds to issue the title papers in the name of respondent Martina Pacada. Petitioners appealed to the Court of Appeals contending that their father became the actual owner of the lot upon its full payment during the latter's lifetime. *Held,* the fact that the Government failed to issue the certificate of title upon the full payment of the purchase price to the now deceased purchaser does not preclude the latter from acquiring ownership of the lot in question during his lifetime. It is not the issuance of the deed of conveyance that vests ownership under the Friar Lands Act. Sec. 16 of the same Act, which provides that the widow shall be entitled to receive the deed of the land upon showing that she has complied with the requirements of the law for the purchase, is not applicable to the present case for this contemplates a situation wherein the purchaser-applicant dies before completing payment of the purchase price. BACALZO *v.* PACADA, G. R. No. L—10915, March 30, 1960.

LAND REGISTRATION—PUBLIC LAND LAW—THE DECREE OF REGISTRATION MAY STILL BE IMPUGNED ONE YEAR AFTER THE ISSUANCE AND ENTRY THEREOF WHEN THE PROPERTY INVOLVED IS ALLEGEDLY PRIVATE IN NATURE. — Plaintiff brought this action to cancel the certificate of title issued in favor of the defendant by virtue of a homestead patent. The plaintiff claimed that he was the owner of the lot in question, having been in actual possession thereof since 1914, publicly, openly, peacefully, and against the whole world; that up to the present time, he is the only one who benefits from the produce thereof; and that the said land is at present the subject of a registration case applied for by him. The defendant claimed that the action had already prescribed, having been brought only in December of 1958. The decree was issued on Sept. 12, 1953, and the certificate of title four days later. *Held,* the contention that the decree of registration can no longer be impugned on the ground of fraud one year after the issuance and entry of the decree does not apply here because the property involved is allegedly private in nature, and if so, has ceased to be a part of the public domain. The court therefore erred in dismissing the case outright without giving the plaintiff a chance to prove his claim. MESINA *v.* PINEDA, G. R. No. L—14722, May 25, 1960.

LAND REGISTRATION—TORRENS SYSTEM—ONE WHO BUYS FROM ANOTHER WHO IS NOT THE REGISTERED OWNER MUST EXAMINE NOT ONLY THE CERTIFICATE OF TITLE BUT ALL THE FACTUAL CIRCUMSTANCES NECESSARY TO DETERMINE IF THERE ARE ANY FLAWS IN THE TITLE OF THE TRANFEROR, OR IN HIS CAPACITY TO TRANSFER THE LAND. — The southwestern portion of of a lot covered by a torrens title, situated in Rizal, Nueva Ecija, and owned by Alipio Gasmena, was donated by the latter to Florencio Gasmena, which donation was duly annotated in the certificate of title. Florencio Gasmena mortgaged this portion to Godofredo Galindez, and subsequently sold it to him. The mortgage was registered and memorandum thereof was entered on the certificate of title, but the subsequent sale was never registered. The defendant took possession of the property on the date of the mortgage. In the meantime, Florencio Gasmena died. Several years later, the portion mentioned was segregated and made a separate lot. A new transfer certificate of title was issued in the name of the deceased Florencio Gasmena, which carried no annotation of the registered mortgage in favor of Galindez. The widow and heirs of Florencio Gasmena executed a deed of extrajudicial partition with sale. Plaintiff herein were the purchasers, who after examining the new title and noting no encumbrance made no further investigations. The deed of extrajudicial partition with sale was registered and another transfer certificate of title was issued in the name of the plaintiffs. Upon the refusal of the defendant to relinquish possession of the lot, this action was commenced. *Held,* while one who buys from the registered owner does not have to look behind the certificate of title, one who buys from another who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land. Plaintiffs did not buy the lot from the registered owner. They bought it from the heirs and widow. Thus, they were bound at their peril to investigate the transferor's right to sell the property. The plaintiff's failure to make the investigations required by the circumstances constituted lack of good faith. Neither of the buyers having registered the transfer in good faith, the ownership of the property property pertains to the defendant who first took possession in good faith. REVILLA *v.* GALINDEZ, G. R. No. L—9940, March 30, 1960.

LEGAL ETHICS—ATTORNEY'S LIEN—THE ATTORNEY'S LIEN TAKES EFFECT FROM THE TIME OF ENTRY ON THE RECORD AND IS NOT EXTINGUISHED BY THE SATISFACTION OF THE JUDGMENT UNLESS THERE HAS BEEN WAIVER. — Ricardo Nolan appeared as counsel for the plaintiff in a foreclosure of real estate mortgage against Fidel Henares, the administrator of the estate of the deceased defendant. The plaintiff won the suit and Attorney Nolan was awarded attorney's

fees in the court's decision. On July 7, 1953, Nolan filed a notice of attorney's lien with the court, alleging that he was entitled to 10% of the amount of the judgment in the foreclosure suit. On July 16, 1954, the mortgaged properties were sold at public auction by virtue of the writ of execution issued on Nov. 13, 1953. Four days after the sale was confirmed by the court, Nolan petitioned for the payment of his lien. The defendant claimed that the payment of the lien was beyond the court's jurisdiction because it was filed after the satisfaction of the foreclosure mortgage. Consequently, there was no longer any judgment to which the lien could legally attach. *Held,* the court acquired jurisdiction over the charging lien long before the satisfaction of the judgment when Nolan filed his notice of lawyer's lien. The satisfaction of the judgment did not extinguish the lien for the lien attaches not only to the judgment, but also to its proceeds and to all executions that might thereafter be issued in pursuance of such judgment (sec. 33, rule 127). BACOLOD-MURCIA MILLING CO., INC. *v.* HENARES, G. R. No. L—13505, March 30, 1960.

POLITICAL LAW—ADMINISTRATIVE LAW—THE SECRETARY OF JUSTICE MAY REFUSE REINSTATEMENT TO A SUSPENDED N.B.I. AGENT AGAINST WHOM ADMINISTRATIVE CHARGES ARE PENDING DESPITE HIS ACQUITTAL IN THE CRIMINAL CASES. — Pursuant to criminal charges filed against the petitioner, the Secretary of Justice suspended him on May 18, 1951. Subsequently, another criminal charge was filed against him. On appeal, petitioner was acquitted of both charges. In view of the acquittals, petitioner requested reinstatement with payment of back salaries. Respondent refused on the ground that before his acquittal, an administrative charge was filed against him, which, together with another administrative charge filed after his acquittal, is still being heard. *Held,* considering the nature of the charges administratively filed, we find that they are so grave as to give sufficient reasons for the respondent's continuing the suspension of the petitioner. PASCUA *v.* TUASON, G. R. No. L—13046, May 20, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — THE MAYOR OF A MUNICIPALITY CANNOT BE COMPELLED TO SIGN VOUCHERS COVERING AMOUNTS NOT YET APPROPRIATED. — Shortly after election in 1955, the petitioners resigned from their positions as policemen of the municipality of Taal, Batangas, inasmuch as they belonged to the opposite political faction. Somehow, the petitioners were able to receive part of their accumulated vacation and sick leave pay. The present action arose when the mayor refused to sign the vouchers for the remaining amounts thereof, the mayor alleging that there was no appropriation for the amounts covered by said vouchers. *Held,* petitioners' right to receive payment of their terminal leave is indubitable. Pursuant, however, to our fundamental law, no money shall be paid out of the Treasury except in pursuance to an appropriation made by law (art. VI, sec. 23, Constitution of the Philippines). Implementing this mandate, sec. 2300 of the Rev. Adm. Code provides that "Disbursements shall be made by the municipal treasurer upon properly executed vouchers, *pursuant to the budget* and with the approval of the Mayor." There being no such budget or appropriation in the instant case setting aside the sum necessary to pay petitioners' claim, the respondent mayor was bound to refuse the vouchers in question. BALDIVIA *v.* LOTA, G.R. No. L—12716, April 30, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — A COMPLAINT IS NOT A PREREQUISITE TO AN ADMINISTRATIVE INVESTIGATION.— A certain Turiano Alonzo filed a sworn statement with the respondent manager of the NWSA accusing the petitioner of an act of dishonesty. After an investigation was ordered by the manager of the NWSA, Bautista instituted a proceeding for prohibition with preliminary injunction, which the lower court dismissed. On appeal he contended that he could not be subjected to an administrative investigation alleging that a mere sworn statement cannot be the basis of an investigation. *Held,* a complaint is not a prerequisite to an administrative investigation. Administrative proceedings may be commenced against a government officer or employee by the head of the Bureau or Office concerned *motu propio.* BAUTISTA *v.* NEGADO, G.R. No. L—14319, May 26, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — AN ACT OF DISHONESTY, THOUGH NOT COMMITTED IN THE PERFORMANCE OF DUTY, IS A GROUND FOR ADMINISTRATIVE INVESTIGATION. — A certain Turiano Alonzo filed a sworn statement with the respondent Manager of the NWSA accusing the petitioner of an act of dishonesty. After an investigation was ordered by the manager of the NWSA, Bautista instituted a proceeding for prohibition with preliminary injunction, which the lower court dismissed. On appeal he contended that he could not be subjected to an administrative investigation since the act which he performed was a purely unofficial transaction. *Held,* as held in *Nera v. Garcia,* G.R. No. L—13169, Jan. 30, 1960, dishonesty of an employee need not be committed in the course of the performance of his duties to warrant an investigation. BUATISTA *v.* NEGADO G.R. No. L—14319, May 26, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — REFUSAL BY THE PROVINCIAL FISCAL TO REPRESENT A MUNICIPALITY DOES NOT JUSTIFY THE LATTER IN RETAINING A SPECIAL ATTORNEY. — The municipal council of Bauan, Batangas, by a resolution authorized its mayor to take the proper steps to challenge Act 1383 which created the NWSA. The provincial fiscal refused to represent the municipality. Consequently, the council authorized the engaging of a special counsel and appropriated ₱2,000.00 for that purpose. The mayor engaged Julio Enriquez as special counsel. Petitioner Enriquez requested reimbursement of the docket fee and his initial attorney's fee of ₱500.00. The Auditor General disallowed the request for attorney's fees but did not object to the refund of the docket fee. *Held,* according to sections 2241, 1682 and 1683 of the Rev. Adm. Code, the provincial fiscal is the legal counsel of the mayor and of the municipal council, and it is his duty to represent the municipality in any court except when he is disqualified by law, in which case the municipal council may engage the services of a special attorney. The refusal

of the provincial fiscal to perform his duty cannot justify the action taken by the municipal council. Instead of engaging a special attorney, the council should have requested the Secretary of Justice to appoint an acting provincial fiscal in place of the fiscal who refused to represent the municipality. ENRIQUEZ *v.* GIMENEZ, G.R. No. L-12817, April 29, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — THE ASSIGNMENT OF A DETECTIVE CAPTAIN TO THE POSITION OF PRECINCT COMMANDER IS NOT IN VIOLATION OF LAW. — Paralejas, a detective captain in the Manila Police Department, was assigned to the position of precinct commander. Alleging that the position of detective captain which Paralejas previously occupied belongs to the unclassified service pursuant to section 671 (j) of the Rev. Adm. Code, that the position of precinct commander is classified, and that the assignment to the latter post was effected in violation of section 685 of said Code, the petitioner filed a petition in the Court of First Instance of Manila for mandamus with preliminary injunction against the respondents. *Held,* detectives are members of the police force, and, being excluded from the enumeration of section 671 (j) of the Rev. Adm. Code they are embraced in the classified service under sec. 60 of said Code. The assignment, therefore, of a detective captain to the position of precinct commander in the police department is not in violation of section 685 of the aforementioned Code. SUBIDO *v.* SARMIENTO, G.R. No. L—14981, May 23, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — WHERE THE ISSUE IN A CASE IS INTERLINKED WITH AN EXISTING BOUNDARY DISPUTE BETWEEN TWO MUNICIPALITIES NOT YET RESOLVED BY THE PROVINCIAL BOARD, JUDICIAL RECOURSE IS PREMATURE. — Hinabangan and Concord were municipal districts with territorial boundaries. When they were fused into one regular municipality, the new boundaries thereof were not specified. The new municipality of Hinabangan issued a license to fish to Rufina Nabuhal within its territorial waters. Since 1954, the municipality of Wright had been asserting jurisdiction over certain fishing grounds of Hinabangan. The former issued a license to fish to Julian Abegonia within the fishing zones of Hinabangan. An action was filed to declare Hinabangan as having jurisdiction over the area in dispute. *Held,* the controversy between Nabuhal and Abegonia regarding the territorial coverage of their fishing licenses is interlinked with the existing boundary dispute between the two municipalities, which dispute appears to be awaiting resolution by the provincial board of Samar. Until the matter is resolved by the provincial board, judicial recourse is premature. MUNICIPALITY OF HINABANGAN *v.* MUNICIPALITY OF WRIGHT, G.R. No. L—12603, March 25, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — PENDING APPROVAL OF THE PRESIDENT, APPOINTEES TO THE MUNICIPAL POLICE ARE DE FACTO OFFICERS ENTITLED TO SALARY.—Petitioners were civil service eligibles appointed by the then mayor of Ronda, Cebu. Their

appointments were not yet approved by the President when the newly elected mayor served notice upon the petitioners advising them of their dismissal. The petitioners stayed in service up to July 18, 1956 when they sought a writ of mandamus to compel the mayor to sign their payroll and to reinstate them. *Held,* petitioners' appointments were legal and in order. However, for such appointments to be complete, the approval of the President is required. Until their appointment is acted upon favorably or otherwise, the petitioners may be considered as *de facto* officers and entitled to salary for services actually rendered. CUI *v.* ORTIZ, G.R. No. L-13753, April 29, 1960.

POLITICAL LAW — ADMINISTRATIVE LAW — THE PRESIDENT MAY ORDER THE REINCARCERATION OF A PERSON WHO VIOLATES THE TERMS OF HIS CONDITIONAL PARDON. — Petitioner Espuelas was charged and convicted of the crime of inciting to rebellion. After serving part of his sentence, the President granted him a conditional pardon by remitting the unexpired period of his sentence on condition that he shall not again violate any of the penal laws of the Philippines. Thereafter, he was found guilty of usurpation of authority by the JP court of Tagbilaran. Pending appeal to the CFI, the fiscal filed a motion to dismiss the case provisionally. The motion was granted, but on the same day the President ordered the imprisonment of the petitioner. The latter then filed a petition for *habeas corpus* which the court granted. The respondent appealed and raised the following question: May the President order the reincarceration of the appellee due to violation of the terms of his conditional pardon? *Held,* Under sec. 64 (i) of the Rev. Adm. Code, the President is empowered "to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition or conditions of his pardon, parole, or suspension of sentence." And as held in the case of *Tesoro V. Director of Prisons,* 68 Phil. 154, mere commission of the offense without need of conviction by the Court, is sufficient in order that the petitioner may be deemed to have violated the terms of his pardon. ESPUELAS *v.* PROV'L WARDEN, G.R. No. L—13223, May 30, 1960.

POLITICAL LAW — CIVIL SERVICE — WAR VETERANS CANNOT BE REPLACED WITH CIVIL SERVICE ELIGIBLES WHILE THERE ARE NON-VETERAN TEMPORARY APPOINTEES. — Petitioners, veterans of World War II, are both civil service non-eligibles who were given temporary appointments as industrial arts teachers in the division of city schools of Iloilo. In their division there were five other temporary arts and garden teachers. On August 26, 1957, the petitioners learned of their replacement by civil service eligibles. The principal issue is whether or not the respondents may replace petitioners, who are war veterans, with civil service eligibles when at the time there were non-veteran temporary appointees who could have been replaced first. The Solicitor General, citing interpretative order No. 130 issued on July 18, 1955, maintained that the law giving preference to veterans applies only to appointments but not to cases where the non-veteran is already occupying a position. Sec. 8 thereof

says, "the preference herein granted shall not apply to promotions and transfer, nor shall it apply to positions which have been declared policy determining, primarily confidential, or highly technical pursuant to sec. 671 (i) of the Administrative Code." *Held*, the interpretative opinion rather strengthens the position of the petitioners for it manifestly contemplates a situation where a veteran is already appointed, and that the preference he enjoys and continues to enjoy does not extend to promotions and transfers, etc. Since the positions occupied by the petitioners are neither policy determining nor highly confidential nor technical, the petitioners should have been given preference. GONZALES *v.* ALDANA, G.R. No. L—14576, April 27, 1960.

POLITICAL LAW — CONSTITUTIONAL LAW — PINBALL MACHINES ARE GAMBLING DEVICES THE OPERATION OF WHICH IS PROHIBITED BY LAW. — On Dec. 24, 1957, an ordinance was passed prohibiting the granting of licenses for the installation or operation of "Pinball machines." Petitioner applied for a license for his pinball machines but was refused. He then filed a petition attacking the constitutionality of Ord. 3941 on the ground that pinball machines are not gambling but amusement devices. *Held*, the proper test in this case is whether or not the device encourages the gambling instinct. Although not all slot machines are gambling devices per se, all pinball machines are gambling devices since they develop the gambling instinct, specially tending to corrupt the young, and since winning therein depends wholly upon chance or hazard. Hence their suppression by Ord. 3941 is valid and constitutional, being a proper exercise of the "General Welfare Clause" of the charter of the city of Manila. UY HA *v.* CITY MAYOR, G.R. No. L—14149, May 30, 1960.

POLITICAL LAW — CONSTITUTIONAL LAW — IN THE EXERCISE OF EMINENT DOMAIN, THE LEGISLATURE MUST PROVIDE FOR AN EFFECTIVE PAYMENT OF JUST COMPENSATION. — The city of Cebu filed an action for declaratory relief praying for a clear interpretation of R.A. 1383 which provides for the taking over of the ownership, control, supervision, and jurisdiction over the Osmeña Waterworks System by the Nawasa. The lower court declared the statute to be unconstitutional in so far as it deprived the plaintiff of its ownership over the Osmeña Waterworks System without due process of law. Defendants invoked the exercise of the power of eminent domain. *Held*, the law is unconstitutional in so far as it deprived the plaintiff of its ownership over the waterworks system for failing to provide for an effective payment of just compensation. The act merely states that the "net book value... of Government-owned waterworks service system in cities, municipalities, and municipal districts shall be received by the Authority (Nawasa) for an equal value of the assets of the Nawasa." But what these assets are, nothing concrete appears. Such is not the compensation that satisfies the constitutional provision. CEBU *v.* NAWASA, G.R. No. L—12892. April 30, 1960.

POLITICAL LAW — CONSTITUTIONAL LAW — A SENATOR IS DISQUALIFIED TO APPEAR AS COUNSEL IN ANY CRIMINAL CASE WHERE THE OFFENSE CHARGED IS INTIMATELY CONNECTED WITH THE OFFICE OF THE ACCUSED.— It was alleged in an information that Leroy Brown, the mayor of Basilan City, and his co-defendants organized groups of police patrol and civilian commandoes; that Yakan Awalin Tebag was arrested by order of Brown without any warrant or complaint filed in court; that Tebag was maltreated as a consequence of which, he died; that to simulate that Tebag had been killed by peace officers in an encounter between the latter and a band of bandits, shots were fired on his body and a rifle left by his side. The defendants were charged with murder. Senator Roseller Lim appeared as counsel for the accused. *Held*, the Constitution provides that no senator or member of the House of Representatives shall appear as counsel in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office. Since the offenses charged in the information were intimately connected with their respective offices and were perpetrated while they were in the performance, though improper or irregular, of their official functions, Senator Lim is disqualified to appear as counsel in this case. PEOPLE *v.* MONTEJO, G.R. No. L—14595, May 31, 1960.

POLITICAL LAW — ELECTION LAW — THE RECOUNTING OF THE VOTES MERELY CONSISTS IN THE MATHEMATICAL COUNTING OF VOTES RECEIVED BY EACH CANDIDATE, AND DOES NOT INVOLVE ANY APPRECIATION OF THE BALLOTS NOR THE DETERMINATION OF THEIR VALIDITY. — Eustaquio R. Cawa and Primitivo R. Pasta were candidates for municipal mayor. Because of the discrepancies existing between the election returns in dispute and those in the possession of the provincial treasurer and the Commission on Elections, Cawa filed a petition with the Court of First Instance of Quezon for the recounting of the votes under sec. 168 in relation with sec. 163 of the Revised Election Code. The majority of the members of the municipal board of canvassers also filed a similar petition based on the same ground. The trial court dismissed the petitions for recount on the ground that, in consulting the ballots, it will necessarily have a different criterion for appreciating their validity from that of the election inspectors. *Held*, the trial court is hereby ordered to proceed with the recount of the votes. Sec. 163 in relation with sec. 168 of the Revised Election Code explicitly states that the proceeding for recounting of votes is summary in nature and merely consists in the mathematical counting of the votes received by each candidate. It does not involve any appreciation of the ballots nor the determination of their validity as is required in election contests. The only purpose of recount is merely to count the number of votes received by each candidate as they appear on the face of the ballots. CAWA *v.* DEL ROSARIO, G.R. No. L—16837, May 30, 1960.

POLITICAL LAW — ELECTION LAW — THE TITLE OF A MAYOR CANNOT BE CONTESTED INDIRECTLY BY QUESTIONING HIS PROCLAMATION. — In the general elections of 1959, Jose Malimit and Este-

ban Degamo were mayoralty candidates while Vicente Acain and Felino Palarca ran for vice-mayor of Carmen, Agusan. The board of canvassers of said municipality proclaimed Malimit as mayor-elect. Three members of the board objected to Malimit's proclamation because the municipal treasurer's copy of the election return for one precinct had been tampered with during the canvass. Finding the claim to be true, the Commission on Elections annulled the canvass and proclamation with respect to the office of mayor, suspended the five members of the board who made the proclamation, and authorized the appointment of substitute members who were duly appointed subsequently. The new board of canvassers made a recanvass and proclaimed the election of Degamo and Palarca. The petitioners instituted this present action for prohibition, mandamus, and certiorari with preliminary injunction to prevent the enforcement of said proclamation. *Held,* the title to said offices may not be contested except directly by writ of quo warranto and/or by election protest, not indirectly by questioning the regularity of their proclamation because they at least have a color of title to said offices. ACAIN *v.* BOARD OF CANVASSERS, G.R. No. L-16445, May 23, 1960.

POLITICAL LAW — ELECTION LAW — THE SUBSTITUTE OF A SUSPENDED MUNICIPAL CANVASSER NEED NOT BE A REGISTERED VOTER BELONGING TO THE SAME PARTY.—In the general elections of 1959, Jose Malimit and Esteban Degamo were rivals for the mayoralty office while Vicente Acain and Felino Pelarca ran for vice-mayor of Carmen, Agusan. The board of canvassers of said municipality proclaimed Malimit as mayor-elect. Three members of the board objected to Malimit's proclamation because the municipal treasurer's copy of the election return for one precinct had been tampered with during the canvass. Finding the claim to be true, the Commission on Elections annulled the canvass and proclamation with respect to the office of mayor, suspended the five members of the board who made the proclamation, and authorized the appointment of substitutes. The new board of canvassers made a recanvass and proclaimed the election of Degamo and Pelarca. The petitioners attacked the validity of the proclamation because the substitute members appointed were not electors of Carmen belonging to the party of the suspended members. *Held,* sec. 167 of the Rev. Election Code limiting the appointment of substitutes to registered voters of the same party applies only when the members of the board to be substituted are "candidates" for election and not when they are suspended because of irregularities committed in the discharge of their duties relative to the conduct of the election. ACAIN *v.* BD. OF CANVASSERS, G.R. No. L—16445, May 23, 1960.

POLITICAL LAW — NATURALIZATION — COURTS HAVE NO POWER TO DECLARE THE CITIZENSHIP OF AN INDIVIDUAL WHEN THE SAME HAS NEVER BEEN PUT IN ISSUE BY THE PLEADINGS. — In his petition for naturalization and in the declaration of intention, Danilo Channie Tan declared himself to be a citizen of Nationalist China. Sensing the dismissal of his petition, Tan attempted instead to establish that

he was already a Filipino citizen, without, however, amending his pleading. The CFI of Cebu declared Tan to be a Filipino citizen over the opposition of the Solicitor General. *Held,* in declaring the petitioner a citizen of the Philippines, the lower court went beyond the issues raised by the pleadings, and acted in a manner so irregular as to exceed its jurisdiction. Under our laws, there can be no action for the judicial declaration of citizenship because courts of justice exist for the settlement of justiceable controversies. As an incident only of the adjudication of the rights of the parties to a controversy may the courts pass upon their status, TAN *v.* REPUBLIC, G.R. No. L—14159, April 18, 1960.

POLITICAL LAW — PUBLIC CORPORATIONS — MUNICIPAL CORPORATIONS HAVE THE POWER TO CHARGE RENTAL FEES ON ITS PROPERTIES REGARDLESS OF THE REASONABLENESS OF THE AMOUNT. — The defendant owns certain lots in the market site of which the plaintiffs were lessees. An ordinances was passed raising the rental fees. The plaintiffs filed a petition for declaratory judgment with preliminary injunction. They assailed the legality of the ordinance on the ground that the rates fixed were unreasonable. *Held,* the power to impose fees is not a governmental but proprietary function. The city is free to charge any sum it may deem best regardless of the reasonableness of the amount, and the prospective lessees are free to enter into the corresponding contract of lease, if they are agreeable to the terms. ESTEBAN *v.* CABANATUAN, G.R. No. L—13662, May 30, 1960.

POLITICAL LAW — STATE IMMUNITY — A STATE AS INTERVENOR DOES NOT WAIVE ITS IMMUNITY WHERE IT MERELY RESISTS A CLAIM WITHOUT FILING A COMPLAINT NOR ASKING FOR AFFIRMATIVE RELIEF IN ITS ANSWER. — Arsenia Enriquez was the owner of four parcels of land which were mortgaged to the Mercantile Bank of China. The mortgage was foreclosed and while the mortgage debt was being paid, the Japanese Forces occupied Manila. The Bank of Taiwan took over the administration and control of all banks in the Philippines and had the properties sold at public auction. The properties were bought by Asaichi Kakawa. In 1946, the Alien Property Custodian of the United States issued a vesting order vesting in itself the remaining lots. The four lots were transferred to the Republic of the Philippines. Benito Lim, son and administrator of the intestate estate of Arsenia Enriquez, filed a complaint against the PAPA for the recovery of the properties in question with back rents, alleging the nullity of the sale of Kakawa because of the threats and intimidation exerted by the latter. The Republic of the Philippines intervened and claimed that the court had no jurisdiction over the claim for rentals and damages since the action in that regard constituted a suit against the State to which it had not given consent. The plaintiff argued that the Government had waived its non-suability by its intervention. *Held,* the claim for damages for the use of the property constitutes a charge against the financial liability of the Republic of the Philippines. Such claim, therefore, cannot be maintained because of the immunity of the

State from suit. The State did not waive its immunity by its intervention because it merely united with the defendant Attorney General in resisting the plaintiff's claim, and for that reason, it asked no affirmative relief against any party in its answer in intervention. Consequently, the State, having taken no initiative against the plaintiff, did not surrender its immunity from suit. LIM *v.* BROWNELL, G.R. No. L—8587, March 24, 1960.

POLITICAL LAW — TAXATION — THE PRESCRIPTIVE PERIOD FOR THE COLLECTION OF INCOME TAX BY JUDICIAL ACTION IS FIVE YEARS FROM THE TIME THE RETURN IS FILED OR SHOULD HAVE BEEN FILED. — On August 4 & 5, 1952, a BIR examiner assessed deficiency income taxes against the respondent company for the years from 1945 to 1951. Upon the company's failure to settle the deficiency, petitioner issued a warrant of distraint and levy on the company's property on Dec. 23, 1954. Respondent contested the assessment and levy in the Court of Tax Appeals. The court held that the collection of deficiency taxes from 1945 to 1947 already prescribed because more than five years have elapsed from the time the returns should have been filed. The deficiency taxes for the years 1948 to 1950 were allowed. *Held*, the prescriptive period mentioned in Sec 51 (d) is applicable only to collection by summary method. Since Sec. 51 (d), applicable only to income taxes, does not provide for a prescriptive period insofar as the collection of income taxes by judicial action is concerned, it may be concluded that the provisions of Sec. 331, being general in character, may be considered suppletory with regards to matter not covered by the title on income taxes. The tax Court, therefore did not err in holding that the right of the government to collect deficiency income taxes for 1945 to 1947 had already prescribed. COLLECTOR OF INT. REV. *v.* BOHOL LAND TRANSPORTATION CO., G. R. No. L—13099, April 29, 1960.

Note: R. A. 2343 which took effect on June 20, 1959 has repealed the three year limitation upon the collection by summary method of income taxes. Therefore, whether by judicial or administrative action, the prescriptive period is five years as provided by sec. 331.

REMEDIAL LAW—CIVIL PROCEDURE—DEFENDANT'S FAILURE TO APPEAR IN AN INFERIOR COURT DOES NOT IPSO FACTO MAKE HIM IN DEFAULT. — Limcaco instituted an action against the petitioner for the recovery of a sum of money. Duly summoned, petitioner failed to answer or appear before the municipal court on the date set for hearing. The hearing was postponed to a later date but again the petitioner failed to appear, having been given no notice of said postponement. It was only then that petitioner was declared in default. After presenting her evidence, the complaint was dismissed. Without notice to petitioner, a new trial was granted ex parte on motion of Limcaco. The court reversed its decision but no copy of the second decision was served upon the petitioner. Petitioner moved to set aside the judgment for lack of requisite notice. To the petition for certiorari, the respondent set up the defense that the petitioner, being in default by reason of its failure to answer or appear, was not entitled to notice. *Held*, unlike sec. 6 of rule 35, sec. 13 of rule 4 of the Rules of Court is not mandatory and merely authorizes the inferior court to declare the defendant in default. Since no such declaration was made prior to the second date set for hearing, all subsequent proceedings were void for lack of requisite notice. PEOPLE'S SURETY AND INSURANCE CO., INC. *v.* LIMCACO, G. R. No. L—12170, April 18, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—COSTS NOT ASSESSED BY THE CLERK OF COURT ARE IMPROPERLY TAXED, AND A SALE ON EXECUTION BASED ON SUCH COSTS IS NULL AND VOID. — In Civil Case No. 564, the Court of Appeals rendered a decision giving Dasalla and others the right to recover from Romulo and two others the possession of the property in litigation "with costs." Dasalla then petitioned the lower court for a writ of execution, to which petition was attached a bill of costs which he asked the defendants Romulo and others to pay jointly and severally. A writ of execution was issued. To satisfy the payment of the costs, two parcels of land belonging to Romulo were attached and sold at public auction. Thereafter Romulo sold these same parcels of land to Desquitado. At the expiration of the period of redemption, Dasalla was issued by the sheriff an absolute deed of sale which was duly registered. Defendant Romulo filed motions for reconsideration which were denied by the lower court. On appeal he raised the following point: Were the costs for the satisfaction of which the sale was executed properly taxed? *Held*, For the costs to be properly taxed, the provision of sec. 8, rule 131 must be strictly followed. The costs were improperly taxed because they were not assessed by the clerk of court Therefore, the execution was null and void. ROMULO *v.* DASALLA, G. R. No. L—13153, May 30, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—THE COURT OF ORIGIN TO WHICH A CASE HAS BEEN REMANDED HAS THE DUTY TO NOTIFY THE PARTIES OF THE RECEIPT OF THE CASE IN ORDER TO REACQUIRE JURISDICTION. — A shipment of one case of machine knives from Henry W. Peabody & Co. of California consigned to the Central Sawmill Inc. of Manila was insured by the plaintiff. Discharged into the custody of the defendant contractor and operator of the arrastre service at the Port of Manila, the shipment was not delivered to the consignee, giving rise to the liability of the insurance company. The insurance company filed the present case. The defendant filed a motion to dismiss which was granted. On appeal, the case was remanded to the court of origin for the further proceedings. The counsel for the plaintiff was notified of the remanding of the case and its receipt by the court of origin but not the defendant nor his counsel. For failure to answer, the defendant was declared in default and judgment was rendered against him after hearing. Neither counsel nor defendant was notified of the motion for default nor of the decision of the court. *Held*, the court of origin whose case is taken to a higher court on appeal and which case is later remanded to it for further proceedings has the duty to notify the parties of the receipt

of said case before resuming the interrupted proceedings. It is only through the notification that the court of origin, to which a case is remanded, re-acquires jurisdiction over an appealed case. INSURANCE OF NORTH AMERICA *v.* PHILIPPINE PORTS TERMINAL, G. R. No. L—14133, April 18, 1960.

REMEDIAL LAW—CIVIL PROCEDURE—THE JURISDICTION OVER THE LIABILITY OF ARRASTRE CONTRACTORS BELONGS TO THE ORDINARY COURTS OF JUSTICE AND NOT TO ADMIRALTY COURTS. — Defendant, an operator of a pier service, received sixty-eight cartons of paint from plaintiff for transshipment to Iloilo. At the time of loading, defendant delivered only fifty-nine cartons but offered nine cartons to make up for the shortage which the consignee refused. Plaintiff as a result of the transaction sustained losses amounting to not less than ₱300.00. When the case was filed, a motion to dismiss was interposed on the ground that the Court of First Instance had no jurisdiction over the subject matter, it being less than ₱2000.00. Plaintiffs contended that the case called for the exercise of admiralty maritime jurisdiction which is lodged in the Court of First Instance. *Held,* the case at bar does not deal with any maritime matter nor with the administration and application of maritime law. The defendant's duty is like that of any depositary—to take good care of said goods and to turn them over to the person entitled to possession. The issues raised by the pleadings, as to whether the defendant had fully discharged the obligation to deliver the cartons and if not, the amount of indemnity due the plaintiff, does not require the application of any maritime law and cannot affect either navigation or maritime commerce. MACONDRAY & CO. INC. *v.* DELGADO BROS. INC., G. R. No. L—13118 April 28, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — APPEAL IS THE PROPER REMEDY TO A DECISION OF THE AUDITOR GENERAL WHERE THE AGGRIEVED PERSON IS A PRIVATE INDIVIDUAL, AND NOT MANDAMUS. — Gaudencio Lacson was laid off as acting department manager and administrative officer of the NAMARCO on December 31, 1955 due to the reorganization of the NAMARCO pursuant to R. A. 1345. In addition to the retirement insurance benefits received, he also filed a claim for gratuity equivalent to one month salary for every year of service under sec. 18 (b), par. (3) of Rep. Act 1345. The Auditor General denied his claim. Subsequently, Lacson filed a petition for mandamus against the Auditor General. The respondent filed a motion to dismiss for lack of jurisdiction. *Held,* the petition for mandamus against the Auditor General is in effect an appeal from the latter's decision denying his claim for gratuity which appeal therefore should have been made to this court within thirty days from notice of the decision. As the law stands now, decisions of the Auditor General in cases affecting an executive department, bureau, or office of the Government may be appealed directly to the President whose action shall be final, while those where the aggrieved party is a private person or entity are appealable to the Supreme Court. Consequently, the petition for mandamus must necessarily fail. LACSON *v.* AUDITOR, GENERAL G.R. No. L—12538, April 29, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — WHERE THE CLAIMS OR CAUSES OF ACTION IN A SINGLE COMPLAINT ARE SEPARATELY OWNED BY DIFFERENT PARTIES, EACH SEPARATE CLAIM SHALL FURNISH THE JURISDICTIONAL TEST. — The thirty one respondents brought this action before Judge Pasicolan of the CFI of Pampanga. They sought to recover the aggregate amount of ₱4,554.00 for services rendered in the construction of a floodgate plus ₱500.00 for attorneys' fees and not less than ₱10,000.00 by way of actual, moral, consequential, and exemplary damages. However, no individual claim susceptible of exact pecuniary estimation exceeded ₱330.00. The jurisdiction of the court was assailed, but the judge ruled in favor of the respondents. *Held,* where the claims in a single complaint are separately owned by different parties, each separate claim shall furnish the jurisdictional test. This rule was incorporated in sec. 88 of the Judiciary Act by R.A. 2613. Hence, this case falls clearly within the jurisdiction of the Justice of the Peace Courts. PANGILINAN *v.* PASICOLAN, G.R. No. L—13317, April 25, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — THE FAILURE TO APPEAR AT THE PRE-TRIAL MAY BE CONSIDERED AS FAILURE TO PROSECUTE. — Flaviano T. Dalisay, Jr. brought a complaint for ejectment in the Justice of the Peace Court against Lorenzo A. Yutuc. Elena Peralta Vda. de Caina, representing her three children, filed a complaint in intervention. The Justice of the Peace Court, having rendered judgment in favor of plaintiff Dalisay and against the defendant Yutuc and the intervenor, the latter appealed to the Court of First Instance. The Court of First Instance set the case for pre-trial. On the day of pre-trial, neither the intervenor nor her counsel appeared. The court, on the plaintiff's motion, dismissed the complaint in intervention. *Held,* the failure to appear at a pre-trial may be considered as failure to prosecute, which is a ground to dismiss an action under sec. 3, rule 30 of the Rules of Court. PERALTA *v.* REYES, G.R. No. L—15792, May 30, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — AN ACTION FOR THE DELIVERY OF A TRANSFER CERTIFICATE OF TITLE SHOULD BE FILED IN THE COURT OF FIRST INSTANCE OF THE PROVINCE WHERE THE PROPERTY OR ANY PART THEREOF IS SITUATED.—Magdalena Vda. de Ramirez instituted a case in the CFI of Pangasinan against the Magdalena Estate Inc. for the purpose of requiring the latter to deliver the transfer certificate of title covering lot No. 34 situated in Cubao, Q.C. The corporation alleged that its refusal to deliver the transfer certificate was due to the adverse claim of the petitioners herein, the spouses Eusebio Espeneli & Anastacia Mojica, who had similarly demanded the delivery of the said certificate of title. The petitioner filed a motion to dismiss the complaint

upon the ground that the venue had been improperly laid, the property in dispute being located in Quezon City. *Held,* the motion to dismiss is hereby granted. It is not possible for the Court of First Instance of Pangasinan to decide the case without passing upon the claim of the parties with respect to the title and possession of said lot, which claim pursuant to sec. 3 rule 5 of the Rules of Court shall be determined in the province where said property or any part thereof lies. ESPENELI *v.* SANTIAGO, G.R. No. L—14434, April 28, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — THE PARTIES ARE NOT BOUND BY A PRIOR JUDGMENT UNLESS THEY WERE ADVERSARY PARTIES IN SUCH JUDGMENT. — The plaintiff-appellant petitioned for the reopening of this case wherein her relationship with the defendant was declared to be that of sub-lessorship. She claimed that such relationship had already been passed upon by the Court of Appeals in a prior case to be that of partnership. The issue in the prior case was the rental value of the property in question and the action was for the ejectment of Rosario Yulo and Yang Chiao Seng. The issue in this case is the relationship between the plaintiff and the defendant. *Held,* The doctrine of res judicata cannot be invoked in this case, there being no identity of parties nor of issue nor of cause of action. Parties to a judgment are not bound by it in a subsequent controversy between each other, unless they were adversary parties in the original action. YULO *v.* YANG, G.R. No. L—12541, March 30, 1960.

REMEDIAL LAW — CRIMINAL PROCEDURE — DISMISSAL AFTER ARRAIGNMENT ON THE GROUND THAT THE INFORMATION DOES NOT CHARGE ANY OFFENSE IS AN ACQUITTAL. — Charged with estafa, the accused pleaded not guilty and presented a motion to quash on the ground that the facts alleged in the information do not constitute a crime. The court ordered the dismissal of the case. Subsequently, an amended information was filed to which the accused pleaded double jeopardy. The prosecution discounted the defendant's theory alleging that the original information was dismissed with the express consent of the accused. *Held,* the lower court found that the accused could not be found guilty of any offense under the original information. Its judgment therefor was one of acquittal and not of dismissal, and hence the same constitutes a bar to the amended information. PEOPLE *v.* LABATETE, G.R. No. L—12917, April 27, 1960.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PROVINCIAL FISCAL HAS NO EXCLUSIVE RIGHT TO INVESTIGATE A CHARGE. — Sagales lodged a complaint against the petitioners with the provincial fiscal which was given due course and assigned to a special counsel for investigation. Because of the delay in the investigation, the offended party filed the same complaint with the Justice of the Peace. The petitioners alleged lack of jurisdiction on the part of the Justice of the Peace for investigating the case without awaiting the report of the fiscal. *Held,* there is nothing in the law granting a provincial fiscal the exclusive right to investigate a charge, specially when he is guilty of inaction or conduct tending to jeopardize the rights of the offended party. DE LA CRUZ *v.* SAGALES, G.R. No. L—14901, April 25, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—THE PROVISO IN REP. ACT 1289 APPLIES ONLY TO AN INFORMATION FILED IN A COURT OF COMPETENT JURISDICTION.—On March 4, 1955, a complaint for libel was filed in the Justice of the Peace Court of Balayan, Batangas at the instance of Edward Field, a resident of Manila, against the defendants, two of whom are residents of Manila and two of Pangasinan. On June 15, 1955, R.A. 1289 which governs the jurisdiction of courts over libel cases took effect. The libel case was elevated to the CFI of Batangas and a corresponding information was filed on July 8, 1955. The defendants filed a motion to dismiss on the ground that under R.A. 1289 amending Art. 360 of the Revised Penal Code, the complaint should have been filed in the CFI of the province or city where the complainant or any of the accused resides, that is, either in Manila or Pangasinan. The prosecution alleged that R.A. 1289 states that such law is not applicable to actions which "have been filed in court at the time of the effectivity of such law", and since the complaint was filed with the JP court of Balayan on March 4, 1955, R.A. 1289 could not apply. *Held,* the proviso in R.A. 1289 which states that such law is not applicable to actions which "have been filed in court at the time of the effectivity of such law" contemplates the filing of the action with the court of competent jurisdiction. The dismissal is hereby affirmed. PEOPLE *v.* TE, G.R. No. L—11747, March 24, 1960.

REMEDIAL LAW—CRIMINAL PROCEDURE—THE ACCUSED IS NOT ENTITLED TO KNOW IN ADVANCE THE NAMES OF ALL THE WITNESSES FOR THE PROSECUTION. — In an information, Jose Badiable, and three others were charged with murder. At the trial of the case, the counsel for the defense asked the court to order the prosecution to furnish him with a list of all the names of the witnesses for the prosecution which request, the court granted. Subsequently, the defendants filed a motion inviting the attention of the court to the fact that the prosecution had not complied with its order. At the trial, the prosecution called several persons whose names did not appear as witnesses in the information. The court disallowed them from taking the witness stand. *Held,* as provided by sec. 1, rule 112, while the accused is entitled to know the nature and cause of the accusation against him, yet it does not mean that he is entitled to know in advance the names of all the witnesses for the prosecution. The success of the prosecution might be endangered if such right were granted to an accused, for the known witnesses might be subjected to pressure, or coerced not to testify. PEOPLE *v.* PALACIO, G.R. No. L—13933, May 25, 1960.

REMEDIAL LAW — CRIMINAL PROCEDURE — DIRECT ASSAULT IS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURTS OF FIRST INSTANCE. — The accused were charged with "assault upon a person in authority with disturbance of public order" for having attacked and used personal violence upon election inspectors. The Court of First Instance, instead of deciding the case on the merits, remanded it to the Municipal Court for lack of jurisdiction on the ground that the crime committed was that of assault without intent to kill, one of the offenses enumerated in section 87 of the Judiciary Act of 1948. *Held,* while sec. 87 of the Judiciary Act of 1948 provides that the Justice of the Peace Courts have original jurisdiction over cases of "assaults where the intent to kill is not charged or evident upon the trial," this does not include direct assaults defined and penalized under Article 148 of the Revised Penal Code. "Assaults where the intent to kill is not charged or evident upon the trial" apparently refers to crimes against persons under title eight of the Revised Penal Code, while direct assaults are crimes against public order falling under title three of the same code. VILLANUEVA *v.* ORTIZ, G.R. No. L—15344, May 30, 1960. (Reiterating SALVADOR *v.* ANGCOY, G.R. No. L—15122, May 21, 1960.)

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — AN APPEAL FROM A DECISION OF THE MUNICIPAL COURT IN EJECTMENT PROCEEDINGS DOES NOT VACATE SAID DECISION. — The plaintiff filed this action seeking permission to deposit the rentals of the premises they were occupying and an extension of the lease contract. Defendant answered with a petition for ejectment. On April 11, 1959, the municipal court rendered judgment ordering the plaintiffs to vacate the premises occupied by them, and to deposit the rentals of the said premises with the court. In due time, the plaintiff appealed to the Court of First Instance. The defendant filed a petition to execute the judgment because of plaintiff's failure to deposit the rentals or to file a supersedeas bond. The plaintiff contended that the appeal had the effect of vacating said decision, as provided by sec. 9 of rule 40 of the Rules of Court. *Held,* sec. 9 rule 40 applies only to ordinary actions and not to cases of ejectment which are governed by sec. 8 of rule 72. In ejectment cases, the judgment must be executed immediately in order to prevent further damages unless the person ejected files a supersedeas bond. ACIERTO *v.* LAPERAL, G.R. No. L—15966, April 29, 1960.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — A WRIT OF CERTIORARI MAY BE APPLIED FOR ONLY WHEN THERE IS NO APPEAL NOR ANY OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW. — The surety company executed two performance bonds in favor of the Republic of the Philippines to guarantee the faithful discharge by the International Construction and Engineering Co., Inc. of its obligations under two contracts. Later on, several persons, who claimed to have worked in the said construction as laborers and/or employees of the contractor, and to have been illegally dismissed by the latter, instituted an action in the Court of Industrial Relations against the

contractor and the surety for the alleged unpaid wages and one month separation pay. The CIR rendered a decision against the contractor and the surety which became final and executory. The CIR issued an alias writ of execution, and in pursuance thereof, the sheriff caused the office supplies and other properties of the surety to be distrained and levied upon and threatened to sell said property. The surety sought a writ of certiorari upon the theory that the decision and the alias writ of execution were null and void because the CIR had no jurisdiction to take cognizance and decide the said case. *Held,* a writ of certiorari may be applied for only when there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. The surety, being a defendant in the case before the CIR, could have appealed from its decision. Yet, the surety did not appeal. It even satisfied part of its obligation under the decision by making several payments. Therefore, the writ asked for cannot be granted. Phil. SURETY AND INSURANCE CO. *v.* CIR, G.R. No. L—12766, May 25, 1960.

REMEDIAL LAW — SPECIAL PROCEEDINGS — THE FILING OF A CLAIM AGAINST A DECEASED SOLIDARY DEBTOR IS NOT A CONDITION PRECEDENT FOR THE FILING OF AN ORDINARY ACTION AGAINST THE OTHER SURVIVING SOLIDARY DEBTORS. — In a civil case, the lower court seized the truck of the defendant Antolin Torralba. He filed a bond of ₱10,000.00 subscribed by the petitioner as security for the return of the truck. An indemnity agreement was made in favor of the surety company, by Torralba as principal and Antonio Villarama and Florante Roque as sureties. Petitioner paid the plaintiff Uy Han when the defendant lost in the civil case. The surety company demanded reimbursement from Villarama and Roque only, as sureties in the counterbond, because Torralba died and was dropped from the complaint. The respondents contended that the claim, being a money claim, should have been presented in the estate proceedings of the deceased Torralba, and for failure of the petitioner to do so, the complaint against them should be dismissed. *Held,* rule 87, sec. 6 of the Rules of Court provides for the procedure should the creditor desire to go against the deceased debtor, but there is nothing in the said provision making compliance with such procedure as a condition precedent before an ordinary action against the surviving solidary debtors can be filed, should the creditor choose to demand payment from the surviving solidary debtors. And art. 1216 of the Civil Code expressly allows the creditors to proceed against anyone of the solidary debtors, or some, or all of them simultaneously. MANILA SURETY AND FIDELITY CO., INC. *v.* VILLARAMA, G. R. No. L—12165, April 29, 1960.

REMEDIAL LAW — SPECIAL PROCEEDINGS — AFTER THE LAPSE OF ONE YEAR FROM THE DATE OF THE FIRST PUBLICATION OF NOTICE, BUT PRIOR TO THE DISTRIBUTION OF THE ESTATE, A CLAIM AGAINST THE ESTATE CAN STILL BE FILED, PROVIDED THAT THE CONDITIONS IN SEC. 2 OF RULE 87 ARE COMPLIED WITH. — Apolinario de Guzman filed a claim for ₱10,000.00 in the settlement of the intestate estate of Arsenio Afan. The administratrix of the said estate objected to the consideration of the claim on the ground that it had been filed