CASE DIGEST

SUPREME COURT

CIVIL LAW—CIVIL REGISTER—STATEMENTS IN A BIRTH CERTIFICATE ENTERED IN THE CIVIL REGISTER RELATIVE TO THE IDENTITY OF THE FATHER OF A CHILD ARE NULL AND VOID IF THE ALLEGED FATHER HAS NOT SIGNED THE INSTRUMENT. — Joaquin P. Roces filed a petition before the CFI of Manila praying that corrections be made on the birth certificate registered with the local civil registrar of Manila by striking out from said document all informations having reference to him as father of the child Ricardo Joaquin V. Roces and the surname "Roces" appended to the name of the child be also striken from the aforesaid records. The minor, represented by his mother, opposed the petition on the ground that it involves not merely correction of clerical errors but controversial matters. The lower court rendered decision dismissing the petition. Hence, this appeal. **Held,** it appearing on the face of the birth certificate that the appellant has not signed the instrument, statements made therein relative to the identity of the child's father are null and void and expressly violate the law. Consequently the local civil registrar has no authority to incorporate said unlawful statements in the corresponding entry made by him. ROCES *v.* THE LOCAL CIVIL REGISTRAR OF MANILA, G. R. No. L-10598, Feb. 14, 1958.

CIVIL LAW — CIVIL REGISTER — ENTRIES IN THE CIVIL REGISTER CAN BE CORRECTED ONLY IF THE ALLEGED MISTAKES ARE CLERICAL IN NATURE AND NOT THOSE THAT WOULD AFFECT THE STATUS, NATIONALITY OR CITIZENSHIP OF THE PERSON INVOLVED. — On April 5, 1954, a baby boy was born to Virginia Ansaldo, herein appellant, and Henry Wang, a Chinese. It was stated on the birth certificate that the child's nationality is chinese. On Feb. 10, 1956, the herein appellant filed a petition before the CFI of Manila praying for the correction of the birth certificate, seeking to change the word "Chinese" under the child's name and opposite the word "Nationality", in the birth certificate, to the word "Filipino". The Solicitor General opposed the petition of the herein appellant. The lower court issued an order denying the petition. Hence this appeal. **Held,** the clerical errors which might be corrected thru judicial sanction under Article 412 of the New Civil Code would be those harmless and innocuous changes. To effect changes on matters which may have a bearing and effect on the status, citizenship or nationality of the parties concerned, it is necessary that a proper suit be filed where not only the State but all persons concerned are joined as parties so that any order or decision in the case may be made with due process of law and on the basis of the facts proven. VIRGINIA ANSALDO *v.* REPUBLIC OF THE PHILIPPINE, G. R. No. L-10226, Feb. 14, 1958.

CIVIL LAW — DAMAGES — OFFICERS OR AGENTS OF THE GOVERNMENT CHARGED WITH THE PERFORMANCE OF LEGISLATIVE OR QUASI-JUDICIAL DUTIES, WHEN ACTING WITHIN THE SCOPE OF THEIR AUTHORITY, ARE NOT LIABLE FOR THE CONSEQUENCES OF THEIR OFFICIAL ACTS, UNLESS THEY ACTED WILLFULLY AND MALICIOUSLY AND WITH THE EXPRESS PURPOSE OF INFLICTING INJURY UPON THE PLAINTIFF. — The complaint for libel filed by the plaintiff against the Governor of Rizal and the staff members of the Philippine Free Press was dismissed by the defendant fiscal after his investigation revealed that there was no **prima facie** case, and that the statements were made in good faith and for public interest. Consequently, the plaintiff, invoking Article 27 of the New Civil Code, instituted this action to recover moral and pecuniary damages for failure to discharge an official duty without just cause. **Held,** the fiscal's refusal to prosecute the case because of insufficiency of evidence to establish a **prima facie** case is a refusal with just cause. In such cases, the fiscal has the duty to dismiss the complaint. Vested with authority and discretion to determine the merits of a complaint, the fiscal cannot be subjected to the dictates of the offended party. ZULUETA *v.* NICOLAS, G. R. No. L-8252, Jan. 31, 1958.

CIVIL LAW — DAMAGES — UNDER THE CIVIL CODE OF 1889, MORAL AND CORRECTIVE DAMAGES ARE NOT RECOVERABLE EXCEPT AS CONCOMITANT TO PHYSICAL INJURIES. RECOVERY UNDER THE NEW CIVIL CODE CANNOT BE MADE TO APPLY RETROACTIVELY IN VIEW OF ITS PUNITIVE CHARACTER IN ACCORDANCE WITH ARTICLE 2257. — The plaintiffs in a previous case filed an action for the partition of several lots plus damages because of the defendants' refusal to recognize the former's rights and failure to account for and deliver the plaintiffs' share in the crops obtained from 1941-42 and 1946-47. The court ordered the partition, but denied the recovery of damages for failure to prove exact and actual damages. The present case was instituted to recover moral and exemplary damages due to the suffering, anguish and anxiety caused by the defendants' refusal to partition the property, and to deliver the plaintiffs' share of the crops for the period covering 1947 to 1955. **Held,** under the Civil Code of 1889, moral and corrective damages are not recoverable except as concomitant to physical injuries. Recovery under the New Civil Code cannot be made to apply retroactively in view of its punitive character in accordance with Article 2257. RAMOS *v.* GUANZON, G. R. No. L-10423, Jan. 21, 1958.

CIVIL LAW — DONATIONS — UNDER ARTICLES 1305 AND 1306 OF THE CIVIL CODE OF 1889, THE NULLITY OF CONTRACT DUE TO AN ILLEGAL CONSIDERATION OR SUBJECT MATTER, WHEN EXECUTED (AND NOT MERELY EXECUTORY), DOES NOT PRODUCE THE EFFECT OF BARRING ANY ACTION BY A GUILTY PARTY TO RECOVER WHAT IT HAS ALREADY GIVEN UNDER THE CONTRACT. — Conchita Liguez filed this action seeking to recover the possession of property donated to her during her minority by Salvador Lopez, defendants' predecessor-in-interest. Inasmuch as the contract was tainted by an illicit cause, the defendants contended that the donation was null and void, thereby producing no effect whatever. As secondary defenses, defendants claimed that what may preclude the donor from setting up the defense of illegality cannot preclude the heirs, and that the **pari delicto** rule should be applied. **Held,** Under Articles 1305 and 1306 of the Civil Code of 1889, the nullity of the contract due to an illegal consideration or subject matter, when executed (and not merely

executory), does not produce the effect of barring any action by a guilty party to recover what it has already given under the contract. The **pari delicto** rule should not apply, because the guilt of a minor should not be judged with severity equal to the guilt of an adult, since minors occupy a privileged position in law. LIGUEZ *v.* COURT OF APPEALS, G. R. No. L-11240, Feb. 13, 1958.

CIVIL LAW — EASEMENTS — THE EASEMENT OF A RIGHT OF WAY CANNOT BE ACQUIRED BY PRESCRIPTION. — The plaintiffs have been in the continuous and uninterrupted use of a road which traversed the land of the defendants for more than twenty years, long recognized and respected by the defandants' predecessor-in-interest. On May 12, 1953, the defendants constructed a chapel on the middle of the right of way and a year later the way was completely closed by means of fences. The plaintiffs claimed that they have acquired the easement of right of way over the land of the defendants thru prescription by the continuous and uninterrupted use of the same. The lower court dismissed the complaint. Hence this appeal. **Held,** under Articles 620 and 622 of the New Civil Code, continuous and apparent easements are acquired either by title or prescription, continuous non-apparent easements and discontinuous ones whether apparent or not, may be acquired only by virtue of a title. The easement of a right of way is a discontinuous one, and therefore cannot be acquired by prescription. RONQUILLO *v.* ROCO, G. R. No. L-10619. Feb. 28, 1958.

CIVIL LAW — A MATERIAL MAN'S LIEN FOR THE VALUE OF MATERIALS USED IN THE CONSTRUCTION OF A BUILDING ATTACHES TO SAID STRUCTURE ALONE AND DOES NOT EXTEND TO THE LAND ON WHICH IT ADHERES. — Petitioner entered into a verbal agreement with the respondent to supply the latter for the construction of a theater for the Plaza Theater Inc. It was agreed by the parties that such obligation was personally assured by respondent Orosa and payment would be made on demand. Petitioner Lopez delivered from May 17, 1946 up to Dec. 4, 1946 materials amounting to ₱62,285.85 of which only ₱20,848.50 was paid. The building was constructed on land belonging to Orosa and which was acquired on Sept. 25, 1946 by the corporation for ₱6,000.00. Upon demand by Lopez, Orosa with the consent of the former mortgaged the properties of the Plaza Theater, Inc. Unknown to Lopez however said properties were already mortgaged with the PNB as early as Nov. 1946 for ₱30,000.00 with the Luzon Surety Co. as surety. The corporation in turn mortgaged with the surety the properties as counter-security. The land on which the building was constructed was not registered under the Torrens System, so that the mortgage was registered under Act 3344 on Nov. 16, 1946. Subsequently the corporation acquired a torrens title for the land on Oct. 25, 1947 without any encumbrance appearing thereon. Upon demand for payment by petitioner respondent executed a "deed of assignment" for 420 shares of stock in the Plaza Theater, Inc. valued at ₱42,000.00. Petitioner brought this action for the payment of the obligation. Orosa's defense was that the obligation was personal and upon petitioner's acceptance of 420 shares as direct security. Petitioner waved his right to recover any deficiency in the obligation. The corporation made a similar defense and added that they bought the materials in good faith from Orosa and that

since the corporation existed only on Oct. 14, 1946 it could not have incurred obligations prior to that date. The trial court ordered respondent to pay jointly the unpaid balance of the costs of the materials used for the building, thereby, granting petitioner a material man's lien. **Held,** art. 1923 paragraph 5 of the Spanish Code in granting refection "to the movables on which it is made" does not delimit such refection to the land. Immovables include building, irrespective of whether or not said structure and the land belong to the same owner. An analysis of the provisions of the Civil Code reveals that the law gives preference to unregistered refectionary credits only with respect to the real estate on which the refection is made. LOPEZ *v.* OROSA, G.R. No. L-11264, Feb. 28, 1958.

CIVIL LAW — MORAL DAMAGES — THE SOCIAL AND FINANCIAL STANDING OF THE OFFENDER AND THE OFFENDED PARTY ARE ADDITIONAL ELEMENTS WHICH SHOULD BE TAKEN INTO CONSIDERATION IN THE DETERMINATION OF MORAL DAMAGES. — Dominding, owner of a mango store, and Arañas, his manager brought an action against Trinidad Ng and her husband to recover the value of 400 baskets of mangoes claimed to have been delivered on May 25, 1953. Allegation is made in the complaint that the purchasers had agreed to pay the following day but that they failed to do so. In answer the defendants alleged that only 150 baskets were taken and that these were to be paid for, according to the understanding between the parties, when the price of the mangoes exported had been collected. The defendants also put up a counterclaim against Arañas for the amount of ₱50,000 as moral damages for the indignities to which Trinidad Ng was subjected by Arañas, for ₱10,000 as exemplary damages, and for ₱1,000 as attorney's fees. The lower court sentenced the defendants to pay the value of 150 baskets of mangoes on the plaintiff's complaint; but, on the other hand, plaintiff Arañas was sentenced to pay to the defendant the sum of ₱50,000 as moral damages, and ₱1,000 as attorney's fees. Arañas appealed. **Held,** moral damages are to be fixed in the discretion of the judge. The social and financial standing of the offender and the offended party are additional elements which should be taken into account in the determination of the amount of moral damages. Considering the circumstances of the case, ₱1,000 should be sufficient as moral damages, but the offender should be required to pay punitive damages in the amount of ₱2,000 because of his act in abusing the confidence of a customer belonging to the weaker sex, which bespeaks of a perverse nature dangerous to the community. DOMINGDING *v.* NG, G. R. No. L-10872, Feb. 28, 1958.

CIVIL LAW — NATURALIZATION — MAKING FALSE STATEMENTS ON MATERIAL MATTERS IN THE PETITION FOR NATURALIZATION INDICATES THAT THE APPLICANT'S CHARACTER HAS NOT BEEN IRREPROACHABLE AND REFLECTS AGAINST HIS MORAL CHARACTER. — Sy Chhut alias Tan Bing Tiong alleged in his petition for naturalization that he had not been convicted of any crime and that he had conducted himself in a proper and irreproachable manner during his entire stay in the Philippines in his relations with the constituted government. However, the record showed that he had been charged and convicted of the crime of constructing a building without a permit. The lower court found that Tan Bing Tiong did not possess the other qualifica-

tions for naturalization, and denied his petition for naturalization. **Held,** making false statements on material matters in the petition for naturalization indicates that the applicant's character has not been irreproachable and reflects against his moral character. SY CHHUT *v.* REPUBLIC, G. R. No. L-10202, Jan. 8, 1958.

CIVIL LAW — NATURALIZATION — THE WITNESS' KNOWLEDGE OF THE APPLICANT FOR NATURALIZATION NEED NOT BE FOR FIVE CONTINUOUS YEARS. A RESULTANT PERIOD OF ACQUAINTANCE OF AROUND SIX YEARS, THOUGH NOT CONTINUOUS IS MORE THAN SUFFICIENT TO SATISFY THE REQUIREMENT OF LAW. — Subieng filed this petition for naturalization in the Court of First Instance of Cebu. The petition was opposed by the government on the ground that the petitioner was not morally irreproachable, was anti-Filipino, and has not evinced a sincere desire to become a Filipino citizen. After hearing, the court granted the petition, and the government appealed. **Held,** the petitioner has complied with Section 5 of the Naturalization Law by satisfactorily proving that he was born in the Philippines and that he has resided continuously in the Philippines for a period of more than 30 years. The witness' knowledge of the petitioner need not be for five continuous years. A resultant period of six years, though not continuous is more than sufficient to satisfy the requirement of law. The sarcastic remarks uttered by the petitioner against the government cannot be given importance, this being a country where free expression is encouraged. YAP SUBIENG *v.* REPUBLIC, G. R. No. L-10234, Jan. 24, 1958.

CIVIL LAW — OBLIGATIONS — IF THE LOAN WAS EXPRESSLY AGREED TO BE PAYABLE ONLY AFTER THE WAR OR AFTER LIBERATION, OR BECAME PAYABLE AFTER THOSE DATES, NO REDUCTION COULD BE EFFECTED, AND PESO-FOR-PESO PAYMENT SHALL BE ORDERED IN PHILIPPINE CURRENCY. — In the intestate estate of Luther Young and Pacita Young, who died in 1954 and 1952 respectively, Pacifica Jimenez presented for payment four promissory notes signed by Pacita for different amounts totalling twenty-one thousand pesos. All the promissory notes were executed during the Japanese occupation "payable six months after the war". Acknowledging receipt by Pacita during the occupation, in the currency then prevailing, the administrator manifested willingness to pay provided adjustment of the same be made in line with the Ballantyne schedule. The claimant objected to the adjustment insisting on full payment in accordance with the notes. The lower court rendered judgment in favor of the plaintiff. Hence this appeal. **Held,** if the loan could be paid during the Japanese occupation, the Ballantyne schedule should apply with corresponding reduction of the amount. However, if the loan was expressly agreed to be payable only after the war or after liberation, or became payable after those dates, no reduction could be effected, and peso-for-peso payment shall be ordered in Philippine currency. JIMENEZ *v.* BUCOY, G. R. No. L-10221, Feb. 28, 1958.

CIVIL LAW — PERSONS — IN CASES OF COMPULSORY ACKNOWLEDGMENT, THE CIVIL CODE ONLY REQUIRES A DECLARATION BY THE COURT OF THE CHILD'S STATUS AS A NATURAL CHILD OF THE PARENT, WHO, IF LIVING, WOULD BE COMPELLED TO RECOGNIZE THE OFFSPRING AS SUCH.—Edward Christensen, an American citizen, was the manager of the Mindanao Estates in Davao and lived with a young girl named Bernarda Camporedondo. They lived together as husband and wife for thirty years without the benefit of marriage. Out of said relation, two children, Maria Helen and Maria Lucy Christensen were allegedly born. However, upon Christensen's death, he stated in his will that he had but one child, Maria Lucy; that Maria Helen, although bearing his name, was not his child. He provided that Helen would get ₱3,600.00, Camporedondo ₱1,000.00 and the rest of his properties would go to Lucy. He named Aznar as executor of his last will and testament. Oppositions to the probate of the will were separately filed by Maria Helen and Bernarda Camporedondo. Furthermore, Maria Helen filed a motion to be declared as the natural child of Edward Christensen, because she had been in the continuous possession of the status of a natural child of the deceased. The lower court found that Maria Helen had been in the continuous possession of the status of a natural child and ordered Maria Lucy to recognize Helen as such natural child. With regard to Camporedondo, the lower court found that she was entitled to one-half of the property of the deceased under Article 144 of the New Civil Code. Hence this appeal. **Held,** in cases of compulsory acknowledgment, the Civil Code only requires a declaration by the court of the child's status as a natural child of the parent, who, if living, would be compelled to recognize the offspring as such. Under the Old Civil Code, when a man and woman, not suffering from any impediment to contract marriage, live together as husband and wife, an informal civil partnership exists, and each of them has an interest in the properties acquired during said union and is entitled to participate therein if said properties were the product of their joint efforts. Camporedondo, being illiterate, could not have contributed anything to the properties acquired by Christensen. Article 144 of the New Civil Code is applicable only to property aquired after the effectivity of Republic Act No. 386 and cannot be given retroactive effect to govern those already possessed before August 30, 1950. DANEY *v.* GARCIA, G. R. No. L-11483-4, Feb. 14, 1958.

CIVIL LAW — PRESCRIPTION — AS LONG AS THE OTHER HEIRS ACKNOWLEDGE THEIR CO-OWNERSHIP OR DO NOT SET UP ANY ADVERSE TITLE TO THE PROPERTY, PRESCRIPTION IS UNAVAILABLE. — Plaintiffs were grandchildren of Rosendo Cordova with his first wife, Juana Zabala with the execption of Josefa Casten and Rita Besaner, while defendants were children of Rosendo with his second wife, Potentiana Mirasol. Juana died ahead of her husband Rosendo who in turn died in 1918 while his second wife died in 1927. The plaintiffs in their complaint filed in 1955 alleged that after the death of Rosendo in 1918, his widow, Potentiana, took possession of the real properties which were acquired during their marital life and duly registered in their name in the Office of the Register of Deeds of Iloilo, and enjoyed its produce up to her death in 1927 at which date defendants with the evident intention of defrauding the other heirs of Rosendo of their share from the one-half of the conjugal estate, continued the possession and enjoyment of the properties in question to the prejudice of said heirs, and consequently plaintiffs as heirs of Rosendo demanded partition of the properties in accordance with law but defendants refused. Defendants filed a motion to dismiss the complaint on the ground, among others, that the cause of action had already

prescribed, it appearing that plaintiffs' right to the properties accrued in 1918 and they instituted the present action only in 1955. Plainiffs opposed the motion on the ground that the action, being one of partition by one heir against another, cannot be the subject of prescription. The lower court sustained defendants' motion. Hence, this appeal. **Held,** as long as the other heirs acknowledge their co-ownership or do not set up any adverse title to the property, prescription is unavailable. Tested under the above principle, the pleadings herein do not allege enough facts indicative of adverse possession on defendants' part which may serve as a basis for a claim of prescription; for while it is arrived that defendants used and enjoyed possession of the properties since 1927, they have done so, however, with the intention to defraud the other heirs and to deprive them of their legitimate share and participation. There is another aspect that may be considered. Since defendants held the properties merely as heirs and the deprivation of plaintiffs' share was due to fraud, they cannot now set up the defense of prescription, for there is created between them a relation of trust which extends protection to the **cestui que** trust and gives him the right to recover the property regardless of the lapse of time. CORDOVA, *v.* CORDOVA, G. R. No. L-9936, Jan. 14, 1958.

CIVIL LAW — PROPERTY — A PERSON, WHO, RECOGNIZING THE OWNER'S RIGHT TO GET BACK HIS PROPERTY, MAKES IMPROVEMENTS THEREON AFTER HE HAD BEEN ASKED EXTRAJUDICIALLY AND JUDICIALLY TO SURRENDER AND RETURN ITS POSSESSION, ACTS IN BAD FAITH AND FORFEITS HIS IMPROVEMENTS WITHOUT RIGHT TO REIMBURSEMENT THEREFOR. — Felices was the grantee of a homestead patent. In 1949, he conveyed in a conditional sale to defendant a portion of his homestead for ₱1,700.00. Two years after the sale, the plaintiff tried to recover the land in question from the defendant, but the latter refused to allow it unless he was paid the amount of ₱2,000.00 as the alleged value of the improvemnts he had introduced on the property. In view of the defendant's persistent refusal, the plaintiff deposited the received price in court and filed this action. The improvements were found to have been made either after the plaintiff had informed the defendant of his intention to recover the land or during the pendency of the action in the lower court. The lower court held that the defendant was in bad faith and not entitled to reimbursement for his improvements. Hence this appeal. **Held,** a person, who, recognizing the owner's right to get back his property, makes improvements thereon after he had been asked extrajudicially and judicially to surrender and return its possession, acts in bad faith and forfeits his improvements without any right to reimbursement therefor. FELICES *v.* IRIOLA, G. R. No. L-11269, Feb. 28, 1958.

CIVIL LAW — PROPERTY — UNDER THE LAW, A PERSON OCCUPYING THE PROPERTY OF ANOTHER IS DEEMED TO BE A POSSESSOR IN GOOD FAITH AND THAT HE WHO ALLEGES BAD FAITH ON THE PART OF THE POSSESSOR HAS THE BURDEN OF PROOF. — Plaintiffs filed a complaint, alleging that they were the owners of a certain lot, that they had abandoned said lot and the defendants without their knowledge and consent, administered said lot by leasing the same to several tenants and collected rental thereon. The defendant answered that he was a possessor in good faith, because he bought a parcel

of land adjacent to the plaintiffs' lot and he thought that it was included in the parcel he bought. The defendant alleged that being in good faith, he was entitled to the fruits received by him. The lower court dismissed the action. **Held,** under the law, a person occupying the property of another is deemed to be a possessor in good faith and that he who alleges bad faith on the part of the possessor has the burden of proof. In the present case, the defendant claimed good faith alleging that the lot in question was adjacent to his, and he believed in good faith that it formed part of it. This claim was not disproved by the plaintiffs, neither did they submit evidence to show bad faith on the part of the defendant. As a possessor in good faith, the defendant was entitled to the fruits received by him, until he was advised by the plaintiffs that the lot belonged to them. LABAJO *v.* ENRIQUEZ, G. R. No. L-11093, Jan. 27, 1958.

CIVIL LAW — SALES — IF THE OPTION IS GIVEN WITHOUT CONSIDERATION, IT IS A MERE OFFER OF A CONTRACT OF SALE, WHICH IS NOT BINDING UNTIL ACCEPTED. IF, HOWEVER, ACCEPTANCE IS MADE BEFORE A WITHDRAWAL OF THE OFFER, IT CONSTITUTES A BINDING CONTRACT OF SALE EVEN THOUGH THE OPTION WAS NOT SUPPORTED BY A SUFFICIENT CONSIDERATION. — The plaintiff offered to sell 1,000 cartoons of sardines to Chua Hian Tek. The latter accepted the offer unconditionally and delivered his letter of acceptance. However, due to shortage of the catch of sardines by the packers of California, Atkins Kroll & Co. falied to deliver the commodities it offered for sale. An action was then filed for damages. The petitioner alleged that there was no contract of sale, but only an option to buy, which was not enforceable for lack of a consideration distinct from the price in accordance with Article 1479 of the New Civil Code. The CFI and the Court of Appeals rendered judgment against the petitioner. Hence this appeal. **Held,** if the option is given without consideration it is a mere offer of a contract of sale, which is not binding until accepted. If, however, acceptance is made before a withdrawal of the offer, it constitutes a binding contract of sale even though the option was not supported by a sufficient consideration. ATKINS KROLL & CO. *v.* CHUA HIAN TEK, G. R. No. L-9871, Jan. 31, 1958.

COMMERCIAL LAW — GENERAL BONDED WAREHOUSE ACT — A RICE MILL HOUSED IN A "CAMARIN" IS WITHIN THE PURVIEW OF THE TERM "WAREHOUSE" UNDER THE 'GENERAL BONDED WAREHOUSE ACT' (ACT 3893) AND THE OWNER THEREOF IS LIABLE UNDER THIS LAW FOR FAILURE TO SECURE LICENSE FROM THE BUREAU OF COMMERCE.—Dionisio Versola was charged in the Cotabato Court of First Instance of violating Sec. 3 of the General Bonded Warehouse Act (Act 3893). It was shown that defendant owned and operated a rice mill housed in a 'camarin' 6 by 8 meters and with wooden posts, partition walls and cogon roof. The undisputed evidence showed that in January, 1951 and prior thereto, he accepted and milled palay in his camarin and charged therefor from ₱0.50 to ₱0.80 per cavan without securing the necessary license from the Bureau of Commerce as required under Sec. 3 of Act 3893. Convicted, Versola appealed, maintaining that his mill was not subject to the provisions of Act 3893 as the camarin was used for milling purposes only and not for storage and deposit of palay, and that small quantities of this commodity brought to his mill were never kept therein for over one hour. **Held,** Sec-

tion 2 of Act 3893 provides that "x x 'warehouse' shall be deemed to mean every building, structure, or other protected inclosure, in which rice is kept for storage. The term 'rice' shall be deemed to mean either palay, in bundles or in grains, or cleaned rice, or both. x x x For the purpose of this Act, the business of receiving rice for storage shall include x x any contract or transaction wherein the rice delivered is to be milled for and on account of the owner thereof." Defendant's rice mill house in a camarin falls, therefore, within the purview of **'warehouse'** under Act 3893. PEOPLE *v.* VERSOLA, G. R. No. L-5707, March, 27, 1958.

COMMERCIAL LAW — INSURANCE — THE STIPULATION IN A LIFE INSURANCE POLICY GIVING THE INSURED THE PRIVILEGE TO REINSTATE IT UPON WRITTEN APPLICATION DOES NOT GIVE THE INSURED ABSOLUTE RIGHT TO SUCH REINSTATEMENT BY MERE FILING OF AN APPLICATION. — Plaintiff and his wife applied for insurance for P5,000 to which the defendant issued the corresponding policy. The policy provides that the premiums shall be paid semi-annually. The subscribers failed to pay the premium for the third semester by virtue of which, the company notified them that the policy has lapsed and are given sixty days to file an application for reinstatement. The plaintiff sent a one-hundred peso money order with sixty five pesos more balance. The plaintiff failed to pay the other due accounts until the wife died without the lapsed policy being reinstated. This is now an action by the plaintiff for the amount of the policy. **Held,** the company has the right to deny the reinstatement if it is not satisfied as to the insurability of the insured and if the latter does not pay all overdue premiums and all other indebtedness to the company. After the death of the insured, the insurance company cannot be compelled to entertain an application for reinstatement of the policy because the conditions precedent to reinstatement can no longer be determined and satisfied. ANDRES *v.* CROWN LIFE INSURANCE CO., G. R. No. L-10874, Jan. 28, 1958.

COMMERCIAL LAW — PRIVATE CORPORATIONS — THE POWER OF A CORPORATION TO SUE AND BE SUED IS LODGED IN THE BOARD OF DIRECTORS WHICH EXERCISES ITS CORPORATE POWERS, AND NOT IN THE PRESIDENT. WHEN THE OTHER MEMBERS OF THE BOARD, WHO SHOULD NORMALLY INITIATE THE ACTION TO PROTECT THE CORPORATE PROPERTIES AND INTERESTS, ARE THE ONES TO BE ADVERSELY AFFECTED THEREBY, A SINGLE STOCKHOLDER UNDER SUCH CIRCUMSTANCES MAY SUE IN BEHALF OF THE CORPORATION. — On May 6, 1955, the Republic of the Philippines in representation of the Bureau of Prisons brought an action against Macario Apostol for the collection of the unpaid balance of an obligation contracted by said Apostol in favor of the Bureau of Prisons. On July 19, 1955, the Philippine Resources Development Corporation moved to intervene, alleging that Apostol, while president of said corporation, without the knowledge and consent of the stockholders thereof, delivered goods belonging to said corporation to the Bureau of Prisons in payment of his personal debts. The corporation was represented by its secretary-treasurer who was a member of the board of directors. The Government alleged that the powers of the corporation to sue and be sued is lodged in the president. The Court of Appeals rendered judgment against the petitioner. Hence this appeal. **Held,** the power of a corporation to sue and be sued is lodged in the board of directors which exercises its corporate powers, and not in the president. When the other members of the board, who should normally initiate the action to protect the corporate properties and interest, are the ones to be adversely affected thereby, a single stockholder under such circumstances may sue in behalf of the corporation. REPUBLIC *v.* COURT OF APPEALS, G. R. No. L-10141, Jan. 31, 1958.

COMMERCIAL LAW — TRANSPORTATION — WHERE THE FERRY SERVICE PROPOSED IS BETWEEN TWO MUNICIPALITIES AND SERVES AS A CONTINUATION BY WATERCRAFT OF A NATIONAL HIGHWAY, LOCAL AUTHORIZATION IF NEEDED SHOULD MORE PROPERLY COME FROM THE PROVINCIAL BOARD.—For the operation of a ferry service across the Cagayan River, two applications were filed with the Public Service Commission: one by Carillo who proposed to operate between barrio Mabangug, Municipality of Aparri and barrio Alinunu, municipality of Camalaningan, and the other by Remigio between barrio Mabangug, municipality of Aparri and barrio Catotoran, municipality of Camalaningan. The purpose of both ferries is to bridge a gap in a national highway where it is interrupted by a body of water. Both applications were opposed by Cababa, an operator across the same river but between barrios Catotoran and Calaoagan, both in the municipality of Camalaningan. Cababa had a certificate of public convenience from the PSC and a contract with said municipality for operation. Alleging that the applications of Carillo and Remigio had already been disapproved by the municipal council of Camalaningan, Cababa moved for the dismissal of the applications on the theory that the PSC had no jurisdiction to grant them without the previous aproval of the municipalities concerned. The PSC denied the motion after hearing the applicants' evidence on the merits. But the proceedings were interrupted because upon a new date being set out for the continuance of the hearing, oppositor filed with the Supreme Court a petition for certiorari and prohibition to have the order denying the motion to dismiss annulled and also to have the PSC desist from further hearing the applications for for lack of jurisdiction, relying in the case of Municipality of Gattaran v. Elizaga, G. R. No. L-4378-8, May 8, 1952. **Held,** the case cited is an authority for holding that where a ferry lies entirely within the territorial jurisdiction of a municipality, previous approval of that municipality is necessary before the PSC can grant a private operator a certificate of public convenience. CABABA *v.* PUBLIC SERVICE COMMISSION, G. R. No. L-11186, Jan. 31, 1958.

CRIMINAL LAW — REMEDY PROVIDED UNDER ART. 5 OF THE REVISED PENAL CODE APPLIES ONLY TO PENALTIES PROVIDED BY SAID CODE AND NOT TO THOSE PROVIDED BY SPECIAL LAWS. — Jesus Salazar y Gabriel was charged with illegal possession of firearms. After pleading guilty, the Manila Court of First Instance sentenced him to a five year imprisonment and to pay costs, the lowest penalty imposable under the law. Defendant appealed contending that the trial court erred in not recommending clemency, under Article 5 of the Revised Penal Code, considering that the weapon involved, a submachinegun, had already been confiscated by the government and that nothing was shown that he was a hardened criminal. **Held,** articles of the Revised Penal Code, enjoining the courts to make proper representation to the Chief Executive whenever a strict enforcement of the provisions of

said Code would result in the imposition of a clearly excessive penalty after taking into consideration the degree of the malice and the injury caused by the offense, applies only to penalties provided by the Revised Penal Code and not to those provided by special laws as in the case of illegal possession of firearms punished under Republic Act No. 4, amending Section 2692 of the Revised Administrative Code. PEOPLE *v.* SALAZAR, G. R. No. L-7490, Jan. 21, 1958.

CRIMINAL LAW — VIOLATION OF CENTRAL BANK CIRCULAR NO. 60 — IN ORDER THAT THIS CIRCULAR COULD BE INFRINGED IT IS NECESSARY TO SHOW THAT THE OUTGOING PHILIPPINE RESIDENT OR TRANSIENT VISITOR HAS TAKEN OR IS ABOUT TO TAKE OUT OF THE PHILIPPINES PHILIPPINE COINS OR NOTES IN EXCESS OF THE EXEMPTED AMOUNT WITHOUT THE NECESSARY LICENSE ISSUED BY THE CENTRAL BANK. — A charge for violation of Circular No. 37, as implemented by Circular No. 60, Section 1(b) of the Central Bank, in relation to Republic Act No. 265, was instituted against Caridad Capistrano in the Rizal Court of First Instance. The charge alleged that on March 31, 1955 the accused, an outgoing Philippine resident who was ready to leave for Hongkong, concealed in her person "100 pieces, P50.00 each — P5,000." When the case was called for trial, after denial of her motion to quash, the accused admitted the act alleged in the complaint, but averred that said act did not constitute a public offense. The Court sentenced her to one month imprisonment and to pay a fine of P200 with subsidiary imprisonment in case of insolvency, and to pay the costs. Hence this appeal. **Held,** in order that the circular in question could be infringed, it is necessary to show that the outgoing Philippine resident or transient visitor has taken or is about to take out of the country Philippine coins or notes in excess of the exempted amount allowed without the license from the Central Bank. Failure to allege this avernment constitute a fatal defect as it does not show any charge at all. PEOPLE *v.* CAPISTRANO, G. R. No. L-12724, Jan. 31, 1958.

LABOR LAW — COLLECTIVE BARGAINING — A COLLECTIVE BARGAINING UNIT MUST EFFECT A GROUPING OF EMPLOYEES WHO HAVE SUBSTANTIAL MUTUAL INTERESTS IN WAGES, HOURS, WORKING CONDITIONS AND OTHER SUBJECTS OF COLLECTIVE BARGAINING. — The Cebu Stevedores Association filed a petition for certification election to determine the proper collective bargaining unit that would represent the laborers of the Cebu Stevedoring Co., Inc. Three other unions joined the petition **each** claiming the right to take part in the certification election. One of these 3 unions was the herein petitioner. Judge Bautista of the CIR rendered decision in favor of the petitioner to represent the permanent workers and the holding of a certification election between the petitioner and the Cebu Trade Union for the unit to represent the casual workers. An appeal was made by the company and the other unions to the Court **in Banc** which reversed the above decision and ruled that the appropriate bargaining unit is the employer's unit embracing all the employees and workers therein involved. The CIR **in Banc** further ordered for the holding of an election where the 4 labor unions should take part. From this decision an appeal was made by the Democratic Labor Association. **Held.** there should be 2 collective bargaining units, one to represent the workers belonging to the permanent status of work and another one representing

workers belonging to the non-permanent or temporary status of work. Certain factors should be taken into consideration to determine the proper collective bargaining unit and among these are the will of the employees; affinity and unity of employees interest; prior collctive bargaining history and lastly, the employment status. DEMOCRATIC LABOR ASSOCIATION *v.* CEBU STEVEDORING CO., INC., G. R. No. L-10321, Feb. 28, 1958.

LABOR LAW — JURISDICTION — IF THE PURPOSE OF THE ACTION IS TO OBTAIN SOME INJUNCTIVE RELIEF AGAINST CERTAIN ACTS OF VIOLENCE OF THE LABORERS, THE SAME CAN BE OBTAINED FROM THE INDUSTRIAL COURT WHICH IS GIVEN AMPLE POWER TO ACT THEREON BY THE MAGNA CARTA. — Upon failure of the Peter Paul Philippines Corporation (hereinafter called the Company) to act on the petition of petitioner-union for the improvement of the working condition of the laborers, a strike was called on May 3, 1955 whereupon the Company filed on May 20, 1955 a complaint for injunction. In the complaint a writ of preliminary injunction was prayed for, under such terms as the court may direct, to be made permanent after trial. The court, without any hearing, on the same day issued the writ and set the hearing on the merits on May 25, 1955. On May 24, 1955, the petitioner-union filed a motion to dismiss and to dissolve the writ on the ground that the court had no jurisdiction over the case since it appears that the issue involved grew out of a labor dispute between plaintiff Company and defendant union. On June 1, 1955, the court denied the motion. Hence, the present appeal for certiorari. It appears that, in addition to the labor dispute which resulted in the strike staged on May 3, 1955, there were other labor cases pending before the CIR between the same parties. **Held,** the court **a quo** has no jurisdiction to try the instant case for the same is already involved in those cases which had been submitted to the industrial court for adjudication. This step is necessary in order to avoid multiplicity of actions. If the purpose of the action is to obtain some injunctive relief against certain acts of violence of the laborers, the same can be obtained from the industrial court which is given ample power to act thereon by the Magna Carta. Verily, the court **a quo** acted without jurisdiction. LAKAS NG PAGKAKAISA SA PETER PAUL *v.* VICTORIANO, G. R. No. L-9290 Jan. 14, 1958.

LABOR LAW — JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS — LABOR LEGISLATIONS, PARTICULARLY THE INDUSTRIAL PEACE ACT, APPLY ONLY TO INDUSTRIAL EMPLOYMENT BUT NOT TO ORGANIZATIONS AND ENTITIES ORGANIZED AND OPERATED NOT FOR PROFIT OR GAIN AND CONSEQUENTLY THE COURT OF INDUSTRIAL RELATIONS HAS NO JURISDICTION OVER CASES BROUGHT IN CONNECTION THEREWITH. — Respondent Araos worked with the petitioner as a Scout executive and during her incumbency, organized the BSP Employees Welfare Association, a sort of a labor organization or union of employees of the BSP. On Jan. 29, 1954, she filed charges with the NBI Against Chief Scout Executive Villacorta for alleged "anomalous actuations in the performance of duties". The personnel committee of the BSP, after discussing the case of respondent, unanimously concluded on May 26, 1954 that the respondent be dismissed from service and made the proper recommendation to the BSP President Vargas who on June 1, 1954 sent a letter to herein respondent notifying her of her dismissal. Respondent filed charges against the BSP for

unfair labor practice declaring that she had been dismissed due to her union activities. The petitioner moved for the dismissal of the case contending among other things the lack of jurisdiction of the CIR over the case. The CIR however rendered decision in favor of respondent. Hence, this petition to review the CIR decision. **Held,** Republic Act 875, particularly that portion thereof regarding labor disputes and unfair labor practice, does not apply to the BSP, it not being an organization or entity for purposes of profit or gain but for elevated and lofty purpose and consequently the CIR has no jurisdiction to entertain and decide actions brought pursuant thereto. BOY SCOUT OF THE PHILIPPINES *v.* ARAOS, G. R. No. L-10091, Jan. 29, 1958.

LABOR LAW — WORKMEN'S COMPENSATION ACT — UNDER SECTION 51 OF ACT 3428 AS AMENDED, ONLY THE PETITIONER IS ENTITLED TO BE NOTIFIED OF THE JUDGMENT ENTERED IN ACCORDANCE THEREWITH AND IT DOES NOT REQUIRE THAT BEFORE THE HEARING OF THE PETITION FILED PURSUANT THERETO THERE SHOULD BE A NOTIFICATION TO THE OTHER PARTY. — Respondents, Julio Lasian and Remedios Pineda, as dependents of their son Jose Pineda who died in the service of C. Ying Bakery, of which petitioner Adelina Severo was the manager, were awarded a "compensation of ₱1,560.00 plus burial expenses not exceeding ₱100.00 less any amount already paid" by the Workmen's Compensation Commission. The award was not appealed and became final and executory. But as neither the owner nor the manager paid the award except the mount of ₱500.00 the respondents herein petitioned the Court of First Instance of Iloilo for an order of execution under section 51 of Act 3428, which was granted. Hence, the petitioner appealed by way of certiorari, contending that without notice to him the respondents' **ex parte** motion was heard and acted upon by the Judge, and therefore, the order granting it was illegal and unenforceable against him. **Held,** this is untenable, for according to section 51 of Act 3428 as amended, the herein petitioner is entitled to be notified of the judgment entered in accordance therewith and it does not require that before the hearing of the petition filed pursuant thereto there should be a notification to the other party. SEVERO *v.* PELAYO, G. R. No. L-9390, Feb. 28, 1958.

LAND TITLES — HOMESTEAD — THE PRINCIPLE OF PARI DELICTO IS NOT APPLICABLE TO A HOMESTEAD WHICH HAS BEEN ILLEGALLY SOLD, IN VIOLATION OF THE HOMESTEAD LAW, BECAUSE THE POLICY OF THE LAW IS TO GIVE THE LAND TO A FAMILY FOR A HOME AND FOR CULTIVATION AND THE LAW ALLOWS THE HOMESTEADER TO REACQUIRE THE LAND EVEN IF IT HAS BEEN SOLD. — A homestead patent was issued to the plaintiff. He sold it to the defendants who thereupon took possession of the land covered by the patent. The plaintiff died and thereafter the heirs sought to recover the land from the defendants on the ground that the sale was null and void. The defendants refused to return the land alleging the principle of **pari delicto**. **Held,** the principle of **pari delicto** may not be invoked in a case of this kind since it would turn counter to an avowed fundamental policy of the state that the forfeiture of the homestead is a matter beween the state and the grantee of his heirs, and that until the state has taken steps to annul the grant and asserts title to the homestead the purchaser is, as against the vendor or his heirs, no more entitled to keep the land than any intruder. ANGELES *v.* COURT OF APPEALS, G. R. No. L-11024, Jan. 31, 1958.

LAND TITLES — HOMESTEAD — A HOMESTEAD ENTRY HAVING BEEN PERMITTED BY THE DIRECTOR OF LANDS, THE HOMESTEAD IS SEGREGATED FROM THE PUBLIC DOMAIN AND THE DIRECTOR OF LANDS DIVESTED OF THE CONTROL AND POSSESSION THEREOF EXCEPT IF THE APPLICATION IS FINALLY DISAPPROVED AND THE ENTRY ANULLED AND REVOKED. — Plaintiffs were the owners of a parcel of land which they had inherited from their daughter. Their daughter acquired the land as a homestead (H. A. No. 229763, Entry No. 138890) in 1939 and approved on Nov. 29, 1950 by the Secretary of Agriculture and Natural Resources. An action was brought against the defendants for illegally taking possession of the homestead, and asking for the delivery of the same, together with its annual produce until the termination of the case. The defendants were declared twice in default and judgment was rendered in favor of the plaintiffs. The defendants appealed, alleging, as one of their grounds, that the land subject matter of the action was still part of the public domain, no homestead patent or title having been issued as yet; and consequently the Director of Lands had jurisdiction over the case and not the Court of First Instance. **Held,** a homestead entry having been permitted by the Director of Lands, the homestead is segregated from the public domain and the Director of Lands divested of the control and possession thereof except if the application is finally disapproved and the entry annulled and revoked. REYES *v.* MACALINAO, G. R. No. L-10747, Jan. 31, 1958.

LAND TITLES — PUBLIC LAND LAW — CONVEYANCES OF HOMESTEAD WITHIN THE FIVE-YEAR PERIOD ARE NULL AND VOID FROM INCEPTION, AND CANNOT BE OBVIATED EVEN IF OFFICIAL APPROVAL IS GRANTED AFTER THE EXPIRATION OF THE PERIOD. — Santander was granted a homestead patent in 1937 and the corresponding certificate of title was issued to him in 1938. In 1942, still within five years from the granting of the homestead patent, Santander executed a document of absolute sale of a two-hectare portion of his homestead to Asuncion for ₱480.00. The sale was approved by the Secretary of Agriculture and Commerce in 1947. Santander brought this action to recover the two-hectare portion of his homestead on the ground that the sale was null and void. The trial court declared the sale to be null and void and ordered the plaintiffs to repurchase the land at its present value and not at its original value. Hence this appeal. **Held,** conveyances of homestead within the five-year period are null and void from inception, and cannot be obviated even if official approval is granted beyond the expiration of the period. There is no legal sanction for the judgment of the lower court requiring the appellant to repurchase from the appellees at the property's present value. The sale to appellees being null and void, appellants never lost ownership over the land in question, and appellees' right is reduced to nothing more than to recover the price paid by them for said land, which is only ₱480.00. SANTANDER *v.* ASUNCION, G. R. No. L-6184, Feb. 28, 1958.

LAND TITLES — REVIEW — PETITION FOR REVIEW IN LAND REGISTRATION CASES MUST BE BASED ON ACTUAL FRAUD AND FILED WITHIN ONE YEAR FROM

ENTRY OF DECREE IN THE LAND REGISTRATION COMMISSION. — An appeal from the order of CFI of Samar denying petition for review of decision of said court. In the barrio of Pangdan, Catbalogan, Samar, Dionisio Centino claimed a parcel of land said to contain about 5 hectares bounded by the sea, swampy land — part of the public domain, and Pangdan River. In the same vicinity, Emeritario Cui, also claimed a parcel much bigger in area. The Director of Lands claimed also a parcel said to be public land. In cadastral proceedings, the Lot 2040 in question in accordance with its order on April 8, 1933 was divided into three portions and adjudicated to the respective claimants. About twenty years later, Centino filed a petition to review the decision on said Lot 2040, contending that the decision rendered is incorrect, confusive and contrary to the evidence and facts and susceptible of varied interpretation which may prejudice the rights of ownership of the movant. **Held,** the petition for review in Land Registration cases must be based only on **actual fraud** and that the allegation of Centino in support of his petition does not or did not constitute fraud. Besides, the petition was filed only on Jan. 1955, more than 20 years had passed since the entry of the decree by the Land Registration Commission. DIRECTOR OF LANDS *v.* CENTINO, G. R. No. L-11264, Feb. 10, 1958.

POLITICAL LAW — ADMINISTRATIVE LAW — ACTION OF THE COMMISSIONER OF CUSTOMS AS REGARDS MATTERS REFERRED TO HIM BY THE COLLECTOR OF CUSTOMS WAS ONLY SUPERVISORY IN NATURE AND HIS CONFORMITY OR DISAGREEMENT TO THE RULING OF THE LATTER DID NOT TRANSFORM SAID DECISION INTO THAT OF THE COMMISSIONER. INDEPENDENT OF THE OPINION OF THE COMMISSIONER ON MATTER BROUGHT TO HIS ATTENTION FOR ADVICE BY THE COLLECTOR, THE PARTIES HAVE THE RIGHT TO APPEAL THE CONTROVERSY TO HIM FOR PROPER DETERMINATION. — The Collector of Customs amended his decision of May 19, 1954 by reversing and holding that the imported leather was primarily intended as uppers of shoes and should not be classified as patent leather. As a result, the five cases in question were declared confiscated and forfeited in pursuance to Section 1363 (f) of the Revised Administrative Code and paragraph 9 of the Central Bank circulars Nos. 44 and 45. This amended decision was sent by registered mail to the manager of the factory with notice that appeal, if any, should be interposed with the Commissioner of Customs within 15 days from receipt, otherwise it would become final and executory. Said mail appeared to have been received by an employee of the factory on June 10, 1954 as evidenced by the registry return card. At the same time, the Commissioner was furnished a copy and he affirmed the amended decision. On Sept. 14, 1954 the importer received a letter from the Collector demanding the surrender of the goods or payment of the sum of ₱10,000 in cash which prompted the filing of the petition to set aside the amended decision. This petition was referred by the Collector to the Commissioner who in a second indorsement dated Dec. 3, 1954 reiterated his concurrence to the amended decision. Copy of the denial of the petition was received by the importer on Dec. 29, 1954. The importer then filed a notice of appeal with the Court of Tax Appeals. On October 17, 1955, the CTA issued a resolution holding that said tribunal had no jurisdiction to entertain the case by reason of the petitioner's failure to appeal to the Commissioner. The motion for reconsideration, having been denied, petition for review by certiorari was filed with Supreme Court on

the ground that the respondent Commissioner's concurrence to the amended decision of the Collector embodied in the second indorsement may be considered a decision from which appeal may be interposed. **Held,** the appeal made available to an importer or person aggrieved by a decision or ruling of any collector of customs of the Philippines has two phases: first, the one provided for in Section 1380 of the Revised Administrative Code, i.e., such party is given 15 days from receipt of the adverse ruling or decision of the Collector to give notice in writing to the latter signifying his desire to have the matter reviewed by the Commisisoner of Customs and second, if still dissatisfied, his appeal could be projected to the Court of Tax Appeals pursuant to Section 7 of Act No. 1125 by filing with said tribunal a petition within 30 days from receipt of notice of the decision or ruling sought to be reviewed. In the instant case, the importer failed to observe the procedure laid down in Section 1380 of the Rev. Administrative Code. Hence, the lower acted properly in dismissing the petition filed therein in view of the petitioner's failure to exhaust administrative remedies. SAMPAGUITA SHOE AND SLIPPER FACTORY *v.* COMMISSIONER OF CUSTOMS, G. R. No. L-10285, Jan. 14, 1958.

POLITICAL LAW — ADMINISTRATIVE LAW — IF THE NEGLIGENT EMPLOYEE WAS ENGAGED IN THE PERFORMANCE OF GOVERNMENTAL DUTIES, AS DISTINGUISHED FROM CORPORATE OR PROPRIETARY OR BUSINESS FUNCTIONS, THE GOVERNMENT IS NOT LIABLE. — The plaintiff sought to recover damages from the defendants arising from the death of the plaintiff's father, who was run over by a truck driven by Torralba on Sept. 30, 1948, an employee of the provincial government, detailed with the district engineer. Torralba pleaded guilty to the crime of homicide thru reckless imprudence and was accordingly sentenced. The plaintiff reserved the right to file a civil action for damages. Hence the present proceedings against the defendants. Upon motion to dismiss the case, the judge dismissed the action against the defendants except Torralba. The trial judge opined that the plaintiff could not recover against the defendant under Article 103 of the Civil Code. The plaintiff however maintains that the basis of his claim is Article 1903 contending that Torralba was a "special agent" within the meaning of the law. **Held,** Torralba was not a special agent within the meaning of Article 1903. If the negligent employee was engaged in the performance of governmental duties, as distinguished from corporate or proprietary or business functions, the government is not liable. The construction or maintenance of roads in which the truck or the driver worked at the time of the accident are admittedly governmental duties. PALAFOX *v.* PROVINCE OF ILOCOS NORTE, G. R. No. L-10659, Jan. 31, 1958.

POLITICAL LAW — PUBLIC CORPORATION — WHILE IN CASE OF WAR OR DURING AN EMERGENCY, TOWN PLAZAS MAY BE OCCUPIED TEMPORARILY BY PRIVATE INDIVIDUALS, WHEN THE EMERGENCY HAS CEASED, SAID TEMPORARY OCCUPATION OR USE MUST ALSO CEASE AND THE TOWN OFFICIALS SHOULD SEE TO IT THAT THE TOWN PLAZAS SHOULD EVER BE KEPT OPEN TO THE PUBLIC AND FREE FROM ENCUMBRANCES OR ILLEGAL PRIVATE CONSTRUCTIONS. — During the last world war, the market building of Pozorrubio was destroyed. After liberation, the market vendors began constructing temporary and make-shift stalls, even

small residences on a portion of the town plaza. In time, the whole municipal market was rehabilitated but the owners of the structures on the town plaza failed and refused to transfer to said market place. Pending appeal from the decision of the CFI, dismissing the petition for prohibition, lifting the preliminary injunction and ordering the removal of the stalls within ten days from notice, the appellants voluntarily vacated the public plaza. Counsel for appellees now asked for the dismissal of the appeal since the present case has become moot and academic. The court, instead of summarily dismissing the appeal, for the satisfaction of the parties and for possible guidance of town officials and residents, deemed it convenient and necessary to decide the case by formal decision. **Held,** there is absolutely no question that town plazas cannot be used for the construction of market stalls, specially of residences, and that such structures constitute a nuisance subject to abatement according to law. Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties. While in case of war or during an emergency, town plazas may be occupied temporarily by private individuals, when the emergency ceased, said temporary occupation or use must also cease and the town officials should see to it that the town plazas should ever be kept open to the public and free from encumbrances or illegal private construction. ESPIRITU *v.* MUNICIPAL COUNCIL, G. R. No. L-11014, Jan. 21, 1958.

POLITICAL LAW — PUBLIC CORPORATIONS — A MUNICIPAL CORPORATION, UNLIKE A SOVEREIGN STATE, IS CLOTHED WITH NO INHERENT POWER OF TAXATION. THE CHARTER OR STATUTE MUST PLAINLY SHOW AN INTENT TO CONFER THAT POWER OR THE MUNICIPALITY CANNOT ASSUME IT. — Ordinance No. 92, as modified by Ordinance No. 116 were passed by the Municipal Council of the City of Cebu, imposing a tax for the sale of lumber. Plaintiffs brought an action to recover the taxes paid under said ordinances, on the ground that they were invalid. They alleged that the Charter of the City of Cebu did not confer upon it the power to impose a tax for the sale of lumber as porvided for in the ordinances, and thus, the ordinances were **ultra vires.** The lower court upheld the validity of the ordinances. **Held,** Section 17(m) of Commonwealth Act No. 58, the Charter of the City of Cebu, grants to the Municipal Board the power to tax the sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerin, petroleum, or any other products thereof. Lumber is not therein enumerated. It is a settled rule that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power of the municipality cannot assume it. Ordinances No. 92 and 116 are **ultra vires.** SANTOS LUMBER CO. *v.* CITY OF CEBU, G. R. No. L-10198, Jan. 22, 1958.

POLITICAL LAW — TAXATION — UNDER SECTION 190 OF THE INTERNAL REVENUE CODE, THE COMPENSATING TAX IS TO BE PAID ONLY UPON GOODS DIRECTLY RECEIVED FROM WITHOUT THE PHILIPPINES, AND NOT AFTER THE SAME HAD BEEN LAWFULLY BROUGHT TO THE PHILIPPINES "FROM WITHOUT" BY THE FORMER OWNER. — David Sencindiver, a member of the United States Embassy Staff in the Philippines, was the owner of a Buick Sedanet registered in his name in the State of Virginia. He brought it to the Philippines and it was released from customs without requiring him to pay compensating tax, because he was a member of the U.S. Embassy Staff. Sencindiver sold the car to Viduya who registered it in the MVO in his name. The Collector of Internal Revenue assessed ₱943 as compensating tax invoking Section 190 of the Internal Revenue Code which provides, "All persons residing or doing business in the Philippines who shall purchase or receive goods, from without the Philippines, shall pay a compensating tax x x x x". **Held,** under section 190 of the Internal Revenue Code, the compensating tax is to be paid only upon goods directly received from without the Philippines, and business in the Philippines who shall purchase or receive goods, from without" by the former owner. COLLECTOR OF INTERNAL REVENUE *v.* VIDUYA, G. R. No. L-10808, Feb. 28, 1958.

POLITICAL LAW — TAXATION — A JOINT MANAGEMENT FOR TWO DISTINCT CORPORATIONS IS A CORPORATION WITHIN THE MEANING OF SECTION 84 (b) OF THE INTERNAL REVENUE CODE, AND SO IS LIABLE TO INCOME TAX UNDER SUCH SECTION. — The Batangas Transportation Co. and the Laguna Tayabas Bus Co. are two distinct and separate corporations engaged in the business of land transportation, under a joint management called "Joint Emergency Operation". The Collector of Internal Revenue assessed a deficiency income tax and compromise for the years 1946 to 1949, amounting to ₱54,143.54. The respondent companies appealed from said assessment to the Court of Tax Appeals, but before filing his answer, the Collector of Internal Revenue set aside his original assessment and reassessed the alleged income tax liability of the respondents at ₱148,890.14, claiming that said companies had been erroneously credited in the last assessment. The corrected and increased reassessment was embodied in the answer filed by the Collector of Internal Revenue. The Court of Tax Appeals found that the "Joint Emergency Operation" was not a corporation within the contemplation of Section 24(b) of the Internal Revenue Code and thus was not taxable. Hence this appeal. **Held,** a joint management for two distinct corporations is a corporation within the meaning of Section 24(b) of the Internal Revenue Code, and so is liable to income tax under such section. Pending appeal in the Court of Tax Appeals of an assessment made by the Collector of Internal Revenue, the Collector, pending hearing before said court, may amend his answer before the court, and the latter, on the basis of the evidence presented before it, may redetermine the assessment. Where the failure to file an income tax return for and in behalf of an entity which is later found to be a corporation under Section 24(b) of the Internal Revenue Code was due to reasonable belief based on the advice of its attorneys and accountants, a penalty in the form of a surcharge should not be imposed and collected. COLLECTOR OF INTERNAL REVENUE *v.* B. T. Co. & L. T. B. Co., G. R. No. L-9692, Jan. 6, 1958.

POLITICAL LAW — TAXATION — THE MAIN PURPOSE OF THE ENACTMENT OF REPUBLIC ACT NO. 1125, CREATING THE COURT OF TAX APPEALS, WAS NOT ONLY TO GIVE TO SAID COURT EXCLUSIVE APPELLATE JURISDICTION OVER DISPUTED TAX ASSESSMENTS, BUT ALSO TO TRANSFER TO ITS JURISDICTION ALL CASES INVOLVING

SAID ASSESSMENTS PREVIOUSLY COGNIZABLE BY COURTS OF FIRST INSTANCE AND EVEN THOSE ALREADY PENDING IN SAID COURTS. — The petitioner owns the Hacienda Fortuna. The Collector of Internal Revenue assessed an income tax for the year 1949 on the Hacienda. The petitioner protested, but was overruled by the Collector of Internal Revenue. Ledesma appealed to the Court of Tax Appeals in January, 1956, but before the filing of the appeal, the Collector of Internal Revenue has already filed a civil action in the CFI for the collection of the tax for 1949. The Collector of Internal Revenue filed a motion to dismiss the petition for review alleging that the pendency of the civil action in the CFI was a bar to the petition for review on the ground that it involved two actions between the same parties and the same subject matter. The Court of Tax Appeals dismissed the petition. **Held,** the main purpose of the enactment of Republic Act No. 1125, creating the Court of Tax Appeals, was not only to give to said court exclusive appellate jurisdiction over disputed tax assessments, but also to transfer to its jurisdiction all cases involving said assessments previously cognizable by the Courts of First Intance and even those already pending in said courts. LEDESMA *v.* COURT OF TAX APPEALS, G. R. No. L-11343, Jan. 29, 1958.

POLITICAL LAW — TAXATION — THE TERM "RESIDENCE" AS USED IN THE TAX CODE OF 1939, IS SYNONYMOUS WITH "DOMICILE" AND THE TWO ARE USED INTERCHANGEABLY. — Miller, an American citizen, born in California, came to the Philippines in 1905. He never lived in any residential house in the Philippines. He stayed at the Manila Hotel and later on transferred to the Army and Navy Club. In 1941, Miller executed his last will and testament in California, declaring that he was of "Santa Cruz, California". He was killed by the Japanese soldiers during the occupation, leaving real and personal properties in the United States and shares of stock in Philippine Corporations. De Lara was appointed ancillary administrator and the Collector of Internal Revenue assessed estate and inheritance taxes not only on Miller's property in the United States, but also on his property in the Philippines, claiming that Miller had acquired a residence here. The Court of Tax Appeals modified the assessment made by the Collector of Internal Revenue. Hence this Appeal. **Held,** the term "residence" as used in the Tax Code of 1939, is synonymous with "domicile" and the two are used interchangeably. The shares of stock in Philippine corporations are taxable, although the general rule is that they are taxable at the domicile of the owner under the principle of **mobilia sequuntur personam,** nevertheless, when he, during his lifetime, extended his activities with respect to his intangibles, so as to avail himself of the protection and benefits on the laws of the Philippines, in such a way as to bring his person or property within the reach of the Philippines, the reason for a single place of taxation no longer obtains — protection, benefit, and power over the subject matter are no longer confined to California, but also to the Philippines. COLLECTOR OF INTERNAL REVENUE *v.* COURT OF TAX APPEALS, G. R. No. L-9456 & L-9481, Jan. 6, 1958.

POLITICAL LAW — TAXATION — SECTION 305 OF THE NATIONAL INTERNAL REVENUE CODE WHICH PRECLUDES THE USE OF INJUNCTION TO RESTRAIN THE COLLECTION OF TAXES IS MODIFIED BY SECTION 11 OF REPUBLIC ACT NO. 1125 WHICH ALLOWS THE COURT OF TAX APPEALS TO ISSUE SAID WRIT OF INJUNCTION SUBJECT TO CERTAIN LIMITATIONS. — In 1952, the Collector of Internal Revenue demanded from Aznar the payment of tax deficiencies from 1945-1951. The Collector instructed the City Treasurer of Cebu to place Aznar's property under constructive destraint to guarantee the satisfaction of the taxes. Aznar filed a petition in the Court of Tax Appeals to enjoin the Collector from proceeding to collect by summary methods of destraint and levy on the ground that the right of the Collector to collect by extra judicial means had already prescribed, it being made beyond the three-year prescriptive period under Section 51 of the Internal Revenue Code. The petition for injunction was granted. Hence this appeal. **Held,** section 305 of the National Internal Revenue Code which precludes the use of injunction to restrain the collection of taxes is modified by Section 11 of Rep. Act No. 1125 which allows the Court of Tax Appeals to issue said writ of injunction subject to certain limitations. The requirement of a bond before a writ of injunction could be issued by the Tax Court applies only to cases where the means sought to be employed for the enforcement of the collection of the tax are by themselves legal and not when the same are declared null and void. COLLECTOR OF INTERNAL REVENUE *v.* AZNAR, G. R. No. L-10370, Jan. 31, 1958.

POLITICAL LAW — TAXATION — REPUBLIC ACT NO. 1125 CREATING THE COURT OF TAX APPEALS, TOOK EFFECT ON JUNE 16, 1956 AND TAXES PAID BEFORE SAID DATE MUST BE GOVERNED BY THE PERTINENT LAW THEN ENFORCED AT THE TIME OF THEIR PAYMENT. — The petitioner, an educational institution duly organized under the law, protested the collection of income tax for the years 1950-1951 on November, 1952. The petition for refund was denied on January, 1953. Thereafter the petitioner filed a motion for reconsideration, which was denied by the Collector of Internal Revenue on April 20, 1955. On April 29, 1955, the petitioner filed a petition for review with the Court of Tax Appeals. The Collector filed a motion to dismiss on the ground of lack of jurisdiction of the CTA, because said case was instituted beyond the two-year prescriptive period provided for by Section 306 of the Tax Code. The petition for review was dismissed. **Held,** Republic Act No. 1125 creating the Court of Tax Appeals, took effect on June 16, 1956, and taxes paid before said date must be governed by the pertinent law then enforced at the time of their payment. COLLEGE OF ORAL AND DENTAL SURGERY *v.* COURT OF TAX APPEALS & COLLECTOR OF INTERNAL REVENUE, G.R. No. L-10446, Jan. 28, 1958.

REMEDIAL LAW — CERTIORARI — SETTLED IS THE RULE THAT CERTIORARI WILL NOT LIE WHERE THE RELIEF SOUGHT IS OBTAINABLE BY APPLICATION IN THE COURT OF ORIGIN AND THE ATTENTION OF THE COURT HAS NOT BEEN CALLED TO ITS SUPPOSED ERROR. — Respondent Pepsi-Cola Company on April 25, 1957 filed a complaint for injunction against the UPSO et al. and on the same day a writ of preliminary injunction was issued **ex parte** after the lower court received the testimony of witnesses for the plaintiff and upon plaintiff's filing of a bond of ₱1,000. Without asking for the dissolution of the writ, defendant-unions filed a petition for certiorari on the ground that the lower court had not jurisdiction to take cognizance of the injunction case and

issue the order of injunction in view of the pendency of an unfair labor practice case between the same parties in the CIR. **Held,** petition denied. The petitioner did not bring up before the trial court, prior to asking for certiorari, the issue of jurisdiction as well as the facts upon which such issue may be resolved or decided i.e., the supposed interrelation and connection between the acts described in the complaint of injunction and the unfair labor practice case in the CIR, which connection was not apparent on the face of the record; thereby depriving the trial court of the opportunity to determine for itself whether it had jurisdiction to take cognizance of the case and issue the injunction order. Settled is the rule that certiorari will not lie where the relief sought is obtainable by application in the court of origin and the attention of the court has not been called to its supposed error. The order of injunction having been issued **ex parte** (according to sec. 9(d) of RA 875), it became void and of not effect after the fifth day of its issuance by operation of law and even without any judicial pronouncement to that effect. UNITED PEPSI-COLA SALES ORGANIZATION *v.* CAÑIZARES, G. R. No. L-12294, Jan. 23, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — BY THE FAILURE OF THE ALIEN TO APPEAR BEFORE THE COMMISSIONER OF IMMIGRATION AND TO REPORT TO HIM ONCE A WEEK AS STIPULATED ON THE SURETY BOND, THE TERMS THEREOF WERE BREACHED NOT ONLY BY THE PRINCIPAL BUT ALSO BY THE SURETY, WHICH JUSTIFIED THE FORFEITURE OF THE BOND BY THE COMMISSIONER AND BY THE COURT. — On June 27, 1947, the President ordered the deportation of Chung Kiat Kang as an undesirable alien. The latter moved for the reconsideration of the deportation order, and pending action thereon he was allowed to be at liberty upon the filing of a surety bond. On May 3, 1949, the petition for reconsideration of the deportation was denied. The Commissioner of Immigration required the alien to appear and report to him but he failed to do so. On May 16, 1949, the Commissioner declared the surety bond forfeited, of which forfeiture the surety was notified the following day. Upon failure of the surety to pay the amount of the bond as demanded, an action was filed in the Court of First Instance of Manila for forfeiture of the surety bond. Judgment was rendered against the defendant surety. On appeal to the Court of Appeals, the counsel for the appellants, the surety and counter sureties introduced additional evidence to show that the Chairman of the Deportation Board authorized the release and/or cancellation of the cash and surety bonds filed in behalf of Chung Kiat Kang. The Court of Appeals rendered judgment reversing the decision of the lower court, because it was of the opinion that the release and/or cancellation authorized by the Chairman was tantamount to a release of the surety bond. Hence this appeal. **Held,** by the failure of the alien to appear before the Commissioner of Immigration and to report to him once a week as stipulated on the surety bond, the terms of the bond were breached not only by the principal but also by the surety, which justified the forfeiture of the bond by the Commissioner of Immigration and by the Court. REPUBLIC *v.* COURT OF APPEALS, G. R. No. L-9928, Jan. 31, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — SECTION 5 OF RULE 41 DOES NOT PRESCRIBE A SPECIAL FORM ON APPEAL BOND. IT ONLY REQUIRES THAT THE SAME BE FOR THE AMOUNT OF SIXTY PESOS, "CONDITIONED FOR THE PAYMENT OF COSTS WHICH THE APPELLATE COURT MAY AWARD AGAINST THE APPELLANT". — In a petition for consolidation of title of ownership filed by Laserna, the petitioners herein, opposed on the ground that under Art. 1606 of the New Civil Code, they, as vendors—a—retro are granted the right to repurchase the property 30 days from final judgment, and the period has not yet lapsed. The lower court granted the petition for consolidation. Petitioners then filed on time, notice of appeal, appeal bond and record on appeal which were approved on Dec. 12, 1955 and the clerk was directed to certify and elevate them to the appellate court. However, five days later, on Dec. 17, 1955, respondent Judge ordered the disapproval of the appeal bond after discovering, according to him, that "the same consisted merely in the signatures of two lawyers". NOW, THEREFORE, in consideration of the promises and of such appeal, we the undersigned Atty. Jesus Cruz and Atty. Eleazar Samson, of Rm. 211 E.V.D. Building, Quiapo, Manila, as sureties, do hereby a jointly and severally bind ourselves in favor of Evangelino Laserna in the amount of sixty pesos (₱60.00), Phil. Currency, conditioned for the payment of cost which the appellate court may award against the appellants". **Held,** section 5 of Rule 41 of the Rules of Court, does not prescribe a special form on appeal bond. It only requires that the same be for the amount of sixty pesos, "conditioned for the payment of costs which the appellate court may award against the appellants. The bond in question complies substantially with law." CRUZ *v.* ENRIQUEZ, G. R. No. L-1030, Feb. 28, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — SERVICE OF NOTICE UPON ONE OF THE ATTORNEYS OF RECORD IN A CASE, IS SUFFICIENT AND BINDING UPON THE PARTY REPRESENTED. — Plaintiff filed an action in the CFI of Manila for the recovery of certain properties allegedly belonging to his father and unlawfully donated to defendant as being inofficious. The defendant answered and denied that the plaintiff's legitimate has been impaired and filed a counter-claim. Up to the filing of the answer to defendant's counter-claim, plaintiff had been represented by Atty. Lugtu. However, Attys. Abelada and Cruz entered an appearance for the plaintiff in "collaboration with Atty. Lugtu". When the case was set for hearing, only the collaborating attorneys were notified so that when the trial came the plaintiff and his attorneys did not appear. The case was dismissed. A motion for reconsideration of the dismissal was filed on the ground that Atty. Lugtu, being the principal council of the plaintiff, therefore, service of notice made to the collaborating attorneys only was improper. **Held,** the motion for reconsideration should be denied on the ground that service of notice in a case upon one of the attorneys of record is sufficient and binding upon the party represented. DY PIAO *v.* SIN TEI, G. R. No. L-10549, Feb. 28, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — JUST AS A WRIT OF PRELIMINARY INJUNCTION SHOULD NOT BE ISSUED TO PUT A PARTY IN POSSESSION OF THE PROPERTY IN LITIGATION AND TO DEPRIVE ANOTHER PARTY WHO IS IN POSSESSION THEREOF, EXCEPT IN A VERY CLEAR CASE OF EVIDENT USURPATION, SO ALSO A RECEIVER SHOULD NOT BE APPOINTED TO DEPRIVE A PARTY WHO IS IN POSSESSION OF THE PROPERTY IN LITIGATION. — Cruz and Domingo, being

the highest bidders at a public bidding for lease of the fishponds in question entered and took possession of the same and installed fish traps therein. Respondent Simbre filed complaint against them to recover ₱10,000 which was the value of the fish caught from the fishponds claimed to be his own, ₱6,000 damages and ₱1,000 litigation expenses, and at the same time prayed for a writ of preliminary injunction which was issued and later dissolved. With leave of court, the Municipality of Camiling and the Director of Lands filed separately answers in intervention, alleging defense of extraordinary prescription under sections 2321, 2323, 2324 of the Revised Administrative Code as amended by Act No. 4003 and Com. Act. No. 471. In a separate civil case for detainer, possession of the fishponds in question had been passed upon and determined by the justice of the peace court in favor of the Municipality, from whose judgment, plaintiff Simbre did not appeal. Simbre now filed an unverified petition for the appointment of a receiver on the ground that Cruz and Domingo who did not have funds or own properties to pay the sum sought to be recovered, were appropriating the proceeds realized from the sale of the fish caught and that such proceeds were in danger of being wasted or lost. The Director of Lands objected on the ground that appointment was but a subterfuge resorted to by Simbre to recover possession of fishponds already in the possession of the Municipality after the dissolution of the writ. **Held,** just as a writ or preliminary injunction should not be issued to put a party in possession of the property in litigation and to deprive another party who is in possession thereof, except in a very clear case of evident usurpation, so also a receiver should not be appointed to deprive a party who is in possession of the property in litigation. MUNICIPALITY OF CAMILING *v.* DE AQUINO AND SIMBRE, G. R. No. L-11476, Feb. 28, 1958.

REMEDIAL LAW — CIVIL PROCEDURE — WHEN THE DEPUTY SHERIFF ACTS IN HIS OWN NAME OR IS GUILTY OF ACTIVE MALFEASANCE OR WHERE HE EXCEEDS THE LIMITS OF HIS AGENCY HE IS LIABLE IN DAMAGES. — An action for damages was filed, against the deputy sheriff Jose Dineros. Pursuant to a writ of execution issued in a civil case, defendant in the name of the Sheriff sold at public auction the property attached therein, over the objection of the plaintiff. The defense denied liability on the ground that he had merely acted for and on behalf of the Provincial Sheriff, Cabaluna. The lower court dismissed the complaint. Hence this appeal. **Held,** Section 334 of the Adm. Code interpreted to mean that, when the deputy sheriff acts in his own name or is guilty of active malfeasance or possibly where he exceeds the limits of his agency he is liable in damages. In this case it is clear form the certificate of sale attached to the complaint that the deputy sheriff acted all the time in the name of the Ex-Officio Provincial Sheriff of Iloilo and no allegations of misfeasance are made. The Sheriff is liable to third persons for the acts of his deputy, in the same manner that the principal is responsible for the acts of his agent. That is why he is required to post a "bond for the benefit of whom it may concern" (Sec. 330 RAC). LORCA *v.* DINEROS, G. R. No. L-10919, Feb. 28, 1958.

REMEDIAL LAW — JURISDICTION — IN CIVIL CASES THE AMOUNT DETERMINATIVE OF THE JURISDICTION OF THE COURT IS THE TOTALITY OF THE CLAIM AS

DEMANDED IN THE COMPLAINT. — Plaintiff filed a complaint in the CFI of Manila against defendant alleging that the latter purchased from the former merchandise consisting of school, office and engineering supplies, equipment and instruments worth ₱2,747.72 and that of said amount only ₱1,000.00 had been paid, leaving thereby a balance of ₱1,547.72. Wherefore it was prayed that defendant be made to pay the plaintiff ₱1,547.72 with interest at 2% per annum and ₱500.00 as attorney's fees and costs. The lower court, upon motion of defendant, dismissed the case on the ground that it had no jurisdiction over the subject matter because the claim was for an amount less than ₱2,000.00, exclusive of interests and attorney's fees. **Held,** in civil cases, the amount determinative of the jurisdiction of the court is the **totality of the claim** as demanded by the plaintiff and alleged in the complaint, particularly in the prayer. In this case the unpaid account of ₱1,547.72 with interests, together with ₱500.00 as attorney's fees, total ₱2,047.72, and, therefore, within the jurisdiction of the Court of First Instance. MANILA BLUE PRINTING CO.,*v.* TEACHERS' COLLEGE, INC., G. R. No. L-10911, March 21, 1958.

REMEDIAL LAW — CONTEMPT — SECTION 4, RULE 64 OF THE RULES OF COURT WHICH PROVIDES THAT THE CHARGE FOR CONTEMPT MAY BE FILED WITH SUCH SUPERIOR COURT OR JUDGE AGAINST WHOM IT WAS COMMITTED, IS PERMISSIVE IN NATURE. IT IS DECLARATORY OF THE INHERENT POWER OF COURTS TO PUNISH THOSE GUILTY OF CONTEMPT AGAINST THE SAME. IT DOES NOT DECLARE THAT THE JURISDICTION OF THE COURT TO PUNISH THE GUILTY PARTY IS EXCLUSIVE. — The defendants, bar flunkers, took their oath as lawyers before a notary public contrary to the Resolution of the Supreme Court, refusing and denying their admission to the bar. They were prosecuted for contempt in the Court of First Instance of Manila, but upon motion of the defendants, the amended informations were dismissed for lack of jurisdiction and, also, upon the ground that the facts alleged therein did not constitute the crime of contempt of court "but against the Supreme Court of the Philippines", and because "what they have done only was the taking of their oath before a notary public who was not authorized by law to take their oaths as lawyers, as the latter can only swear as such before the Supreme Court of any member thereof". Hence this appeal. **Held,** Section 4, Rule 64 of the Rules of Court which provides that the charge for contempt may be filed with such superior court or judge against whom it was committed, is permissive in nature. It is declaratory of the inherent power of courts to punish those guilty of contempt against the same. It does not declare that the jurisdiction of the court concerned to so punish is exclusive. Inasmuch as the oath as a lawyer is a prerequisite to the practice of law, the defendants in taking the oath as lawyers against the prohibition and injunction issued by the Supreme Court, expressed clearly their intent to, and did, in fact, challenge and defy the authority of this Court to pass upon and settle in final and conclusive manner, the issue whether or not they should be admitted to the bar. PEOPLE *v.* LUNA, G. R. No. L-10236-48, Jan. 31, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — THE JURISDICTION OF THE MUNICIPAL COURT OF MANILA OVER CRIMINAL CASES FALLING UNDER SECTION 41 OF ITS REVISED CHARTER AND INVOLVING A SUM OR VALUE NOT EXCEEDING ₱200 IS EXCLUSIVE. — The petitioner was prosecuted in the CFI of Manila for es-

tafa for misappropriating ₱200. The information was dismissed for lack of jurisdiction, whereby another information, a replica of the first, was filed in the municipal court. The motion to quash on the ground of double jeopardy was denied. The petitioner claimed that the CFI had jurisdiction under Section 41 of the Revised Charter of Manila. Paragraph 1 of said section provides that the municipal court has exclusive jurisdiction over criminal cases, punishable by imprisonment of not more than six months, or a fine of not more than ₱200, or both, committed within its jurisdiction. Paragraph 2 provides that the same court has concurrent jurisdiction with the CFI over larceny, embezzlement and estafa where the sum or value involved does not exceed ₱200. **Held,** the offense charged falls within the exclusive jurisdiction of the Municipal Court of Manila in accordance with Section 41 of its Revised Charter. The second paragraph of the same section is not a grant of concurrent jurisdiction upon the CFI with the Municipal Court of Manila. DIMAGIBA *v.* GERALDEZ, G. R. No. L-11395, Jan. 31, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — WHERE THE ACCUSED PLEADED GUILTY TO AN INFORMATION WHICH CHARGES NOT ONLY MURDERS, KIDNAPPINGS AND ROBBERIES AS MEANS TO, AND IN FURTHERANCE OF, THE CRIME OF REBELLION AND WHICH ARE, THEREFORE, ABSORBED BY THE LATTER, BUT ALSO A SEPARATE AND INDEPENDENT CRIME OF MURDER NOT RELATED TO THE REBELLION CHARGE, HE IS GUILTY NOT ONLY OF THE CRIME OF REBELLION BUT ALSO OF THE SEPARATE CRIME OF MURDER. — This is connected with the case of People v. Geronimo decided on October 23, 1956. Abundio Romagosa, alias David, pleaded guilty to a charge of complex crime of rebellion with murders, robberies and kidnappings under 3 separate counts which were the last 3 of the 5 counts against Geronimo, et al. The third and last count alleged that sometime in February 1954, Romagosa, one of four HMB's under Commander Oscar, killed Policarpio Tipay, a Barrio Lieutenant. On October 13, 1954 the court of First Instance of Camarines Sur sentenced Romagosa, by virtue of his voluntary plea of guilty, to reclusion perpetua, pay a ₱10,000.00 fine, idemnify the heirs of two persons killed and named in the information and pay costs of proceedings. Alleging that there is no complex crime of rebellion with murders, kidnappings and robberies and that he should have been found guilty only of the simple crime of rebellion, Romagosa appealed. **Held,** where the accused pleaded guilty to an information which charges not only murders, kidnappings and robberies as means to, and in furtherance of, the crime of rebellion and which are therefore absorbed by the latter, but also a separate and independent crime of murder not related to the rebellion but also of the separate and independent crime of murder and may accordingly be sentenced therefor, he having failed at the arraignment to object to the information on the ground of multiplicity of suit. Sentence is modified, Romagosa being guilty only of simple rebellion and murder. PEOPLE *v.* ROMAGOZA, G. R. No. L-8476, Feb. 28, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — WHEN THE AMENDED INFORMATION IS DISMISSED FOR INSUFFICIENCY OF EVIDENCE, AFTER THE PROSECUTION HAS RESTED ITS CASE, THE ACCUSED IS PUT IN DOUBLE JEOPARDY UPON APPEAL BY THE PROSECUTION. — Calixto Cabarles was prosecuted in the Justice of the Peace Court of Leon, Iloilo for the violation of Article III, Sec. 1, Schedule G-5-A in relation to Article VII, Sec. 1 of Municipal Ordinance No. 19, Series of 1955. Upon arraignment, the accused pleaded not guilty. At the trial, the prosecution presented no other evidence than the report of the chief of police of Leon, Iloilo to the Municipal Treasurer to the effect that the accused refused to pay the fee for the impounding of his carabao. After the prosecution had rested its case, counsel for the accused verbally moved to "quash the information for insufficiency of evidence", contending that what was penalized by the aforementioned ordinance was the act of letting loose any large cattle specified in Sec. 24, Art. V of said ordinance, and not the refusal of its owner to pay the impounding fee. The motion was granted and it was ordered that the amended information be dismissed, The provincial fiscal appealed to the Court of First Instance of Iloilo. The accused filed a motion to quash and dismiss the appeal. The motion was granted, and the case was dismissed. Hence this appeal. **Held,** when the amended information is dismissed for insufficiency of evidence after the prosecution has rested its case, the accused is put in double jeopardy upon appeal by the prosecution. PEOPLE *v.* CABARLES, G. R. No. L-10702, Jan. 29, 1958.

REMEDIAL LAW — CRIMINAL PROCEDURE — WITHDRAWAL OF APPEAL IN THE COURT OF FIRST INSTANCE FROM JUDGMENT OF THE JUSTICE OF THE PEACE OR MUNICIPAL COURTS SHOULD BE MADE BEFORE TRIAL AND NOT DURING OR AFTER IT, AND DENIAL THEREOF BY THE COURT AFTER ACCUSED PLEADED GUILTY TO THE CHARGE IS PROPER. — The Municipal Court of the City of Naga convicted Alicia Rapirap of the crime of less serious physical injuries and sentenced her, after due trial, to pay a fine of ₱20.00. She forthwith appealed to the Court of First Instance of Camarines Sur but when the case was called for trial she manifested, with assistance of counsel, to change her plea of "not guilty" to "guilty" which was granted. After she entered her plea of guilty, her counsel asked the court to impose on her a penalty of ₱20.00. This was denied and in view of such denial, appellant sought to withdraw her appeal. The Court likewise denied the withdrawal of her appeal, sentenced her to arresto menor and to pay ₱200.00 in damages to the offended party with subsidiary imprisonment in case of insolvency and to bear the costs of proceedings. Rapirap appealed, questioning the propriety of the Court's refusal to grant her withdrawal of appeal under Section 12, Rule 118. **Held,** under the rule cited by the appellant, withdrawal of an appeal from a judgment of a Justice of the Peace or Municipal Court may be granted at the discretion of the Court of First Instance to which the appeal was brought, before trial and not during or after it. Where the appeal was sought to be withdrawn after the accused had entered a plea of guilty, denial thereof by the court is proper for the plea of guilty does not merely join the issues of the complaint or information but amounts to an admission of guilt and of the material facts alleged in the complaint and in this sense, takes the place of the trial itself. For all intents and purposes, the case is deemed tried on the merits and submitted for decision and leaves the court with no alternative but to impose the penalty prescribed by law. PEOPLE *v.* RAPIRAP, G. R. No. L-11000, Jan. 21, 1958.

REMEDIAL LAW — SPECIAL PROCEEDINGS — SECTION 4 OF RULE 74, BARRING DISTRIBUTEES OR HEIRS FROM OBJECTING TO AN EXTRA-JUDICIAL PARTITION, IS

APPLICABLE ONLY (1) TO PERSONS WHO HAVE PARTICIPATED OR TAKEN PART OR HAD NOTICE OF THE EXTRA-JUDICIAL PARTITION, OR IN ADDITION, (2) WHEN THE PROVISIONS OF SECTION 1 OF RULE 74 HAVE BEEN STRICTLY COMPLIED WITH. — An appeal on certiorari against decision of the Court of Appeals. Teodoro Tolete died intestate on Jan. 1945. He left four parcels of land in San Miguel, Pangasinan. He left as heirs, his widow and several nephews and nieces. On July 25, 1946, without judicial proceedings, his widow executed an affidavit stating that the deceased left no other heir except the affiant Leoncia de Leon, the legitimate wife of said deceased. This was recorded in the Office of the Register of Deeds. On the same day, she sold the land to Benny Simpilo and the deed of sale was also recorded. On July 17, 1950, Simpilo sold the land to Honorato Salacup and the sale was also recorded. Then on March 1950, Felisa Sinopera, upon her petition for administration of the estate of Tolete, was appointed administratrix, whereupon she brought the present action on June 20, 1950. The complaint alleges that the widow had no right to execute that affidavit of adjudication and therefore, Salacup acquired no right to land sold by Simpilo. **Held,** we notice two significant provisions in Section 1 and 4 of Rule 74. In Sec. 1, it is required that if there are two or more heirs, both or all of them should take part in the extra-judicial settlement. This requirement is made more imperative in the old law (Sec. 596, Act 190) by the addition of the clause, "and not otherwise". By the title of Sec. 4, the distributees of the estate are indicated as the persons to answer for rights violated by extra-judicial settlement. On the other hand, it is also significant that no mention is made expressly of the effect of extra-judicial settlement on persons who did not take part therein or had notice or knowledge thereof. There can not be any doubt that those who took part or had knowledge of the extra-judicial settlement are bound. But as to those who did not take part in the settlement or had no notice of the death of the decedent or of the settlement there is no direct or express provision and it is unreasonable and unjust that they also be required to assert their claim within the period of two years. To extend the effects of settlement to them without any express legal provision to that effect, would be violative of the fundamental right to due process of law. THEREFORE, we hold that the provision of Section 4 of Rule 74, barring distributees and heirs from objecting to any extra-judicial partition is applicable only (1) to persons who have participated or taken part or had notice of the extra-judicial partition, and in addition, (2) when the provision of Section 1 of Rule 74 have been strictly complied with, i.e., that all the persons or heirs of the decedent have taken part in the extra-judicial settlement or were represented either by themselves or through guardians. The case at bar fails to comply with both requirements because not all the heirs interested have participated in the extra-judicial partition for the court found that the dependent left, aside from his widow, nephews and nieces living at the time of his death. SIMPILO *v.* COURT OF APPEALS, G. R. No. L-10474, Feb. 28, 1958.

COURT OF APPEALS

CIVIL LAW — DAMAGES — UNDER ART. 21 OF THE NEW CIVIL CODE IT IS NOT NECESSARY THAT THERE BE A BREACH OF PROMISE TO MARRY IN ORDER TO RECOVER DAMAGES. — Marcela Balane, an unmarried girl of 19 years, became the object of amorous attentions from Yu Chiang while she was working as a maid in the household of Vicente Uy in Pili, Camarines Sur, in 1949, and when his attentions became persistent, Marcela went back to her parents in Libog, Albay. Yu Chiang followed her and presented to the girl's parents a notarial instrument signed by him in the presence of two witnesses wherein he impliedly stated his intention to marry her. Marcela then lived extramaritally with Yu Chiang in his residence at Pili, Camarines Sur, and when she realized that she was conceiving, she pleaded with him to marry her. But her plea fell on deaf ears, whereupon she returned to Libog, Albay on Nov. 10, 1951. On May 12, 1952, Marcela gave birth to a baby girl, Leonila Balane. Failing to find work to support herself and her child, this present action for recognition and support was instituted. **Held,** under Art. 21 of the New Civil Code, breach of promise to marry is not essential in order to recover damages in an action for the acknowledgment of a natural child and for support. Loss or injury to another, caused willfully and in a manner contrary to morals good customs, or public policy is sufficient basis for an action for damages. BALANE *v.* YU CHIANG, (CA) 54 O.G. 687.

CIVIL LAW — DAMAGES — UNFAIR COMPETITION — "AN OFFER OF GOODS OR SERVICES TO THE CUSTOMERS OF A BUSINESS COMPETITOR IS NOT IN GENERAL REGARDED AS UNFAIR COMPETITION". — The Plaintiff is a domestic corporation engaged in the business of dockhandling incoming and outgoing cargoes for inter-island vessels docking at the Sta. Ana wharf in Davao City. Pursuant to a verbal contract between plaintiff and the Compañia Maritima, the former handled the dockhandling work of the latter's vessel. On Dec. 12, 1953 the Compañia Maritima, notified the plaintiff of the termination of the verbal contract regarding the dockhandling work. On January 9, 1954 the defendant started broadcasting over the radio that he will take the dockhandling work, then being performed by the plaintiff, beginning January 16, 1954. On January 15, 1954 a contract between the Compañia Maritima and the defendant was executed. Plaintiff filed in the CFI of Davao an action for damages due to unfair competition, praying at the same time for the issuance of a writ of preliminary injunction. **Held,** a competition to be unfair must have these two characteristics: (1) It must involve an injury to a competitor or trade rival. 2) It must involve acts which are "contrary to good conscience", or "shocking to judicial sensibilities, or otherwise unlawful". An offer of goods or services to the customers of a business competitor is not, in general, regarded as unfair competition. Having the weighty obligation of exercising extra-ordinary diligence, common carriers should be given the right of having a wide discretion in the selection and supervision of persons who will handle their goods. DAVAO STEVEDORE TERMINAL CO., INC. *v.* FERNANDEZ. (CA) 54 O.G. 1433.

CIVIL LAW — MORTGAGE — WHEN THERE IS NO PROVISION MAKING IT THE OBLIGATION OF THE MORTGAGEE TO APPLY THE FRUITS OF THE PROPERTY THEREBY COVERED TO THE PAYMENT OF THE PRINCIPAL OF THE LOAN AND THE INTEREST THEREON THE CONTRACT IS ONE OF MORTGAGE WITH USUFRUCT AND NOT AN ANTICHRESIS.—On April 8, 1932, the spouses Saturnino Corpus and Encarnation Palac executed in favor of defendant Cojuangco a public deed wherein they acknowledged their debt of P8,725, and to guarantee the payment of said loan they

ceded and conveyed by way of first mortgage in favor of said Cojuangco, four parcels of land, with the improvements thereon, free from all charges and encumbrances, subject to the condition, among others, that the capital shall not bear interest, but in lieu thereof the possession of all of the said parcels of land was transferred to her with the "right to have them cultivated and the products therefrom shall belong to her exclusively while the mortgage is in full force." The deed was properly registered. The present action was brought to secure a judgment declaring the above contract as an antichresis, requiring the defendant to render an accounting of the produce of said lands, and to release the same if the principal of the loan and the interest thereon have been covered by the value of the crops. **Held,** the contract is one of mortgage with usufruct and not an antichresis inasmuch as there is no provision therein making it the obligation of the mortgage to apply the fruits of the property thereby covered to the payment of the principal of the loan and the interest thereon. PALAC, ET AL *v.* COJUANGCO, ET AL., (CA) 54 O.G. 1411.

CIVIL LAW — SALE — IN ORDER THAT THE BROKER MAY RIGHTFULLY DEMAND HIS COMMISSION HE MUST BE THE EFFICIENT AND PROCURING CAUSE OF THE SALE. — On May 19, 1955, defendants executed in favor of the plaintiff an exclusive sales agency agreement whereby a commission of 5%, based on the total price obtained, would be given as broker's commission if the property under consideration would be sold during the continuance of the agreement, or during a period of three months following the expiration thereof, if the property were sold by the seller to a purchaser to whom it was submitted by the broker during the continuance of such agency with notice to the seller. The property was sold on Aug. 26, 1955, well within the three-months reservation period agreed upon, by the defendants, Navarretes, personally and without the broker's intervention. The name of the buyer was among those submitted by the broker as prospective buyers of the property. The highest offer made by the buyer during the existence of the agency contract was only ₱9,500. The property was bought for ₱10,000. Plaintiff brought this action to recover the 5% commissions. **Held,** in order to entitle the broker to the commission agreed upon, he must be the efficient agent or procuring cause of the sale. The efficient and procuring cause principle is synonymous with the ready-willing-and-able rule, and these three words provide off-hand the tests in determining whether the agent was the procuring cause of the sale. In this particular case the broker is not entitled to the commission stipulated. F. CALERO & CO. *v.* NAVARRETE, ET AL., (CA) 54 O.G. 705.

COMMERCIAL LAW — NEGOTIABLE INSTRUMENTS — AN ACCOMMODATION PARTY CAN CLAIM NO BENEFIT AS SUCH BUT HE IS LIABLE ACCORDING TO THE FACE OF HIS UNDERTAKING, THE SAME AS IF HE WERE HIMSELF FINANCIALLY INTERESTED IN THE TRANSACTION. — Singh and Calanoc, assistant general managers of the Alto Surety & Insurance Co., executed a promissory note in favor of the Phil. National Bank to secure a loan of ₱5,000 which was to be used to promote a boxing bout. Partial payments were made on the promissory note, which was renewed four times, so that at the last renewal the balance was ₱3,800. Action upon the promissory note for ₱3,800 was instituted against Singh and the Alto Surety & Insurance Co. Singh contended that he was merely an accommodation party and should therefore not be held liable. **Held,** an accommodation party can claim no benefit as such but he is liable according to the face of his undertaking, the same as if he were himself financially interested in the transaction. And the fact that the accommodation party never received the value of the promissory note for having acted as such is of no moment, because it is not necessary that any consideration should move him. PHILIPPINE NATIONAL BANK *v.* SINGH & ALTO SURETY & INSURANCE CO., (CA) 54 O.G. 1061.

CRIMINAL LAW — ARSON — IT IS NOT NECESSARY THAT THERE BE FIRE BEFORE THE CRIME OF ATTEMPTED ARSON CAN BE COMMITTED. — On or about April 18, 1954 in Laoag, Ilocos Norte, accused with the intent to commit arson, scattered blankets, rags, toilet paper and other inflammable materials, all soaked with gasoline; placed them in the ceiling of a big store house located in an inhabited place and containing several inflammable materials like clothing, paper, petroleum, gasoline and similar articles; and intended to set fire to the store house at 9:00 o'clock that same night. However, the plan to commit arson was discovered by the police authorities with the aid of the maid of Paulo Ang. Indicted and convicted of the crime of attempted arson, the accused interposed the present appeal. **Held,** it is not necessary that there be a fire before the crime of attempted arson can be committed. In the case at bar there is abundant evidence manifesting the defendant's desire to burn the building and he adhered resolutely to that desire by performing acts that would carry into effect his plan. PEOPLE *v.* GO KAY, (CA) 54 O.G. 2225.

CRIMINAL LAW — ESTAFA — A PARTNER IS GUILTY OF ESTAFA IF HE FRAUDULENTLY APPROPRIATES PARTNERSHIP PROPERTY DELIVERED TO HIM, WITH SPECIFIC DIRECTIONS TO APPLY IT TO THE USES OF THE PARTNERSHIP. — Campos and Guzman entered into a partnership contract for the purpose of working on the land which Guzman had leased from Juan Alonzo for an agreed rental of 75 cavans of palay. After the harvest, the produce was correspondingly divided among the partners and tenants, and 75 cavans of palay were segregated and deposited with the accused Campos for delivery to Juan Alonzo as rentals of the land cultivated. The accused, however, misappropriated the said 75 cavans. Convicted in the lower court of estafa, the accused appealed. **Held,** a partner is guilty of estafa if he fraudulently appropriated partnership property delivered to him, with specific directions to apply it to the uses of the partnership. PEOPLE *v.* CAMPOS, (CA) 54 O.G. 681.

CRIMINAL LAW — SELF-DEFENSE — INDISCRIMINATE DISCHARGE OF FIREARMS IN SELF-DEFENSE IS PUNISHABLE. — Appellant Galacgac, a native of Ilocos Norte but a naturalized American citizen, arrived in the Philippines on Nov. 22, 1951. Seeing that his wife was not there to meet him, in spite of his cabled advice, he immediately proceeded to the house of his in-laws, where his wife was temporarily sojourning. Upon arrival at the house, Galacgac tried to cuddle his wife but she pushed him depreciatingly and avoided his demonstration of husbandly affection. Thinking that the couple were quarreling, Pablo Soriano went upstairs and upon seeing the angry Concepcion