tion of the nature of the positions held by petitioners at the time of their removal. Petitioners contend that, having been appointed as detectives, they should be regarded as members of the Police Department of Cebu City and, therefore, they are members of the *city police*. As such they can only be removed in line with the procedure laid down in Republic Act No. 557. On the other hand, respondents contend that petitioners are not members of the police force, but of the detective force, of the City of Cebu, and, therefore, their removal is governed by Executive Order No. 264.

Let us first make a brief outline of the procedure concerning removal laid down in the legislation invoked by the parties before passing on to determine the nature of the positions held by petitioners.

Section 1 of Republic Act No. 557 provides, in so far as may be pertinent to their case, that the members of the *city police* shall not be removed "except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty," and in such cases, charges shall be preferred by the city mayor and investigated by the city council in a public heraing, and the accused shall be given opportunity to make their defense. A copy of the charges shall be furnished the accused and the investigating body shall try the case within ten days from notice. The trial shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision. The decision of the city council shall be appealable to the Commission of Civil Service.

é. Executive Order No. 264, on the other hand, prescribes a more summary procedure. It applies to secret service agents or detectives and provides in a general way that the appointing officer may terminate the services of the persons appointed if he deems it necessary because of lack of trust or confidence and if the person to be separated is a civil service eligible, the advice of his separation shall state the reasons therefor. Under this procedure no investigation is necessary, it being sufficient that the appointee be notified of his separation based on lack of confidence on the part of the appointing officer.

An analysis of the pertinent provisions of the Charter of the City of Cebu (Commonwealth Act No. 58) will reveal that the position of a detective comes under the police department of the city. This is clearly deducible from the provisions of sections 32, 34 and 35. Section 32 creates the position of Chief of Police "who shall have charge of the police department and everything pertaining thereto, including the organization, government, discipline, and disposition of the city police and *detective force*." Section 34 creates the position of Chief of the Secret Service who shall, under the Chief of Police, "have charge of the detective work of the department and of the detective force of the city, and shall perform such other duties as may be assigned to him by the Chief of Police." And section 35 classifies the Chief of Police and Assistant Chief of Police, the Chief of the Secret Service and all officers and members of the city police and detective force as *peace officers*. Under this set-up it is clear that, with few exceptions, both policemen and detectives perform common functions and duties and both belong to the police department. In contemplation of law therefor both shall be considered as members of the police force of the City of Cebu.

The authorities in the United States are of the same import. Thus, "The word 'detective', as commonly understood in the U. S., is defined as one of a body of police officers, usually dressed in plain clothes, to whom is intrusted the detection of crimes and the apprehension of the offenders, or a policeman whose business is to detect wrongs by adroitly investigating their haunts and habits." [Grand Rapids & I. Ry. Co. v. King, 83 N.E. 778, 780, 41 Ind. App. 707, citing Am. Dict. and Webst. Dict. (Vol. 12, Words and Phrases, p. 312.)]. The term "policemen" may include detectives (62 C.J.S. p. 1091). And "the term 'police' has been defined as an organized civil force for maintaining order, preventing and detecting crimes, and enforcing the laws, the body of men by which the municipal law, and regulations of a city, town, or district are enforced." (Vol. 62, C.J.S. p. 1050.)

It appearing that petitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557, and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been impliedly repealed in so far as they may be inconsistent with the provisions of said Act. (*See* sec. 6, Republic Act No. 557.) This interpretation is the more justified considering the rank and length of service of many of the petitioners involved. The great majority of them had been in the service for 6 years, one for 9 years, one for 11 years, one for 14 years and one even for 31 years with an efficiency rating which is both commendable and satisfactory. These data give an inkling that their separation is due to causes other than those recognized by law.

Wherefore, the petition is granted, without pronouncement as to costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, Concepcion and *Diokno, J. J.*, concur.

XVI

Co Te Huc, Petitioner vs. Hon. Demetrio B. Encarnacion, Judge, Court of First Instance of Manila, Respondent, G. R. No. L-6415, January 26, 1954.

CRIMINAL PROCEDURE; DOUBLE JEOPARDY; DISMISSAL CONSENTED AND URGED BY COUNSEL OF THE ACCUSED.—Where an accused is dismissed provisionally not only with the express consent of the accused but even upon the urging of his counsel, there is no double jeopardy under Sec. 9, Rule 113, if the case against him is revived by the fiscal.

Amado A. Yatco for petitioner.

Demetrio B. Encarnacion, Assistant Solicitor General Guillermo E. Torres and *Solicitor Jaime de los Angeles* for respondents

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition for certiorari seeking to set aside an order of the Court of First Instance of Manila which directs that petitioner be included as one of the accused in a criminal case for estafa from which he was previously excluded by an order of the court.

On July 15, 1950, several persons including petitioner, were charged with the crime of estafa in the Court of First Instance of Manila (Criminal Case No. 13229). Petitioner was arraigned and pleaded not guilty. On August 29, 1951, upon motion filed by the offended party, with the conformity of his counsel, and without objection on the part of the fiscal, the case was provisionally dismissed as to petitioner. On May 31, 1952, the fiscal filed a motion to revive the case on the ground that its dismissal with respect to petitioner "was impractical, discriminating since the ground of dismissal was not based on the merits of the case." Petitioner objected to this motion but the court granted it stating that after a reinvestigation it was found that he was just as guilty as the other accused. On November 12, 1952, petitioner moved to quash the information as to him alleging that his reinclusion in the same after it has been provisionally dismissed places him in double jeopardy. This motion was denied, and respondent Judge having refused to reconsider his order, petitioner filed the present petition for certiorari alleging that said Judge has acted in excess of his jurisdiction.

It is the theory of petitioner that the charge for estafa filed against him having been dismissed albeit provisionally without him express consent, its revival constitutes double jeopardy which bars a subsequent prosecution for the same offense under section 9, Rule 113, of the Rules of Court. This claim is disputed by the Solicitor General who contends that, considering what has transpired in relation to the incident, the provisional dismissal is no bar to his subsequent prosecution for the reason that the dismissal was made with his express consent.

We are inclined to uphold the view of the Solicitor General. From the transcript of the notes taken at the hearing in connection with the motion for dismissal, it appears that a conference was had between petitioner and the offended party in the office of the fiscal concerning the case and that as a result of that conference the offended party filed the motion to dismiss. It also appears that as no action has been taken on said motion, counsel for petitioner invited the attention of the court to the matter who acted thereon only after certain explanation was given by said counsel. And when the order came the court made it plain that the dismissal was merely provisional in character. It can be plainly seen that the dismissal was effected *not only with the express consent of petitioner but even upon the urging of his counsel.* This attitude of petitioner, or of his counsel, takes this case out of the operation of the rule.

A case in point is People v. Romero, G. R. No. L-4517-20, promulgated on July 31, 1951, wherein the order of dismissal was issued after the defense counsel has invited the attention of the court to its former order to the effect that the case would be dismissed if the fiscal was not ready to proceed with the trial on June 14, 1950. When the case reached this Court on appeal, counsel claimed that "it is indubitable that your defendant did not himself personally move for the dismissal of the cases against him nor expressly consent to it; and that the dismissal was, in effect, an acquittal on the merits for failure to prosecute, because no reservation was made in favor of the prosecution to renew the charges against your defendant in the ulterior proceedings." In overruling this plea, this Court said:

> "Whatever explanation that may be given by the attorneys for the defendant, it is a fact which cannot be controverted that the dismissal of the cases against the defendant was ordered upon the petition of defendant's counsel. In opening the postponement of the trial of the cases and insisting on the compliance with the order of the court dated May 25, 1950 that the cases be dismissed if the Provincial Fiscal was not ready for trial on the continuation of the hearing on June 14, 1950, he obviously insisted that the cases be dismissed. The fact that the counsel for the defendant and not the defendant himself, *personally* moved for the dismissal of the cases against him, had the same effect as if the defendant had personally moved for such dismissal, inasmuch as the act of the counsel in the prosecution of the defendant's cases was the act of the defendant himself, for the only case in which the defendant cannot be represented by his counsel is in pleading guilty according to section 3, Rule 114, of the Rules of Court."

There is more weighty reason to uphold the theory of reinstatement in the present case than in that of Romero considering the particularity that the dismissal was provisional in character. In our opinion this is not the dismissal contemplated by the rule that has the effect of barring a subsequent prosecution.

Petition is dismissed with costs.

Pablo, Padilla, Montemayor, Reyes, Jugo and *Labrador, J. J.*, concur.

Justice Bengzon, concurs in the result.

Chief Justice Paras took no part.

XVII

Philippine National Bank, Plaintiff-Appellee vs. Laureano Atendido, Defendant-Appellant G. R. No. L-6342, January 26, 1954.

WAREHOUSE RECEIPT; PLEDGE THEREOF TO GUARANTEE THE PAYMENT OF AN OBLIGATION; CASE AT BAR.—On June 26. 1940. A obtained from the Philippine National Bank a loan of ₱3,000 payable in 120 days with interest at 6% per annum from the date of maturity. To guarantee the payment of the obligation the borrower pledge to the bank 2,000 cavanes of palay which were then deposited in the warehouse of Cheng Siong Lam & Co. in San Miguel Bulacan, and to that effect the borrower endorsed in favor of the bank the corresponding warehouse receipt. Before the maturity of the loan, the 2,000 cavanes of palay disappeared for unknown reason in the warehouse. When the loan matured the borrower failed to pay either the principal or the interest and so action was instituted. *Held*: The delivery of said palay being merely by way of security, it follows that by the very nature of the transaction its ownership remains with the pledgor subject only to foreclosure in case of non-fulfillment of the obligation. By this we mean that if the obligation is not paid upon maturity the most that the pledgee can do is to sell the property and apply the proceeds to the payment of the obligation and to return the balance, if any, to the pledgor (Article 1872, Old Civil Code). This is the essense of this contract, for, according to law, a pledgee cannot become the owner of, nor appropriate to himself, the thing given in pledge (Article 1859, Old Civil Code). If by the contract of pledge the pledgor continues to be the owner of the thing peldge during the pendency of the obligation, it stands to reason that in case of loss of the property, the loss should be borne by the pledgor. The fact that the warehouse receipt covering the palay was delivered, endorsed in blank, to the bank does not alter the situation, the purpose of such endorsement being merely to transfer the juridical possession of the property to the pledgee and to forestall any possible disposition thereof on the party of the pledgor. This is true notwithstanding the provisions to the contrary of the Warehouse Receipt Law.

Gaudencio L Atendido for appellant.

Ramon B. de los Reyes and *Nemesio P. Libunao* for appellee.

DECISION

BAUTISTA ANGELO, *J.*:

This is an appeal from a decision of the Court of First Instance of Nueva Ecija which orders the defendant to pay to the plaintiff the sum of ₱3,000, with interest thereon at the rate of 6% per annum from June 26, 1940, and the costs of action.

On June 26, 1940, Laureano Atendido obtained from the Philippine National Bank a loan of ₱3,000 payable in 120 days with interest at 6% per annum from the date of maturity. To guarantee the payment of the obligation the borrower pledge to the bank 2,000 cavanes of palay which were then deposited in the warehouse of Cheng Siong Lam & Co. in San Miguel, Bulacan, and to that effect the borrower endorsed in favor of the bank the corresponding warehouse receipt. Before the maturity of the loan, the 2,000 cavanes of palay disappeared for unknown reasons in the warehouse. When the loan matured the borrower failed to pay either the principal or the interest and so the present action was instituted.

Defendant set up a special defense and a counterclaim. As regards the former, defendant claimed that the warehouse receipt covering the palay which was given as security having been endorsed in blank in favor of the bank, and the palay having been lost or disappeared, he thereby became relieved of liability. And, by way of counterclaim, defendant claimed that, as a corollary to his theory, he is entitled to an indemnity which represents the difference between the value of the palay lost and the amount of his obligation.

The case was submitted on an agreed statement of facts and thereupon the court rendered judgment as stated in the early part of this decision.

Defendant took the case on appeal to the Court of Appeals but later it was certified to this Court on the ground that the question involved is purely one of law.

The only issue involved in this appeal is whether the surrender of the warehouse receipt covering the 2,000 cavanes of palay given as a security, endorsed in blank, to appellee, has the effect of transferring their title or ownership to said appellee, or it should be considered merely as a guarantee to secure the payment of the obligation of appellant.

In upholding the view of appellee the lower court said: "The surrendering of warehouse receipt No. S-1719 covering the 2,000 cavanes of palay by the defendant in favor of the plaintiff was not that of a final transfer of that warehouse receipt but merely