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

as a guaranty to the fulfillment of the original obligation of ₱3,000.00. In other word, plaintiff corporation had no right to dispose (of) the warehouse receipt until after the maturity of the promissory note Exhibit A. Moreover, the 2,000 cavanes of palay were not on the first place in the actual possession of plaintiff corporation, although symbolically speaking the delivery of the warehouse receipt was actually done to the bank."

We hold this finding to be correct not only because it is in line with the nature of a contract of pledge as defined by law (Articles 1857, 1858 and 1863, Old Civil Code), but is supported by the stipulations embodied in the contract signed by appellant when he secured the loan from appellee. There is no question that the 2,000 cavanes of palay covered by the warehouse receipt were given to appellee only as guarantee to secure the fulfillment by appellant of his obligation. This clearly appears in the contract Exhibit A wherein it is expressly stated that said 2,000 cavanes of palay were given as a collateral security. 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 Cicil Code). This is the essence 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 pledge 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 part of the pledgor. This is true notwithstanding the provisions to the contrary of the Warehouse Receipt Law.

In a case recently decided by this Court (Martinez v. Philippine National Bank, G. R. No. L-4080, September 21, 1953) which, involves a similar transaction, this Court held:

> "In conclusion, we hold that where a warehouse receipt or quedan is transferred or endorsed to a creditor only to secure the payment of a loan or debt, the transferree or endorsee does not automatically become the owner of the good covered by the warehouse receipt or quedan but he merely retains the right to keep and with the consent of the owner to sell them so as to satisfy the obligation from the proceeds of the sale, this for the simple reason that the transaction involved is not a sale but only a mortgage or pledge, and that if the property covered by the quedans or warehouse receipts is lost without the fault or negligence of the mortgagee or pledgee or the transferree or endorsee of the warehouse receipt or quedan, then said goods are to be regarded as lost on account of the real owner, mortgagor or pledgor."

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Bengzon, Padilla, Montemayor, Jugo, Reyes and *Labrador, J. J.*; concur.

Chief Justice Paras dissents for the same reasons stated in Martinez vs. P.N.B., L-4080.

XVIII

Cebu Portland Cement Company, Petitioner vs. The Court of Industrial Relations (CIR) and Philippine Land-Air-Sea Labor Union (PLASLU), Respondents, G. R. No. L- 6158, *March* 11, 1954.

1. COURT OF INDUSTRIAL RELATIONS; JURISDICTION OVER A CLAIM FILED BY A LABOR UNION WHOSE PERMIT HAD ALREADY EXPIRED AND NOT RENEWED BY THE SECRETARY OF LABOR. — The registration required by Commonwealth Act No. 103 is not a prerequisite to the right of a labor organization to appear and litigate a case before the Court of Industrial Relations. (Kapisanan Timbulan ng mga Manggagawa, 44 O. G. (1), pp. 182, 184-185.) In the second place, once the Court of Industrial Relations has acquired jurisdiction over a case under the law of its creation, it retains that jurisdiction until the case is completely decided, including all the incidents related thereto.

2. EMPLOYER AND EMPLOYEE; THE POSITION OF SUPERINTENDENT IS THAT OF AN EMPLOYEE. — In a general sense an "'employee' is one who renders service for another for wages or salary, and that in this sense a person employed to superintend, with power to employ and discharge men and generally to represent the principal is an 'employee,'" (Shields v. W. R. Grace and Co., 179 P. 265, 271, quoted in 14 Words and Phrases 360.)

3. IBID; IBID. — It has been said that while a superintendent who has the power to appoint and discharge may be considered as part of the management, in the dispute that arises between it and the laborers, said superintendent is an employee in his own relation to the capitalist or owner of the business, in this case, the Cebu Portland Cement Company.

4. IBID; IBID. — Valencia was, in the case of his dismissal by the Cebu Portland Cement Company an employee, not a part of the management, and his case properly falls under the category of an industrial dispute falling under the jurisdiction of the Court of Industrial Relations. And the fact that his position was among the highest in a government enterprise did not change the nature of his relation to his employer.

5. IBID; DISMISSAL WITHOUT CAUSE. — There is no question that the position of general superintendent was not abolished; its salary of ₱6,000 and which was held by one Ocampo, was suppressed. Instead of retiring Ocampo, whose petition was abolished, Valencia was retired, even as his position was retained, and Ocampo promoted to take his (Valencia's) position. As Valencia's position was not abolished or suppressed, Valencia should not have been separated by retirement; it should have been Ocampo who should have been retired because of the abolition of his own position. Petitioner's argument in effect is as follows: that there is economy if Valencia is separated and Ocampo retained, and Valencia dismissed. The absurdity of the contention is evident; it is its own refutation. Reasons of economy may have justified the reduction, of Valencia's salary, but certainly not his separation. Evidently the reduction was merely the opportune occasion for a dismissal without cause.

Legal Counsel of Cebu Portland Cement Company, *Fortunato V. Borromeo* and Asst. Gov't Corporate Counsel, *Leovigildo Monasterial* for petitioners.

Emilio Lumontad for respondents, PLASLU.

DECISION

LABRADOR, *J.*:

This is an appeal by certiorari from a decision of the Court of Industrial Relations ordering the petitioner Cebu Portland Cement Company to reinstate Felix V. Valencia to his former position as general superintendent, with full back pay at ₱1,000 a month from November 15, 1950, up to his reinstatement and the differential salary collectible from May 1, 1949 up to November 16, 1950, with all the privileges and emoluments attached to said position.

The record discloses that on December 31, 1948 respondent Philippine Land-Air-Sea Labor Union (PLASLU) filed a petition with the Court of Industrial Relations, docketed as CIR Case No. 241-V and entitled Philippine Land-Air-Sea Labor Union vs. Cebu Portland Cement Company, submitting a set of grievances and demands against the therein respondent, herein petitioner, for decision and settlement by said court. While the said case was pending and on