Articles 1278, 1279, and 1286 and 1290 of our Civil Code read:

"ART. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

"ART. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

"ART. 1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment."

"ART. 1290. When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

Pursuant to these provisions, defendant would have been entitled to deduct from plaintiff's claims of ₱20,000 — if the latter were established — the sum of ₱150 involved in her first counterclaim, if the allegation thereof were true, *even if no such counterclaim had been set up in her answer*, for "when all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of"' — and, hence, did not plead — "the compensation". Moreover, it is clear from the record before us that said counterclaim was set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See, also, Wisdom vs. Guess Drycleaning Co., 5 Fed. Supl., 762-767).

WHEREFORE, the order appealed from is hereby reversed, insofar as it dismisses defendant's first counterclaim, and the case, is, accordingly, remanded to the lower court for further proceedings, not inconsistent with this decision, with costs against plaintiff-appellee, Enrique Icasiano.

IT SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, J.B.L. Reyes, Paredes and De Leon, JJ., concurred.

Barrera and Dizon, JJ., took no part.

III

Delfin Mercader, Petitioner, vs. Hon. Francisco Valila of the Justice of the Peace Court of Bobon, Samar and Amancio Balite, Respondents, G.R. No. L-16118, February 16, 1961, Bengzon, J.

1. LIBEL; VENUE FOR CRIMINAL ACTION AND CIVIL ACTION FOR DAMAGES.— The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense. Where the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof. (Art. 360, Rev. Penal Code, as amended by Rep. Act 1289).

2. ID.; VENUE OF CRIMINAL COMPLAINT WHERE LIBEL IS CIRCULATED IN PROVINCE OR CITY WHERE NEITHER OFFENDED PARTY NOR OFFENDER RESIDES.— Petitioner here maintains that even if the justice of the peace courts have jurisdiction to conduct preliminary investigations, the venue was improperly laid in Bobon, because neither the complainant nor the defendant resided there. Article 360 of the Revised Penal Code as amended by Republic Act 1289 provides that where the libel is published or circulated in a province or city wherein neither the offended party nor the offender resides, the action may be brought therein; and the complaint herein questioned, alleges that the libel had been *published and circulated in Bobon and other municipalities of Samar*. Bobon and Samar, therefore, constituted proper venue.

D E C I S I O N

On April 20, 1959, Amancio Balite, filed with the justice of the peace court of Bobon, Samar, a criminal complaint for libel against Delfin Mercader. After making the preliminary examination, the judge issued the corresponding warrant of arrest. The accused moved to dismiss for lack of jurisdiction and cause of action. Upon denial thereof, the accused filed in September 1959, this petition for certiorari, based mainly on the alleged want of jurisdiction of the aforesaid inferior court.

In ordinary circumstances, the petition would have been dismissed, without prejudice to its presentation before the local court of first instance. But at that time there were pending before this Tribunal some cases involving the jurisdiction, or lack of jurisdiction, of justices of the peace over criminal libel, in the light of Republic Act 1289, approved June 15, 1955.(1) So, we gave due course to this petition. In his answer, the respondent judge explained that he had taken cognizance of the case for purposes of preliminary investigation. In fact, he stated, as the accused had failed to attend the hearing, and there was *prima facie* evidence, he forwarded the *expediente* to the court of first instance for the trial on the merits.

The controversy is thus reduced to the question whether the inferior courts may, after the passage of Republic Act 1289, entertain criminal complaints for written defamation, not for trial on the merits, but for purposes of preliminary investigation. It is contended by those who would deny such authority, that Republic Act 1289 had the effect of depriving justice of the peace courts of their power even to conduct preliminary investigations in the matter of libel or written defamation. The question has been decided in the affirmative in People v. Olarte, L-13027, June 30, 1960. Through Mr. Justice Concepcion, this Court said:

> "Can we justly hold that by fixing for said offense a penalty falling under the original jurisdiction of courts of first instance, the framers of section 2 of Act No. 277 had evinced the intent,, either to establish an exception to the provisions of Act No. 194, authorizing every justice of the peace, to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law x x x vested in the judges of Courts of First Instance,' or to divest justice of the peace of such authority, as regards the crime of libel?"

(1) Amending Art. 360 of the Revised Penal Code to read as follows:

"x x x The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense; Provided, however, that where the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof. x x x."

"It is obvious to us that such inference is unwarranted. To begin with, there is absolutely nothing in Act No. 277 to indicate the aforementioned intent. Secondly, repeal or amendments by implication are neither presumed nor favored. On the contrary, every statute should be harmonized with them. Thirdly, the jurisdiction of courts of first instance to hear and determine criminal actions within the original jurisdiction thereof is far from inconsistent with the authority of justices of the peace to make preliminary investigations in such actions. What is more, this authority has been vested to relieve courts of first instance of the duty to hear cases which are devoid of probable cause, thereby paving the way for the effective exercise of the original jurisdiction of said courts and expeditious disposal by the same of criminal cases which are prima facie meritorious. x x x."

"It is apparent, from a perusal of the three (3) provisions aforementioned, that the framers of Article 360 of the Revised Penal Code intended to introduce no substantial change in the existing law, except as regards venue, and that, in all other respects, they meant to preserve and continue the status quo under sections 2 and 11 of Act No. 277. Such was, also the purpose of Congress in passing House Bill No. 2695, which eventually became Republic Act No. 1289."

The Bobon justice of the peace has thus acted within his powers, and this petition will have to be dismissed.

Petitioner here maintains that even if the justice of the peace courts have jurisdiction to conduct preliminary investigations, the venue was improperly laid in Bobon, because neither the complainant nor the defendant resided there. The statute(2) provides that where the libel is published or circulated in a province or city wherein neither the offended party nor the offender resides, the action may be brought therein; and the complaint herein questioned, alleges that the libel had been *published and circulated in Bobon and other municipalities of Samar*. Bobon and Samar, therefore, constituted a proper venue.

Petitioner's last contention that the complaint stated no cause of action, may not be considered now. It is unimportant in a certiorari proceeding, specially because petitioner has the remedy of discussing the issue before the court of first instance, and then if after hearing he is convicted, to appeal in due time.

Petition dismissed. No costs.

Padilla, Bautista Angelo, Labrador, Concepcion, J.B.L. Reyes, Barrera, Paredes and Dizon, JJ., concurred.

IV

Petra Carpio Vda. de Camilo et al., Petitioners-appellees, vs. The Hon. Justice of the Peace Samuel A. Arcamo, Ong Peng Kee and Adelia Ong, Respondents-appellants, G.R. No. L-15653, September 29, 1961, Paredes, J.

INTERPLEADER; WHEN JUSTICE OF THE PEACE COURT HAS NO JURISDICTION.— The complaint asking the petitioners to interplead, practically took the case out of the jurisdiction of the JP court, because the action would then necessarily "involve the title to or possession of real property or any interest therein" over which the CFI has original jurisdiction (par.[b], sec. 44, Judiciary Act, as amended). Then also, the subject-matter of the complaint (interpleader) would come under the original jurisdiction of the CFI, because it would not be capable of pecuniary estimation (Sec. 44, par. [a], Judiciary Act), there having been no showing that rentals were asked by the petitioners from respondents.

D E C I S I O N

This appeal stemmed from a petition for Certiorari and Mandamus filed by Petra Carpio Vda. de Camilo and others, against Samuel A. Arcamo, Justice of the Peace of Malangas, Zamboanga del Sur, Ong Peng Kee and Adelia Ong.

Petitioner Petra Carpio Vda. De Camilo, had been by herself and predecessors-in-interest in peaceful, open and adverse possession of a parcel of public foreshore land situated in Malangas, Zamboanga del Sur, containing an area of about 400 square meters. A commercial building was erected on the property which was declared under Tax Dec. No. 5286 and assessed at ₱7,400.00. Respondent Ong Peng Kee was a lessee of one of the apartments of said commercial building since June 1, 1957.

On August 1 1957, Arthur Evert Bannister filed an unlawful detainer case against both De Camilo and Ong Peng Kee (Civil Case No. 64) with the JP of Malangas. For failure of Bannister and/or counsel to appear at the trial they were declared in default and ₱100.00 was awarded to De Camilo on her counterclaim. The motion for reconsideration presented by Bannister was denied.

The other petitioners, Severino Estrada, Felisa, Susana, Antonio and the minors Isabelo, Rene and Ruben, all surnamed Francisco, the said minors represented by their mother Susana, had also been in possession (in common), peaceful, open and adverse, since 1937, of a parcel of public foreshore land about 185 square meters which is adjoining that land occupied by de Camilo. On this parcel, a commercial building assessed at ₱1,000.00 was erected by the Francisco's, and had the same declared under Tax Dec. No. 4911.

On September 1, 1957, the two commercial buildings were burned down. Two weeks thereafter, respondents Ong Peng Kee and Adelia Ong, constructed a building of their own, occupying about 120 square meters. The building, however, was so built that portions of the lands previously occupied by petitioners (De Camilo and the Franciscos) were encroached upon.

Under date of December 3, 1957, De Camilo filed a Civil Case No. 78 for Forcible Entry against Ong Peng Kee and Adelia Ong with the JP of Malangas with respect to the portion belonging to her wherein the building of Ong Peng Kee was erected. On August 8, 1958, Severino Estrada and the Franciscos filed a similar case (No. 105). In answer to the complaints, the defendants (Ong Peng Kee and Adelia Ong), claimed that the land where they constructed their building was leased to them by the Municipality of Malangas.

Pending trial of the two cases, the respondent Ong Peng Kee and Adelia Ong filed a complaint for Interpleader against De Camilo, Severino Estrada, the Franciscos, Arthur Evert Bannister, the Mayor and Treasurer of Malangas (Civ. Case No. 108), alleging that the filing of the three cases of forcible entry (Civ. Cases Nos. 64, 78 and 105), indicated that the defendants (in the Interpleader) had conflicting interests since they all claimed to be entitled to the possession of the lot in question and they (Peng Kee and Adelia), could not determine without hazard to themselves who of the defendants was entitled to the possession. Interpleader plaintiffs further alleged that they had no interest in the property other than as mere lessees.

A motion to dismiss the complaint for Interpleader was presented by the defendants therein (now petitioners), contending that (1) the JP had no jurisdiction to try and to hear the case; (2) There were pending other actions between the parties for the same cause; and (3) The complaint for Interpleader did not state a cause of action. Peng Kee and Adelia registered their opposition to the motion and on September 30, 1957, respondent Justice of the Peace denied the motion to dismiss and ordered the defendants therein to interplead (Annex D). The two forcible entry cases were dismissed.

The defendants (now petitioners) instituted the present proceedings, for *certiorari and mandamus* before the Court of First Instance of Zamboanga, claiming that respondent JP in denying the motion to dismiss acted without jurisdiction, and for having given due course to the complaint for Interpleader, the respondent JP gravely abused his discretion, and unlawfully neglected the per-

(2) Quoted in the margin, *supra*.