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

November 20, 1950, said PLASLU filed an incidental motion in the said case, alleging that respondent herein Felix V. Valencia was dismissed without just cause on November 16, 1950 and praying that he be reinstated with back salaries. The Cebu Portland Cement Company filed an answer denying that Valencia was dismissed without cause and alleging that he was retired from the service together with 100 other employees and/or laborers to promote economy and efficiency in the service in accordance with the order of the Secretary of Economic Coordination. In that same answer the cement company questioned the PLASLU's juridical personality as a labor union, as well as the jurisdiction of the CIR to take cognizance of the incidental case. After hearing the merits of the incidental case the Court of Industrial Relations rendered the decision appealed from. After a motion for reconsideration filed by the cement company was denied *in banc*, it filed the present action for certiorari alleging that (a) the CIR has no power to take cognizance of the incidental case of Valencia, firstly, because the PLASLU's license as a registered labor union was revoked by the Secretary of Labor on August 25, 1950, and secondly, because the subject-matter involved in the said incidental case is not an industrial or agricultural dispute related to the main case, Valencia belonging to the management group of the petitioner company; (b) that the court had no power and acted with grave abuse of discretion, firstly, because it did not state correctly the facts appearing on record secondly, because it disregarded the essential requirements of due process; thirdly, because it did not weigh the evidence submitted by the petitioner herein before promulgating its decision; fourthly, because it had no jurisdiction to consider the claim of a Filipino citizen in the service of a government controlled corporation, etc.

The facts giving rise to the incidental case filed by Valencia against the Cebu Portland Cement Company may be briefly stated as follows: On or before November 10, 1950, Felix V. Valencia was a general superintendent of the company with a salary of ₱12,000 per annum. He first served with the Cebu Portland Cement Company as assistant general superintendent from July, 1939 with a salary of ₱7,200 per annum. In November, 1947, on recommendation of the general manager, he was promoted to the position of general superintendent with compensation at the rate of ₱9,600 per annum. On May 1, 1949, he got a promotional appointment with a compensation of ₱12,000 per annum. On October 7, October 21, and October 23, the Secretary of Economic Coordination ordered the general manager of the Cebu Portland Cement to take steps to secure a reduction in the expenses of the company, in order to enable it to produce cement at a lower cost and thus reduce its price for the benefit of the public. Pursuant to this order the manager proposed that the annual salary of the general superintendent of the plant to be reduced to ₱10,800 and recommended that Valencia be retired for the good of the service and the assistant general superintendent take his place as general superintendent. The Secretary of Economic Coordination approved the proposal and recommendation and ordered the retirement of Mr. Valencia effective November 16, 1950. Valencia refused to retire as ordered and so filed the incidental case.

One of the most important questions raised in this appeal is the supposed lack of jurisdiction on the part of the Court of Industrial Relations to consider the incidental case of respondent Valencia, for the reason that when his claim was presented before the court on November 16, 1950 the Philippine Land-Air-Sea Labor Union, to which he belonged, had no longer any personality before the said court, because its permit to continue as a labor organization had already expired and the same was not renewed by the Secretary of Labor. In the first place, it must be remembered that 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. (Manila Hotel Employees Association vs. Manila Hotel Company and the Court of Industrial Relations, 73 Phil. 374; Mortera, et al. vs. Court of Industrial Relations, 45 Q. G. (4), p. 1714; and Luzon Brokerage Company vs. Luzon Labor Union, 48 O. G. (9), p. 3883.)

It is also claimed that the Court of Industrial Relations has no jurisdiction over the case of the dismissal or separation of Valencia, because the dispute involved between him and the Cebu Portland Cement Company is not an industrial dispute which is causing or likely to cause a strike or a lockout, and the number of employees or laborers involved does not exceed 30. In answer to this contention it must be noted that the original case was instituted by the Philippine Land-Air-Sea Labor Union (PLASLU) and the circumstances required by law for the case to be submitted to the Court of Industrial Relations, as required by Section 4 of Commonwealth Act No. 103, were then present. While this original action was pending, the incidental case of Valencia, a member of the PLASLU, arose and the power of the court to take cognizance thereof is recognized in Section 1 of said Commonwealth Act No. 103 as a dismissal of an employee during the pendency of the proceedings in the original case.

It is also contended that the position of general superintendent held by Valencia, which is next in importance to that of general manager with respect to the operation of the company's plant, is not that of an employee, as Valencia represented the management of the company and his dismissal was a case involving a member of the management and not an employee, and, therefore, not an industrial dispute. 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.) It is true that in the case between the PLASLU and the Cebu Portland Cement Company, Valencia actually represented the management in the dispute arising between the Cebu Portland Cement Company, employer, and the union of the laborers, employees. But in the incidental case at bar, we are not concerned with said relation between the PLASLU and the Cebu Portland Cement Company, but we are with that of Valencia, employee, on one side, as against the Cebu Portland Cement Company, employer, on the other. 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.

> "A foreman in his relation to his employer, is an employee, while in his relation to the laborers under him he is the representative of the employer and within the definition of Section 2(2) of the Act. Nothing in the Act excepts foremen from its benefits nor from protection against discrimination nor unfair labor practices of the master. (NLRB vs. Skinner and Kennedy Stationary Co., 113 Fed. 2d., 667.)
>
> "His interest properly may be adverse to that of the employer when it comes to fixing his own wages, hours, seniority rights or working conditions. He does not lose his right to serve himself in those respects because he serves his master in others. x x x." (330 U. S. 485.)

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 case or his relation to his employer.

Let us now consider the merits of the arguments submitted by petitioner in justification of Valencia's separation. It is claimed that this was made in the interest of economy and efficiency. There is no question that the position of general superintendent was not abolished; its salary was reduced only, from ₱12,000 to ₱10,800 per annum. That of assistant general superintendent, which carried a salary of ₱6,000 and which was held by one Ocampo, was suppressed. Instead of retiring Ocampo, whose position 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, but none if Ocampo, whose position is abolished, is 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.

Was the dismissal in the interest of efficiency? The CIR found that Valencia's efficiency is shown by the greater amount of production obtained during his incumbency. Even the petitioner admits that there is no charge of inefficiency. (See Brief for the Petitioner, p. 89.) But the separation was recommended "for the good of the service," implying that there were valid reasons therefor. None appear in the record. On the other hand, the evidence submitted prove Valencia's efficiency. Even if there were reasons therefor, which were not disclosed, the separation would still be illegal because no charges of any kind whatsoever appear to have been filed against him and neither does any opportunity appear to have been given him to answer them or to defend himself against them.

The above considerations cover the most important points raised in this appeal; it would be unprofitable to answer all the other arguments, most of which are high-sounding claims without foundation in fact and in law. Suffice it for us to state that we have carefully examined the record and we find no reason or ground to disturb the findings of fact and conclusions of law contained in the judgment. The findings of fact are based on the testimonial and documentary evidence submitted. The claim that the facts appearing in the record are not stated, or that the requirements of due process of law have been ignored, find no support in the record, it appearing that every opportunity was afforded petitioner to present its side.

The judgment is, therefore, hereby affirmed, with costs.
So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor; Reyes; Jugo and *Bautista Angelo, J. J.*, concur.
Mr. Justice Concepcion and *Mr. Justice Diokno* did not take part.

XIX

The People of the Philippines, Plaintiff, Antonio Espada, Offended-Party-Appellee, vs Pelagio Montasesa et al., Accussed-Appellants, G. R. No. L-5684, January 22, 1954.

1. CRIMINAL LAW; CIVIL LIABILITY OF THE ACCUSED; CASE AT BAR. — The defendants were found guilty of the crime of coercion and were sentenced either to return the articles in question (two bales of tobacco) to the complainant or to indemnify him of the same of P632.00 with subsidiary imprisonment in case of insolvency. In compliance therewith, the accused delivered to the provincial sheriff two bales of tobacco but in spite of this the provincial sheriff levied upon certain real properties of the accused. The accused claimed that tobacco is a fungible thing and that in accordance with article 1593 of the Civil Code, the obligation of one who receives money or fungible things is to return to the creditor the same amount or thing owned of the same kind or specie and quality. *Held*: The civil liability of the accused-appellants, in the case at bar, is not governed by the Civil Code, as contended, but by Articles 100-111 of the Revised Penal Code. In accordance therewith, the sentence is for the return of the very thing taken, *restitution*, and if this can not be done, for the payment of P600 in lieu thereof, *reparation*. This amount represents the value of the two bales of tobacco taken, at the time of the taking, and this value was fixed by the court presumably in accordance with the evidence adduced during the trial.

2. IBID; IBID; RESTITUTION OR REPARATION AS THE CIVIL LIABILITY OF THE ACCUSED IN CRIMES AGAINST PROPERTY. — The purpose of the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. So if the crime consists in the taking away of his property, the first remedy granted is that of restitution of the thing taken away. If restitution can not be made, the law allows the offended party the next best thing, reparation .

3. IBID; IBID; REPARATION MAY NOT BE MADE BY THE DELIVERY OF A SIMILAR THING. — Reparation may not be made by the delivery of a similar thing (same amount, kind or species and quality), because the value of the thing taken may have decreased since the offended party was deprived thereof. Reparation, therefore, should consist of the price of the thing taken, as fixed by the court (Art. 106, Revised Penal Code).

4. IBID; IBID; AMOUNT TO BE PAID TO THE OFFENDED PARTY AS REPARATION; MONEY AS STANDARD OF VALUE. — In the case at bar, the court considered the payment of P600 as the next best thing, if the property taken could not be returned. No valid objection can be raised against this decision; money is the standard of value, and, except in financial crises, it does not fluctuate in value as much as merchandise or things, especially those bought and sold in the ordinary course of commerce.

Julio Siayoco for appellants.
No appearance for appellees in the Supreme Court.

DECISION

LABRADOR, *J.*:

In the above entitled criminal case, the accused-appellants were found guilty of the crime of coercion and were sentenced by the Court of Appeals, as follows:

> "x x x the penalty is increased to four (4) months and one (1) day of arresto mayor, and that appellant should also be sentenced either to return the articles in question to the complainant or to indemify him in the sum of P632.00, with subsidiary imprisonment in case of insolvency, x x x."

When the case was returned to the Court of First Instance for the execution of the above sentence, said court issued an order of execution for P600, the value of two bales of tobacco obtained by the accused from the offended party. The provincial sheriff levied upon certain real properties of the accused Paulino Dumagat to secure the payment thereof, notwithstanding the fact in compliance with the judgment, the accused had delivered to him (the sheriff) two bales of tobacco. So the accused presented a motion in court praying that the order of execution be set aside. The offended party opposed the petition, and the court sustained this opposition, denying the petition to set aside the order. Against this order of denial, the accused have prosecuted this appeal.

In their brief, the accused claim that tobacco is a fungible thing and that, in accordance with Article 1593 of the Civil Code, the obligation of one who receives money or fungible things is to return to the creditor the same amount of the thing owed of the same kind or species and quality.

The civil liability of the accused-appellants, in the case at bar, is not governed by the Civil Code, as contended, but by Articles 100-111 of the Revised Penal Code. In accordance therewith, the sentence is for the return of the very thing taken, *restitution*, and if this can not be done, for the payment of P600 in lieu thereof, *reparation*. This amount represents the value of the two bales of tobacco taken, at the time of the taking, and this value was fixed by the court presumably in accordance with the evidence adduced during the trial.

The purpose of the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. So if the crime consists in the taking away