with any of the... relative, by consanguinity or affinity within the third civil degree, of the President of the Philippines... in any business, transaction, contract or application with the Government or any other matter calling for action or decision by such officers or employees".

Affinity, it is said, is a tie arising from marriage "which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands towards them and gives to the wife the same reciprocal connection with the relations of the husband". (16 Am Jur. 825) Upon this principle alone, it is believed that the query must be resolved in the affirmative. But there are other considerations, tellingly weighty, which lend powerful support for this conclusion.

The sister of Mrs. Garcia, be it observed, is a relative of the President by affinity, being two degrees removed from the latter. As such, she unquestionably falls within the purview of the legal provision above quoted. I see no reason why her husband should not similarly be so considered.

In the first place, under the prevailing system of conjugal partnership of gains, the earnings of either spouse inure to the benefit of both. Under this regime, husband and wife are business partners, so to speak, each in effect being the agent of the other. Economically, this unity of interest furnishes a compelling motive for one to help the other in any business venture. And intimacy of relations renders collusion between them easy to achieve but difficult to detect. Under these circumstances, it is at once apparent that if only one of the spouses is to be deemed precluded from intervening in any business transaction with the government, the efficacy of the prohibition would be shadowy and extremely susceptible to circumvention.

In the second place, if the President's sister-in-law is placed under legal disability because of the presumptive influence she wields as a consequence of that relationship, it is not unreasonable to suppose that the Congress, conscious of the cohesive family ties obtaining in this country, considered her husband as possessed, more or less, of the same degree of influence and so intended him to fall within the scope of the prohibition.

In view of the foregoing and in the light of the legislative history of Republic Act No. 3019, the conditions which inspired its enactment and the evils that it seeks to avoid, I am of the opinon that the conclusion reached above, though somewhat strict, is more in consonance with the underlying intent and spirit of the Anti-Graft and Corrupt Practices Act.

Let it be said in closing that no statement herein is meant to carry a malicious imputation against anybody. In point of fact, there is not the slightest intimation that the person here involved has been guilty of unbecoming conduct. Unfortunately for him, the governing statute suppresses not merely the reprehensible but also such acts which, although morally above reproach, might somehow make government transactions an object of suspicion before the public eye.

(Sgd.) ALEJO MABANAG
Secretary of Justice

SUPREME COURT CASE DIGEST

CIVIL LAW — PERSONS — THE PRESUMPTIONS OF DEATH UNDER THE CIVIL CODE ARE INAPPLICABLE TO CLAIMS UNDER THE WORKMEN'S COMPENSATION ACT, WHERE NO SETTLEMENT OF AN ESTATE IS INVOLVED. — The husband of the respondent claimant was found missing aboard a vessel where he was employed as a mess boy. The accident occurred while the vessel was in the open sea off the coast of Samar. The widow filed a notice of death and compensation with the proper Regional Office of the Department of Labor against the petitioner under the Workmen's Compensation Act. An award of ₱4,000 as death benefits was granted to the widow. The petitioner objected to the award, contending, among others, that a person missing under the circumstances attending the disappearance of respondent's husband may not legally be considered a widow entitled to compensation under the law. *Held,* the presumptions of death under the Civil Code are inapplicable to claims under the Workmen's Compensation Act since said presumptions may be availed of only for the purpose of settling the estate of a missing person. Moreover, par. 1 of Article 391 of the Civil Code applies where a vessel is lost during a sea voyage and a person aboard it is unheard of for four years since the loss of the vessel. In the case at bar, the vessel was not lost during a sea voyage. *Caltex (Phil.) Inc. v. Villanueva,* G. R. No. L- 15658, Aug. 21, 1961.

CIVIL LAW — PRESCRIPTION — INSTITUTION OF ACTION AGAINST THE AGENT DOES NOT INTERRUPT THE RUNNING OF THE PERIOD OF PRESCRIPTION IN FAVOR OF THE PRINCIPAL. — Plaintiffs insured their store with defendant insurance company. The store was razed by fire and plaintiffs filed their claim for the face value of the insurance policy. Defendant denied their claim, whereupon, plaintiffs filed an ordinary action for recovery. The action however was directed against defendant's agent, instead of defendant itself. The action was dismissed, but without prejudice to the filing of the proper action against the principal, defendant herein. Hence, the present action. From the denial of the original claim to the dismissal of the first action, more than one year elapsed. The insurance policy provided that action on the policy must be brought within 12 months from the rejection of the claim, otherwise all benefits thereunder would be forfeited. Defendant therefore invoked prescription against the second action. Plaintiffs, on the other hand, contended that the filing of the first action interrupted the running of the period provided in the policy. *Held,* plaintiffs' contention is untenable. The action against defendant's agent did not produce any legal effect except that of notifying the agent

of the claim. Beyond such notification, it served no other purpose. There is no condition in the policy that the action must be filed against the agent, and we cannot by interpretation extend the clear scope of the agreement beyond what is agreed upon by the parties. *Ang v. Fulton Fire Ins. Co.*, G.R. No. L-15862, July 31, 1961.

COMMERCIAL LAW — CORPORATION LAW — IN THIS JURISDICTION, PENDING ACTIONS BY OR AGAINST A CORPORATION ABATE UPON THE EXPIRATION OF THE PERIOD ALLOWED BY LAW FOR THE LIQUIDATION OF ITS AFFAIRS. — Before the proper Justice of the Peace Court, plaintiff sought to recover a certain sum from defendant. Judgment having been rendered for a lesser amount, plaintiff appealed to the Court of First Instance. Defendant moved to dismiss the complaint on the ground of lack of legal capacity to sue, plaintiff corporation having been abolished. Plaintiff objected thereto, claiming that pursuant to the Executive Order abolishing it, plaintiff "shall nevertheless be continued as a corporate body for a period of three years from the effective date" of said Order, that is, November 30, 1950, "for the purpose of prosecuting and demanding suits by or against it and of enabling the Board of Liquidators," thereby created, to "gradually settle and close its affairs." Suit was commenced November 14, 1953 or before the expiration of the period provided in the Order. The question is may the action thus commenced be continued after the expiration of the period? *Held,* the rule appears well settled that, in the absence of statutory provision to the contrary, pending actions by or against a corporation are abated upon the expiration of the period allowed by law for the liquidation of its affairs. Our Corporation Law contains no such contrary provision. Accordingly, the question must be answered in the negative. *Nat. Abaca & Other Fibers Corp. v. Pore,* G. R. No. L-16779, Aug. 16, 1961.

COMMERCIAL LAW — INSURANCE — LIMITATIONS IN INSURANCE POLICIES PREVAIL OVER STATUTORY LIMITATIONS AND EXCEPTIONS THERETO. — Defendant insurance company insured plaintiffs' goods against fire. Subsequently, the goods insured got burned. Plaintiffs filed their claim for the value of the policy. Defendant denied their claim, notice of which denial plaintiffs received on April 19, 1956. The instant action to recover on the policy was filed on May 5, 1958. It is provided in the insurance policy that any action thereon must be commenced within 12 months after the rejection of the claim. The action having been instituted more than one year after the denial of the claim, defendant invoked prescription as a defense. *Held,* we have already settled the issue presented here in the case of Macias & Co. v. China Fire Ins. Co., where we declared that the contractual limitation in an insurance policy prevails over the statutory limitation. As stated in said case, the rights of the parties flow from their contract, hence they are not bound by the statute of limitations nor by exceptions thereto. In the words

of our own law, their contract is the law between them, and if they stipulate, as in the instant case, that an action on a claim denied by the insurer must be brought within one year from the denial, they must be governed thereby, not by the rules on the prescription of actions. ANG *v.* FULTON FIRE INS. CO. G. R. No. L-15862, July 31, 1961.

CRIMINAL LAW — QUASI-RECIDIVISM — FOR PURPOSES OF THE EFFECT OF QUASI-RECIDIVISM, IT IS IMMATERIAL WHETHER THE CRIME, FOR WHICH THE ACCUSED IS SERVING SENTENCE AT THE TIME OF THE COMMISSION OF THE OFFENSE CHARGED, FALLS UNDER THE REVISED PENAL CODE OR UNDER A SPECIAL LAW. — Defendants were in a group charged with the crime of murder. The trial court found them guilty and, because they were quasi-recidivists having committed the above-mentioned felony while serving sentence for another crime, imposed the death penalty. Before the Supreme Court *en consulta,* counsel for one of the defendants assailed the consideration of quasi-recidivism in the imposition of the penalty, contending that the allegation of such circumstance was vague, the information having failed to state whether the offense for which defendants were serving sentence at the time of the commission of the crime charged was penalized by the Revised Penal Code or by a special law. *Held,* there is no merit in counsel's pretense. It makes no difference, for purposes of the effect of quasi-recidivism under Article 160 of the Revised Penal Code, whether the crime for which an accused is serving sentence at the time of the commission of the offense charged falls under said Code or under a special law. PEOPLE *v.* PERALTA, G.R. No. L-15959, Oct. 11, 1961.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — FINDINGS OF FACT OF THE COURT OF INDUSTRIAL RELATIONS ARE CONCLUSIVE UPON THE SUPREME COURT IN THE ABSENCE OF ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. — Respondent filed a complaint in the Court of Industrial Relations charging petitioners with unfair labor practices for, among others, dismissing him on account of his union activities. Respondent, before and after becoming a unionist, was employed off and on as a temporary security guard by petitioner corporation until his dismissal. In the interim, and after his affiliation to the union, the union filed charges against petitioner corporation's security officer with respondent gathering the materials for some of the charges. The union at the same time demanded that positions vacated by members of the union be filled with applicants recommended by its board of directors. Respondent was recommended to the position of permanent guard vacated by a member of the union. Instead of being so appointed, he was dismissed during his last employment. Hence, the present action. After hearing, the court concluded that respondent was dismissed for his union activities, and, accordingly, ordered his reinstatement. Petitioners' motion for reconsideration of the court's decision

having been denied, hence, the instant appeal by certiorari upon the ground, among others, that the industrial court erred in making findings and conclusions not supported by substantial evidence. *Held,* the error assigned involves the factual findings of the lower court. The oft-repeated doctrine is for this Court not to review the findings of fact of the Court of Industrial Relations in the absence of proof that it had abused its discretion to an extent amounting to a lack or excess of jurisdiction. SAN MIGUEL BREWERY *v.* RUEDA, G.R. No. L-12682, Aug. 31, 1961.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE COURT OF INDUSTRIAL RELATIONS MAY NOT GRANT REINSTATEMENT UPON A NEGATIVE FINDING IN AN UNFAIR LABOR PRACTICE CASE, ITS POWER BEING LIMITED TO DISMISSING SAID CASE. — Petitioner labor union charged respondent corporation with unfair labor practice, alleging discriminatory dismissal of employees for their union activity. After hearing, the trial judge found the alleged discrimination inexistent, and, accordingly, dismissed the charges. On motion for reconsideration, the dismissal was sustained and the dismissed employees ordered reinstated with back wages. Hence, this appeal by certiorari. The question is, in a proceeding for the trial of unfair labor practices, conducted in accordance with Section 5 of Rep. Act No. 875, can the court grant reinstatement, even if the complaint is to be dismissed because the alleged unfair labor practice has not been proved or found to exist? Held, the instant cases having been instituted as unfair labor practice cases, pursuant to Section 5 of Rep. Act No. 875, and no unfair labor practice having been proved committed, the industrial court has no power to grant reinstatement or back wages, but must limit itself to dismissing the charges of unfair labor practice. NATIONAL LABOR UNION *v.* INSULAR-YEBANA TOBACCO, G.R. No. L-15363, July 31, 1961.

LABOR LAW — COURT OF INDUSTRIAL RELATIONS — THE REQUIREMENT THAT THE COURT SHALL RECEIVE EN BANC A MOTION FOR RECONSIDERATION, SIMPLY DEMANDS THAT ALL THE AVAILABLE JUDGES SHALL TAKE PART. — Petitioners were charged before the Court of Industrial Relations with unfair labor practices. After due hearing, judgment was rendered in favor of respondent-complainant. Petitioners moved for reconsideration, which was denied by resolution of the court *en banc*. However, one of the judges did not take part being on leave at the time. Upon this ground, petitioners filed the instant appeal by certiorari. *Held,* there is no merit in petitioners' contention that the industrial court erred in resolving the motion for reconsideration by the vote of four of the five judges of the court, one being on leave at the time. The requirement that a motion for reconsideration shall be resolved by the court *in banc,* the judges sitting together, simply demands that all the available judges shall take part and as long as a majority of the judges attending concur, it is enough for the pronouncement of a decision, order or award. SAN MIGUEL BREWERY *v.* RUEDA, G.R. No. L-12682, Aug. 31, 1961.

LABOR LAW — DISMISSAL — AN EMPLOYEE DISCHARGED WHILE ON TEMPORARY EMPLOYMENT, AND SUBSEQUENTLY ADJUDGED ENTITLED TO REINSTATEMENT, MAY NOT BE REINSTATED AS A PERMANENT EMPLOYEE. — Respondent worked for petitioner corporation as a temporary security guard. For his union activities, he was dismissed. Whereupon, he filed a complaint in the Court of Industrial Relations charging petitioner with unfair labor practice. The industrial court found the charge to be true and ordered respondent's reinstatement to the position of permanent security guard, to which position he was recommended by his union sometime before his dismissal. Petitioner's motion for reconsideration of the order of the industrial court having been denied, it brought the instant appeal by certiorari to the Supreme Court, contending grave abuse of discretion and excess of jurisdiction on the part of the court below in directing the employment of respondent in a permanent capacity. *Held,* there is no question that having been the subject of unfair labor practice, respondent is entitled to reinstatement. However, petitioner cannot be required to appoint him to a position which he had not previously occupied. Reinstatement, in its general acceptation, means restoration to a state from which one has been removed or separated. We find merit in petitioner's contention. Respondent should be ordered reinstated to his former position of temporary guard. SAN MIGUEL BREWERY *v.* RUEDA, G.R. No. L-12682, Aug. 31, 1961.

LABOR LAW — WORKMEN'S COMPENSATION COMMISSION — MERE FILING OF THE CLAIM FOR COMPENSATION BEYOND THE PERIOD PRESCRIBED IN SECTION 24 OF THE WORKMEN'S COMPENSATION ACT DOES NOT DEPRIVE THE WORKMEN'S COMPENSATION COMMISSION OR ITS HEARING OFFICER OF JURISDICTION TO HEAR AND DETERMINE SAID CLAIM. — Respondent was in the employ of petitioner from June 1, 1950 to December 6, 1958. On July 1, 1957, he wrote his employer that he was ill, and asked that he be laid off. On December 22, 1958, he gave written notice to his employer that he contracted pulmonary tuberculosis, while employed. On December 23, 1958, he filed a formal claim for compensation with the Workmen's Compensation Commission. At the hearing, petitioner moved to dismiss the claim on the ground, among others, that respondent failed to comply with the requirement of Section 24 of the Workmen's Compensation Act (Act No. 3428). Said section provides that the claim for compensation must be presented not later than two months after the date of sickness. The hearing officer having denied the motion, as well as a motion to reconsider said denial, petitioner instituted the present action for certiorari and prohibition with the Court of First Instance, which decided the action in petitioner's favor. Hence, this appeal by respondent. The question is,

is the jurisdiction of the Workmen's Compensation Commission to hear, consider and make an award, dependent upon the existence of the grounds for granting the award as provided by law, or the timeliness of the filing of the claim? *Held,* the mere fact that a claim was presented before the Workmen's Compensation Commission or its hearing officer beyond the period prescribed by the statute, is no ground or reason for holding that said Commission has no jurisdiction to hear and determine the claim. CENTURY INS. Co. *v.* FUENTES, G.R. No. L-16039, Aug. 31, 1961.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — A HOMESTEAD, SALES OR FREE PATENT ONCE REGISTERED UNDER THE LAND REGISTRATION ACT AND CERTIFICATE OF TITLE ISSUED IN LIEU THEREOF BECOMES INDEFEASIBLE AS A TORRENS TITLE AND ANY TITLE SUBSEQUENTLY ISSUED COVERING THE SAME PROPERTY IS NULL AND VOID.—Appellants filed an application for registration in their names of sixteen (16) parcels of land. Appellees opposed and filed a motion to dismiss the application alleging lack of jurisdiction of the court to decree registration of the lots applied for, on the ground that said lots were already covered by certificates of title based on public patents granted to them. Motion granted. On appeal, appellants contended that a certificate of title based upon a public patent, such as homestead, sales or free patent, is null and void; that it is the decree of registration and not the certificate of title which confers the character of incontestability of title; and, hence, that the lower court erred in dismissing the application. *Held,* the primary and fundamental purpose of the Land Registration Act is to finally settle titles to land. There would be no end to litigation if properties covered by torrens title may still be re-litigated in a subsequent land registration case. Pursuant thereto, we have consistently held that a homestead patent once registered under the Land Registration Act cannot be the subject matter of a cadastral proceeding and that any title issued thereon is null and void. The same may be said of a sales patent. Once a certificate of title is issued under the Land Registration Act in lieu of a sales patent, the land is considered registered under the torrens system and the title of the patentee becomes indefeasible. Order appealed from affirmed. DURAN *v.* OLIVA, G.R. No. L-16589, Sept. 29, 1961.

LAND TITLES AND DEEDS — LAND REGISTRATION ACT — A MOTION TO DISMISS UNDER THE RULES OF COURT IS AVAILABLE TO PARTIES IN LAND REGISTRATION PROCEEDINGS. — Appellants applied for registration in their names of sixteen (16) parcels of land. Appellees opposed and filed a motion to dismiss the application on the ground of lack of jurisdiction, as provided in the Rules of Court. Appellants objected to the motion contending that a motion to dismiss under the Rules of Court is not available in land registration proceedings. *Held,* the contention of appellants is untenable. By express provision of Rule 132, Rules of Court, the rules contained therein

apply to land registration and cadastral cases. The Land Registration Act (Act No. 496) does not provide for a pleading similar or corresponding to a motion to dismiss, but as said motion is necessary for the expeditious termination of land registration cases, it may be availed of by the parties. DURAN *v.* OLIVA, G.R. No. L-16589, Sept. 29, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — FAILURE OF A PARTY TO EXHAUST THE ADMINISTRATIVE REMEDIES PROVIDED BY LAW AFFECTS HIS CAUSE OF ACTION, BUT NOT THE JURISDICTION OF THE COURT OVER THE SUBJECT MATTER OF THE CASE. — Petitioner filed with the Director of Mines a lode lease application covering certain mineral claims. Sometime thereafter, respondent wrote to said officer informing him that she had an adverse claim to the mineral claims covered by the lode lease application. Respondent was advised that the filing of her adverse claim was irregular inasmuch as notice of the filing of the lease application had not as yet been published, although she could file a verified protest to said application. Instead of heeding the Director's advise, respondent filed an ordinary civil action praying that petitioner's mineral claims be declared null and void on the ground of overlapping, and that she be declared the rightful and lawful locator and owner of the area covered by her mineral claims, which includes petitioner's mineral claims, and that petitioner be ordered to immediately vacate the areas in question. Petitioner filed a motion to dismiss the complaint on the ground of failure to exhaust all available administrative remedies. The motion was denied, whereupon, it filed its answer, alleging among other defenses, lack of jurisdiction over the case, owing to non-exhaustion of the administrative remedy provided by law. Inasmuch as, the defense notwithstanding, the court set the case for trial, hence, the present action of prohibition. *Held,* we agree with petitioner that respondent is bound by law to follow the administrative procedure provided in the settlement of conflicting mining claims before resorting to the courts. However, respondent's failure to do so, at best, deprived her of a cause of action. It did not affect the jurisdiction of the lower court to hear the case. Petition for writ of prohibition denied. ATLAS CONSOLIDATED MINING & DEVELOPMENT CORP. *v.* MENDOZA, G.R. No. L-15809, Aug. 30, 1961.

POLITICAL LAW — ADMINISTRATIVE LAW — THE COURT OF TAX APPEALS IS NOT VESTED WITH JURISDICTION TO ISSUE WRITS OF PROHIBITION AND INJUNCTION INDEPENDENTLY OF, AND APART FROM, AN APPEALED CASE. — This is a petition for review of a judgment rendered by the Court of Tax Appeals. The respondent court granted the petition for prohibition filed by the respondent taxpayer and enjoined the petitioner Collector of Internal Revenue from collecting income taxes due and surcharges by summary distraint of and levy upon personal and real properties pursuant to Secs. 316 to 330 of the N.I.R.C. Petitioner contends that the respondent

taxpayer cannot bring before the respondent court an independent special civil action for prohibition without taking an appeal from the decision or ruling of the Collector of Internal Revenue in the cases provided for in Secs. 7 and 11 of Republic Act No. 1125. *Held,* tenable. Nowhere does the law expressly vest in the Court of Tax Appeals original jurisdiction to issue writs of prohibition and injunction independently of, and apart from an appealed case. The writ of prohibition or injunction that it may issue under the provisions of section 11 of Republic Act No. 1125, to suspend the collection of taxes, is merely ancilliary to and in furtherance of its appellate jurisdiction. Judgment annulled and set aside. COLLECTOR *v.* YUSECO, G.R. No. L-12518 Oct. 28, 1961.

POLITICAL LAW — CONSTITUTIONAL LAW — A CENSUS ENUMERATION, ALTHOUGH NOT FINAL AND STILL SUBJECT TO CORRECTION, MAY BE CONSIDERED OFFICIAL AND MADE THE BASIS OF A REDISTRICTING STATUTE. — Rep. Act No. 3040, a redistricting or apportionment act, was based on a report submitted by the Director of Census stating, among others, that the same is a "preliminary count of the population", that it "may be subject to revision", but that until the final report is made, the "figures should be considered as official for all purposes". Petitioners, in raising the constitutionality of the statute, contended that the apportionment could not legally rest on the report being of the character already described. *Held,* this issue does not clearly favor petitioners. There are authorities sustaining the view that although not final and still subject to correction, a census enumeration may be considered official, in the sense that governmental action may be based thereon even in matters of apportionment of legislative districts. MACAS *v.* COMMISSION, G.R. No. L-18684, Sept. 14, 1961.

POLITICAL LAW — CONSTITUTIONAL LAW — DISPROPORTIONATE REPRESENTATION CONSTITUTES SUFFICIENT GROUND TO AVOID A REDISTRICTING STATUTE. — Rep. Act No. 3040, in apportioning the representative districts of the country, alloted to some provinces more districts than to others with bigger populations. Petitioners, congressmen and a governor of some of the aggrieved provinces, assailed the statute as unconstitutional and void on the ground, among others, that it apportioned districts without regard to the number of inhabitants of the several provinces. *Held,* the Constitution directs that the one hundred twenty Members of the House of Representatives shall be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants. This provision was violated by Rep. Act No. 3040 when it gave some provinces, with less inhabitants, greater representation than the aggrieved provinces which have bigger number of inhabitants. Such disproportion of representation has been held sufficient to avoid apportionment laws enacted in States having Constitutional provisions similar to ours. We, therefore, declare Rep. Act No. 3040 void. MACIAS *v.* COMMISSION, G.R. No. L-18684, Sept 14, 1961.

POLITICAL LAW — CONSTITUTIONAL LAW — EVERY CITIZEN DEPRIVED OF HIS ELECTIVE FRANCHISE HAS PERSONALITY TO QUESTION THE VALIDITY OF A REDISTRICTING STATUTE. — Congress passed Rep. Act No. 3040 apportioning the representative districts in this country. Petitioners sued for injunction to prevent respondent from implementing said Act alleging unconstitutionality as a ground. After hearing, the Supreme Court, before which the action was brought, declared the statute unconstitutional, and aware of the urgency of the matter, issued a brief resolution granting the injunction without prejudice to the writing of an extended opinion passing on the issues raised. This is the extended opinion. One of the issues raised was whether or not petitioners, Representatives from and a Governor of the aggrieved provinces in the apportionment, had personality to sue and question the validity of the apportionment act. *Held,* the authorities hold that citizens who are deprived of their elective franchise by an apportionment act have sufficient interest to go to court to test the statute. Therefore, petitioners as voters and as congressmen and governor of the aggrieved provinces have personality to sue. MACIAS *v.* COMMISSION, G.R. No. L-18648, Sept. 14, 1961.

POLITICAL LAW — CONSTITUTIONAL LAW — THE VALIDITY OF APPORTIONMENT LAWS IS A JUDICIAL QUESTION COGNIZABLE BY THE COURTS. —In redistricting the country, Rep. Act No. 3040 made the apportionment greatly disproportionate, contrary to the constitutional directive that the Members of the House of Representatives be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants. Upon this ground, petitioners attacked its validity. Respondents argued that since the statute improves existing conditions, the Court could perhaps, in the exercise of judicial statesmanship, consider the question involved as purely political and therefore non-justiceable. *Held,* the mere impact of the suit upon the political situation does not render it political instead of judicial; district apportionment laws are subject to review by the courts; improvement of the present set-up constitute no excuse for approving a transgression of constitutional limitation; and, finally, the judiciary may not with a clear conscience stand by to give free hand to the discretion of the political departments of the Government. MACIAS *v.* COMMISSION, G.R. No. L-18684, Sept. 14, 1961.

POLITICAL LAW — ELECTION LAW — THE ABSENCE OF THE SIGNATURE OF THE PARTY SECRETARY IN THE CERTIFICATE OF CANDIDACY FILED BY A POLITICAL PARTY IS NOT NECESSARILY FATAL TO THE CERTIFICATE. — Petitioners were candidates for councilor in the 1959 elections. Their party filed a collective certificate of candidacy for them, signed by the chairman of the local chapter. The local party secretary did not sign. Upon this ground, respondent Commission on Elections, invoking Section 35 of the Revised Election Code, which provides that a certificate of can-

didacy thus filed shall be subscribed by the president and secretary or corresponding officers of the party, did not give due course to the certificate. Their motion for reconsideration, alleging the filing of an amended certificate bearing the required signatures, having been denied, they presented the instant petition for certiorari and mandamus, with preliminary mandatory injunction, to compel respondent to give due course to their certificate of candidacy. *Held,* the absence of the signature of the local secretary in the original certificate of candidacy did not render the certificate void. The amendment of the certificate was a substantial compliance with the law, and the defect was cured. Respondent ruled that the requirements of Section 35 aforementioned are mandatory. Considering, however, the facts of the case, we rule that it has sacrificed substance to form. As has been asserted in an early case, in the absence of an express provision that a departure from a prescribed form will be fatal, such departure, if due to an honest mistake or misinterpretation of the Election Law, and has not been used as a means for fraudulent practices, will be considered a harmless irregularity, the law being held merely directory. ALIALY *v.* COMMISSION, G.R. No. L-16165, July 31, 1961.

POLITICAL LAW — NATURALIZATION — FAILURE TO STATE IN PETITION FOR CITIZENSHIP PETITIONER'S FORMER PLACES OF RESIDENCE CONSTITUTES VIOLATION OF THE NATURALIZATION LAW FATAL TO HIS PETITION. — Petitioner-appellant filed a petition for naturalization. In his petition, he failed to state his former places of residence. Upon this ground, the trial court denied the petition, invoking Section 7 of Commonwealth Act No. 473 which requires that the petition for citizenship shall set forth not only the present but also the former places of residence of the petitioner. Petitioner appealed. *Held,* the decision appealed from must be upheld. The records reveal that petitioner resided in several places at different times. In his petition, he failed to state these places, in violation of Section 7 of the Rev. Naturalization Law (Com. Act No. 473, as amended). By such omission, petitioner, in effect, falsified the truth, indicating lack of good moral character on his part, which disqualifies him from admission to Philippine citizenship (Sec. 2[3], Rev. Nat. Law). KENG GIOK *v.* REPUBLIC, G.R. No. L-13347, Aug. 31, 1961.

POLITICAL LAW — NATURALIZATION — WHERE PETITIONER RESIDES IN MANILA, HAS A FAMILY OF SIX TO SUPPORT, OWNS NO REAL ESTATE AND HAS NO OTHER SOURCE OF INCOME THAN HIS SALARY AS MANAGER OF A STORE, HIS ANNUAL INCOME OF ₱8,687.50 IS NOT LUCRATIVE FOR PURPOSES OF NATURALIZATION. — Petitioner applied for naturalization. He is married and has five (5) children, who are all studying in the elementary grades. Section 2 of Com. Act No. 473 requires that the petitioner for naturalization must own real estate in the Philippines worth not less than ₱5,000, or have some known lucrative trade, profession, or lawful calling.

Petitioner does not own real estate, but has a lawful occupation, that of manager of a jewelry store, with an annual income of ₱8,687.50. Upon the ground that petitioner's income cannot be considered lucrative, the trial court denied the petition. Petitioner appealed. *Held,* we find weight in the observation of the lower court that due to the present high cost of living in Manila and the low purchasing power of the peso, appellant's annual income of ₱8,687.50 cannot be considered lucrative, especially if we take into account the fact that he has a wife and five (5) children, all of school age and actually attending school, to support. Judgment affirmed. KENG GIOK *v.* REPUBLIC, G.R. No. L-13347, Aug. 31, 1961.

POLITICAL LAW — TAXATION — A MANUFACTURER WHO WHOLESELLS HIS PRODUCTS AT A STORE MAINTAINED BY HIM, APART FROM HIS MANUFACTORY, IS A WHOLESALE DEALER TAXABLE AS SUCH. — Plaintiff owns and operates a soap factory. He also maintains a store where his products are sold. He has a license for retail business. However, he also sells his products in wholesale, this, the proper officials discovered when they examined the books and invoices kept in his store. Accordingly, a certain sum, representing wholesale dealer's tax, was assessed against him. He paid under protest. He contends that as a manufacturer selling only his own products, he cannot be made liable for the wholesale dealer's tax. *Held,* the contention is untenable. A manufacturer becomes a dealer if he carries on the business of selling the goods or products manufactured by him at a store or warehouse apart from his own shop or manufactory. CO TUAN *v.* CITY, G.R. No. L-12481, Aug. 31, 1961.

POLITICAL LAW — TAXATION — ASSOCIATIONS NOT ORGANIZED IN ACCORDANCE WITH THE COOPERATIVE MARKETING LAW ARE NOT ENTITLED TO THE TAX EXEMPTION PROVIDED THEREIN. — Petitioner, an association of persons organized and incorporated as a cooperative marketing association, operates a rice mill where palay owned by members and non-members are milled for a fee. The Collector of Internal Revenue assessed against petitioner a certain sum representing privilege or fixed tax upon business, and percentage tax. Petitioner having failed to pay the tax within the period fixed, the Collector issued a warrant of distraint and levy against its property. Petitioner filed a motion to suspend the execution of the warrant claiming exemption from payment of the taxes assessed, invoking the provisions of the Cooperative Marketing Law (Act No. 3425). *Held,* under the law invoked, a cooperative marketing association must be organized by and composed of persons engaged in the production of agricultural products. Petitioner has not complied with this requirement. Therefore, it cannot be considered as propertly organized under said law so as to be entitled to the tax exemption provided therein. MITHI NG BAYAN COOP. MARKETING ASS'N. *v.* ARANETA, G.R. No. L-14575, July 31, 1961.

POLITICAL LAW — TAXATION — NON-TAXABILITY OF PROPERTIES USED EXCLUSIVELY FOR RELIGIOUS, CHARITABLE AND EDUCATIONAL PURPOSES IS DETERMINED BY THE PRIMARY OBJECT TO WHICH THEY ARE DEVOTED. — Petitioners were authorized to establish and operate a hospital. For a number of years, they have been exempted from the payment of real estate taxes on the lot, building and other improvements comprising the hospital being established for charitable and humanitarian purposes and not for commercial gain. Subsequently, the exemption was revoked and taxes assessed by the Assessor concerned reclassifying the aforesaid properties as taxable. Petitioners appealed the assessment to the proper Board of Assessment Appeals, then to the Court of Tax Appeals. These two bodies affirmed the assessment on the ground that the hospital had a pay ward for pay patients just like any other hospital operated for profit. *Held,* the properties are exempt from taxation. Where rendering charity is its primary object, and the funds derived from payments made by pay patients are devoted to the benevolent purposes of the institution, the mere fact that a profit is made will not deprive the hospital of its benevolent character. Moreover, the exemption in favor of properties used exclusively for religious, charitable and educational purposes is not limited to those that are actually indispensable, but extends to those which are incidental to and reasonably necessary for the accomplishment of said purposes. HERRERA *v.* QC BD. OF ASSESSM. APPEALS, G.R. No. L-15279. Sept. 30, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — ALTHOUGH A CASE APPEALED FROM AN INFERIOR COURT TO THE COURT OF FIRST INSTANCE STANDS FOR *Trial de Novo,* THE PARTIES MAY NOT RAISE IN THE LATTER COURT ISSUES NOT RAISED IN THE FORMER. — Action was commenced before the Justice of the Peace Court to have defendant vacate certain mines and mineral claims allegedly belonging to plaintiff. Defendant did not file any answer, but only made a verbal denial of the allegations of the complaint. Judgment was rendered in favor of the plaintiff. Defendant appealed to the Court of First Instance where, plaintiff's complaint in the inferior court having been reproduced, he filed his answer denying the material allegations of the complaint and interposing various counterclaims. On plaintiff's motion, on the ground that the issues raised in the counterclaims were not raised in defendant's answer in the inferior court, the counterclaims were dismissed. Hence, the present appeal. *Held,* the Rules of Court expressly provide that upon appeal from the judgment of a Justice of the Peace Court to the Court of First Instance, the case shall stand for *trial de novo.* This provision has been interpreted to mean that parties are prevented from raising issues in the Court of First Instance not raised in the Justice of the Peace Court. Order of dismissal appealed from affirmed. ZAMBALES CHROMITE MINING CO. *v.* ROBLES, G.R. No. L-16182, Aug. 29, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — APPELLATE JURISDICTIONAL AMOUNT IN THE COURT OF APPEALS AND IN THE SUPREME COURT IS DETERMINED BY THE INDIVIDUAL CLAIMS OF THE LITIGANTS, NOT BY THE TOTALITY OF ALL THEIR CLAIMS. — Plaintiff and defendant entered into a contract of carriage. Defendant undertook to transport plaintiff's machineries and other articles from Samar to Manila. During the voyage, one of the vessels ferrying plaintiff's goods sank with its cargo. Whereupon, plaintiff commenced action to recover damages. Defendant denied liability for the loss and at the same time filed a counterclaim against plaintiff. The trial court dismissed plaintiff's complaint as well as defendant's counterclaim. Both parties moved for reconsideration but their motions were denied. Hence, the present appeal. Only questions of fact were raised. The parties also fixed their total claims against each other at ₱85,000.00 and ₱193,000.00, respectively. *Held,* in SAMBRANO *v.* RFC (G.R. No. L-13300, Apr. 30, 1960) and RIO Y CIA. *v.* VASQUEZ (G.R. No. L-12097, July 19, 1960), we held that it is the separate total claims of the respective parties and not the combined claims against each other that determine the appellate jurisdictional amount. The value, therefore, of the controversy at bar is less than ₱200,000.00. That being the case, pursuant to Section 31, in relation to Sections 17 and 29 of Rep Act No. 296, as amended, the case is remanded to the Court of Appeals for determination and judgment. NORTHWEST TRACTOR & EQUIPMENT (PHIL.) CORP. *v.* MORALES SHIPPING CO., G.R. No. L-5733, Oct. 19, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — EVEN WHERE PRIVATE COUNSEL HANDLED THE PROSECUTION OF THE CRIMINAL CASE, NOTWITHSTANDING HIS RESERVATION TO FILE A SEPARATE CIVIL ACTION, JUDGMENT IN THE CRIMINAL CASE, AWARDING CIVIL LIABILITY, CONSTITUTES NO BAR TO THE SUBSEQUENT FILING OF THE CIVIL ACTION AGAINST PERSONS WHO MAY BE LIABLE AND NOT PARTIES TO THE CRIMINAL ACTION. — Defendants in the instant case are the operators and owners of a motor vehicle which figured in an accident, resulting in the death of a certain person. In the criminal action, reservation was made for the filing of a separate civil action. The reservation notwithstanding, the private prosecutor continued handling the prosecution of the criminal case. After trial, the accused was convicted and, in addition to his penal liability, sentenced to indemnify the heirs of the victim in an amount specified. The Court of Appeals, despite the fact that its attention was called to the reservation to file a separate civil action, affirmed the judgment. In the present action, which was filed pursuant to the reservation, defendants contended that the judgment in the criminal action sentencing the accused also to indemnify the heirs of the victim was *res judicata,* and therefore a bar to the present action. The trial court absolved the defendants. Plaintiff appealed. *Held,* the judgment in the criminal case, except as to the fact of commission of the crime charged, cannot be considered as *res judicata* constituting a bar to the present action, whether it be to enforce the subsidiary or primary liability of defendants who were not parties to the criminal case. The two cases are different in nature and purpose, and they affect different parties. To

the extent of the issue resolved herein, the decision appealed from is reversed. CANLAS *v.* CHAN LIN PO, G.R. No. L-16929, July 31, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — EXECUTION PENDING APPEAL MUST BE FOR WEIGHTY REASONS IN ALL CASES, ESPECIALLY WHERE PUBLIC OFFICE IS INVOLVED. — In an action for mandamus, the Court of First Instance of Laguna rendered judgment for petitioner Tabuena, ordering defendant de la Cruz, as Director of the Forest Research Institute, to appoint Tabuena to the position of Administrative Assistant II in said Institute. Tabuena filed two motions, one praying for execution, pending appeal, of the judgment insofar as it commands his appointment to the position of Administrative Assistant II. Order for such execution having been granted, de la Cruz instituted certiorari proceedings in the Court of Appeals, which annulled the order. Hence, this petition for review by certiorari. *Held,* under Sec. 2, Rule 39 of the Rules of Court, execution may issue before the expiration of the time to appeal, in the discretion of the court, "upon good reasons to be stated in a special order." Among its reasons for ordering the immediate appointment of Tabuena, the trial court took into account his length of service in the government, the delay that might be entailed in the final disposition of the case, and the consequent prejudice to Tabuena and his family in the meantime. These circumstances may call for sympathy, but hardly warrant the immediate execution ordered. As a solemn trust, occupancy of a public office cannot accommodate the vagaries of personal fortunes. Execution pending appeal must be for weighty reasons in all cases. Said principle is underscored where public office is involved. TABUENA *v.* COURT OF APPEALS, G.R. No. L-16290, Oct. 31, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — FAILURE OF COUNSEL'S MAILING CLERK TO FORWARD A PLEADING REQUIRED IN THE ACTION MAY CONSTITUTE *Accident* OR *Excusable Negligence* AFFORDING RELIEF FROM THE ORDER DISMISSING THE ACTION FOR THE OMISSION. — Plaintiff filed with the proper inferior court an action to recover from defendant a certain sum. Judgment having been rendered for a lesser amount, plaintiff appealed to the Court of First Instance where defendant moved to dismiss the complaint on the ground of lack of legal capacity to sue, plaintiff corporation having been abolished. After hearing, the court issued an order directing plaintiff to amend his complaint within a fixed period, by including another party as co-party plaintiff, or the case would be dismissed. The court received no copy of the required amended complaint, and, accordingly, dismissed the case. Plaintiff moved for reconsideration, alleging that counsel prepared an amended complaint as directed, handed two copies thereof to his mailing clerk with instruction to mail them to the court and to defendant's counsel, but that only the copy addressed to defendant's counsel had actually been mailed, which plaintiff's counsel discovered only after he received copy of the order of dismissal upon inquiring from his clerk, and

that the copy addressed to the court could not be located. Upon these facts; plaintiff claimed that the failure to file the court copy was imputable to the excusable negligence of the mailing clerk, and prayed, therefore, that the order of dismissal be reconsidered and set aside. The motion for reconsideration was denied, hence, this appeal. *Held,* the lower court erred in not granting plaintiff's motion for reconsideration. Upon the facts proved, the failure to file in court the original of the amended complaint must have been due either to accident or to excusable negligence on the part of the mailing clerk. NAT. ABACA & OTHER FIBERS CORP. *v.* PORE, G.R. No. L-16779, Aug. 16, 1961.

REMEDIAL LAW — CIVIL PROCEDURE — THE RULE THAT A JUDGMENT ON A COMPROMISE AGREEMENT IS NOT APPEALABLE AND IS IMMEDIATELY EXECUTORY DOES NOT APPLY WHERE THE JUDGMENT IS INDEFINITE OR UNCERTAIN, OR CONDITIONAL. — Petitioner and respondent were plaintiff and defendant respectively in an ordinary civil action. To resolve their case, they entered into a compromise agreement on the basis of which judgment was rendered. Respondent failed to comply with his undertaking under the agreement. Whereupon, petitioner filed a motion for execution of the judgment. The motion was denied. In the present proceeding for mandamus, petitioner contended that a judgment upon a compromise agreement of the parties is not appealable and is immediately executory; that upon a final and executory judgment, execution becomes a matter of right and it is the ministerial duty of the court to order execution; and that, therefore, the trial court failed to comply with such ministerial duty when it denied the motion for execution. *Held,* the rules invoked by petitioner are each backed up by decisions of this Court. However, said rules only hold true when the judgment sought to be executed is complete and certain in itself. Where the judgment is indefinite or uncertain, or requires the performance of a condition, they do not apply. The judgment involved in this action is one by consent, and it is not complete in itself, or definite, or certain. It is not a judgment, therefore, upon which a writ of execution should ministerially issue upon its becoming final and executory. COTTON *v.* ALMEDA-LOPEZ, G.R. No. L-14113, Sept. 19, 1961.

REMEDIAL LAW — CRIMINAL PROCEDURE — INFERIOR COURTS HAVE ORIGINAL JURISDICTION OVER THE SPECIFIC CRIMES MENTIONED IN SECTION 87 OF THE JUDICIARY ACT, AND OVER ALL THE INCIDENTS THEREOF, IRRESPECTIVE OF THE PENALTIES PROVIDED BY LAW THEREFOR AND OF THE NATURE OF SUCH INCIDENTS. — Defendants were charged before the proper Justice of the Peace Court with malicious mischief for rendering unusable petitioner-complainant's irrigation canal. The complaint contained a claim for indemnity for an amount beyond the jurisdiction of the inferior court. For this reason, defendants challenged the jurisdiction of the court to take cognizance of the case. *Held,* the inferior court has jurisdiction over the of-

fense in question. That the claim for indemnity contained in the complaint is for an amount beyond its jurisdiction is of no moment. The case at bar is governed by the Judiciary Act of 948 (Rep. Act. 296), prior to its amendment, specifically Section 87 thereof. Said section, in giving Justice of the Peace and Municipal Courts original jurisdiction over the specific crimes mentioned therein, makes no qualification. It makes no mention whatsoever of the civil liability of the accused, or any other incident of the crime. It may be safely assumed, therefore, that the legislature intended that said courts shall have original jurisdiction over the specific crimes enumerated therein and all the incidents thereof, irrespective of the penalties provided by law therefor and of the nature of such incidents. PARINGIT *v.* MASAKAYAN, G.R. No. L-16578, July 31, 1961.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — MANDAMUS WILL NOT LIE TO COMPEL A JUDGE TO DECIDE ON THE MERITS A MOTION FOR ADMISSION TO BAIL WHEN THE ACCUSED HAS NOT YET BEEN ARRESTED. — Petitioner Feliciano, one of those charged with the crime of kidnapping with murder, went into hiding after knowing that a warrant had been issued for his arrest. While still at large, his lawyer filed a motion asking that the court fix a bail at ₱10,000 for his liberty. Respondent Judge Pasicolan dismissed the motion upholding respondent Fiscal's opposition that the filing of the motion for admission to bail was premature on the ground that pending his arrest or surrender, Feliciano did not have the right to ask the court to admit him to bail. Hence, this petition to compel the judge to decide the motion on the merits. *Held,* the right to bail only accrues when a person is arrested, detained or otherwise deprived of his liberty (even if no formal complaint or information has yet been filed). The petition therefore is premature, for its purpose is to compel the performance of a duty which does not yet exist. Bail is the security required and given for the release of a person who is in the custody of the law and evidently the accused does not come within its purview, he being still at large. FELICIANO *v.* PASICOLAN, G.R. No. L-14657, July 31, 1961.

COURT OF APPEALS CASE DIGEST

CIVIL LAW — AGENCY — THERE IS AN IMPLIED AGENCY WHERE THE PRINCIPAL FAILS TO REPUDIATE THE ACTS OF THE UNAUTHORIZED AGENT AND, INSTEAD, ACCEPTS THE BENEFITS DERIVED THEREFROM. — Plaintiff sold his house to defendant through the latter's son acting under a power of attorney bearing defendant's signature. Failing to collect certain installments due, plaintiff commenced the present action for recovery. Defendant denied having executed the power of attorney, alleging forgery of his signature. However, it was shown that, in addition to the fact that his wife and his son made payments on the agreed price, defendant did not do anything in repudiation of the transaction, nor of the power of attorney, after he acquired knowledge thereof. On the contrary, plaintiff and members of his family continued collecting rents from the tenant of the house. The question is, was there a valid agency constituted between defendant and his son as to entitle plaintiff to recover on the transaction? *Held,* the answer must be in the affirmative. Upon all the facts proved, we hold that, even if defendant did not really sign the power of attorney, there was an implied agency between him, as principal, and his son, as agent, defendant having failed to repudiate the acts of his son after learning of the same, and having accepted the benefits derived from the alleged unauthorized acts. BASA *v.* SOBREMONTE, CA-GR No. 24558-R, Apr. 27, 1960.

CIVIL LAW — DAMAGES — A CONSUMER IS ENTITLED TO RECOVER MORAL DAMAGES FROM AN ELECTRIC COMPANY THAT DISCONNECTS HIS SERVICE WIRES WITHOUT NOTICE AND WITHOUT JUST CAUSE AND FAILS TO RECONNECTS THE SAME DESPITE AN ORDER OF THE PUBLIC SERVICE COMMISSION. — Action for damages for disconnection of the electric service of the plaintiff, a lawyer, by the defendant. The service wires were cut without notice when plaintiff refused to allow the trimming of the branches of his fruit trees that were in contact with the wires. The Public Service Commission, after finding out that the disconnected service wires were not those in contact with the branches but some outside wires, ordered the defendant to reconnect the wires. For some reason or another, the defendant failed to do so until 17 months later. May plaintiff recover moral damages for the acts of the defendant? *Held,* the defendant acted *mala fide* in disconnecting plaintiff's wires and failed to reconnect the same notwithstanding an order of the Public Service Commission. These act and omission of the defendant had caused the plaintiff to suffer mental torture, anxiety, social humiliation and besmirched reputation. He is therefore, entitled to moral damages. AQUIZAP *v.* SAN MARCELINO ELECTRIC CO., CA-GR No. 24403-R, May 26, 1960.

CIVIL LAW — DAMAGES — DAMAGES RECOVERABLE FOR LOSS OR IMPAIRMENT OF EARNING CAPACITY IN CASES OF TEMPORARY OR PERMANENT PERSONAL INJURY AND IN CASE OF DEATH CAUSED BY QUASI-DELICT ARE BASED ON THE LOSS OR IMPAIRMENT OF THE EARNING CAPACITY OF THE VICTIM HIMSELF AND NOT OF ANY RELATIVE OR NEXT OF KIN OF THE INJURED PERSON. — Plaintiff's son was bumped by defendant's cab pinning him against a parked jeep resulting in injuries to the child. Plaintiff therefore commenced action to recover damages including, among other things, for impairment of his earning capacity alleging nervousness and sleeplessness during the confinement of his child as a result of which he was unable to attend to his business. After trial, the lower court rendered judgment in favor of plaintiff. On appeal, it was *Held,* that the lower court committed error in awarding damages for lost earnings. Said the Court: while the law allows damages for loss or impairment of earning capacity in cases of temporary or permanent personal injury and in case of death caused by a quasi-delict, these damages are based on the loss or impairment of the earning capacity of the victim himself and not of any relative or next of kin of the injured person. REPATO *v.* LA MALLORCA, CA-GR No. 23389-R, May 26, 1960.

CIVIL LAW — HUMAN RELATIONS — A BREACH OF PROMISE TO MARRY IS ACTIONABLE WITHIN THE MEANING OF ARTICLE 21 OF THE NEW CIVIL CODE. — Defendant here paid court to plaintiff, a school teacher of legal age. After some time, plaintiff, believing in defendant's promise of marriage, accepted the latter's proposal, and thereafter had carnal communication with each other. A boy was born, but defendant did not make good his promise. Hence, this action for breach of promise to marry. *Held,* the acts committed by the defendant fall squarely under the provision of Article 21 of the New Civil Code which states as follows: "Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages." Although a criminal act was not committed because the offended woman was already of legal age, it cannot be denied that a grievous moral wrong was perpetrated by the defendant upon the plaintiff. BOBILES *v.* ALMINE, CA-GR. No. 24163-R, Mar. 4, 1960.

CIVIL LAW — PERSONS — A HUSBAND LIVING WITH AND TAKING CARE OF HIS INCAPACITATED WIFE IS THE NATURAL GUARDIAN OVER HER PERSON AS WELL AS OVER HER PART IN CONJUGAL PROPERTIES, AND AS TO HER PARAPHERNAL PROPERTIES, HE MAY BE APPOINTED GUARDIAN OVER THE SAME. — One Julia Espinosa filed a petition for guardianship over the person and properties of her sister Inocencia, alleging incapacity to attend to the administration of her properties and even to the proper care of her person due to senility being more than 100 years of age. Vicente Figueroa, husband of Inocencia, opposed the petition contending full possession by his wife of her mental faculties, and that, at any rate, being her husband, he is the

natural guardian. *Held,* a husband living with and taking care of his incompetent wife is the natural guardian over her person as well as over her part of the properties of the conjugal partnership, and as to the paraphernal properties, in the absence of a written authority to administer given by the wife to the husband, the latter may be appointed guardian over the same. This appointment of the husband as guardian would not mean separation of the common properties of the spouses as, by law, the wife's paraphernal properties are separate, the administration of which exclusively belongs to her. Nor would it in any way prevent the fruits of the paraphernal from accruing to the conjugal partnership. ESPINOSA *v.* FIGUEROA, CA-GR No. 24307-R, Mar. 25, 1960.

CIVIL LAW — PERSONS — LEGAL SEPARATION ON THE GROUND OF "ATTEMPT BY ONE SPOUSE AGAINST THE LIFE OF THE OTHER" CANNOT BE GRANTED WHERE THE ASSAULT IS NOT COUPLED WITH INTENT TO KILL. This is an action for legal separation filed by Ricarte Veloira against his wife on the ground that the latter had attempted against his life. The evidence showed that after a brief verbal quarrel between them in the house, petitioner went out to the garden where he was pursued and attacked by his wife with a bolo. She tried to hit him but the latter ran away unhurt. She made no further effort to do him harm. Will the action prosper? *Held,* an attempt against the life of another carries with it the intent to kill. In the case at bar, it appears that after trying to hit the petitioner and the latter had run away, respondent made no further effort to harm him. Such behavior belies intent to kill. The petition is, therefore, devoid of cause of action and, consequently, it should be, as it is hereby, dismissed. VELOIRA *v.* VELOIRA, CA-GR No. 24105-R, Mar. 5, 1960.

CIVIL LAW — SALES — PURCHASERS *Pendente Lite* ARE NOT PURCHASERS IN GOOD FAITH, BEING PRESUMED TO BE AWARE OF THE LITIGATION AND, CONSEQUENTLY, THEIR RIGHTS DEPEND UPON THE OUTCOME OF THE SUIT. — Plaintiff here purchased certain parcels of land. Subsequently, an action was brought to annul the sale. During the pendency of the suit, defendants purchased from complainant in said suit the same properties previously acquired by plaintiff herein. In the action that ensued wherein plaintiff sought to recover possession of the properties, one of the questions raised on appeal was whether or not defendants were purchasers in good faith. If so, plaintiff could not recover; otherwise, the relief sought would lie. *Held,* appellants cannot be considered as purchasers in good faith. They are purchasers *pendente lite,* as such presumed to be aware of the existence of the litigation, and their rights depending entirely upon the outcome of the suit. BALANGLAYOS *v.* BEJERANO, CA-GR. No. 23437-R, Apr. 29, 1960.

CIVIL LAW — SALES — THE LAW ON DOUBLE SALE APPLIES ONLY TO TWO DIFFERENT SALES OF THE SAME PROPERTY MADE BY ONE AND THE

SAME PERSON IN FAVOR OF TWO DIFFERENT BUYERS. — Plaintiff and defendants, who have no common interest, were purchasers of the same parcels of land. They purchased said properties from two different sellers. Defendants, who were last to purchase, took possession of the lands to the exclusion of the plaintiff. Whereupon, the latter commenced action to recover possession. One of the issues raised was the applicability of the provisions of the Civil Code on double sale. *Held,* the provisions of the Civil Code on double sale do not avail defendants for the reason that they clearly refer to two different sales of the same property made by one and the same person in favor of two different buyers. They cannot apply to the present case where there are two different vendors and two different vendees. BALANGLAYOS *v.* BEJERANO, CA-GR. No. 23437-R, Apr. 29, 1960.

COMMERCIAL LAW — INSURANCE — IT IS NOT NECESSARY THAT THE INSURED DIES OF THE ILLNESS CONCEALED TO PREVENT HIS BENEFICIARIES FROM RECOVERING UNDER THE POLICY. — Plaintiffs were named beneficiaries in a life insurance policy. The original policy having lapsed for non-payment of premium, the insured applied for reinstatement which was approved. In his application for reinstatement, the insured did not disclose the fact that after the lapse of the original policy, but before reinstatement, he had consulted a private physician and was found by the latter to be suffering from hernia, enlarged liver and pyelonephritis. After the reinstatement of the policy, the insured died of coronary thrombosis. The beneficiaries brought the instant action to recover on the policy. *Held,* the beneficiaries cannot recover. The fact that the deceased died of a disease other than those concealed does not militate against the materiality of the facts concealed, for Section 30 of the Insurance Law provides that "materiality is to be determined not by the event but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries." HENSON *v.* PHILAM LIFE INS. CO., CA-GR No. 23720-R, Apr. 20, 1960.

COMMERCIAL LAW — INSURANCE — THE NEGLECT OF AN INSURED TO DISCLOSE THE TRUE STATE OF HIS HEALTH AFTER THE ISSUANCE OF HIS ORIGINAL POLICY BUT BEFORE REINSTATEMENT OF HIS LAPSED POLICY CONSTITUTES CONCEALMENT IN LAW. — One Jose Bernardo Henson procured a life insurance policy from the defendant company for the sum of ₱5,000. In the policy, the plaintiffs were named beneficiaries. The original policy having lapsed for non-payment of premium, the insured filed an application for reinstatement which was approved. In his application, the insured did not disclose the fact that after the lapse of the original policy, but before the reinstatement, he had medically consulted a private practicing physician and was found to be suffering from hernia, enlarged liver and pyelonephritis. A few months after the reinstatement of the policy, the insured died of a different illness, coronary thrombosis. May the beneficiaries recover on the policy? *Held,* the beneficiaries cannot recover. The nondisclosure of the true state of health of the insured constituted concealment in law as defined in Section 25 of the Insurance Law. The concealment has misled the insurer into accepting the risk or accepting it at the rate agreed upon. Section 26 of the same law states that 'concealment whether intentional or unintentional entitles the injured party to rescind." HENSON *v.* PHILAM LIFE INS. CO., CA-GR No. 23720-R, Apr. 20, 1960.

CRIMINAL LAW —ESTAFA — A FORMAL DEMAND FOR PAYMENT BEFORE THE INSTITUTION OF A CRIMINAL ACTION FOR ESTAFA IS UNNECESSARY WHERE THE COMPLAINANT IS DECEITFULLY INDUCED TO PART WITH HIS MONEY. — The accused was convicted by the lower court of estafa for selling a parcel of land not belonging to him. The offended party bought the parcel on the belief that the piece of land pointed out to him by the accused, which was arable, corresponded to that described in the certificate of title presented to him by the accused. It turned out that the land covered by the certificate and which was the object of the sale was a wasteland. Hence, the prosecution for estafa and the judgment already adverted to. The accused appealed assigning as error, *inter alia,* the failure of the lower court to consider previous demand for the return of the price paid as an essential of the crime, which is wanting in the case at bar. *Held,* a formal demand for payment before institution of a criminal action for estafa is necessary only in cases of misappropriation of goods received in trust or on commission or for administration or under an obligation involving the duty to deliver or to return. It is not necessary in a case like the present where the complainant was deceitfully induced to part with his money because from that moment there was already a disturbance of his proprietary rights. PEOPLE *v.* QUESADA, CA-GR No. 23316-R, May 18, 1960.

REMEDIAL LAW — CIVIL PROCEDURE — DISMISSAL FOR FAILURE TO PROSECUTE CONSTITUTES ADJUDICATION ON THE MERITS IN THE ABSENCE OF EVIDENCE THAT IT WAS MADE WITHOUT PREJUDICE. — Plaintiff purchased certain parcels of land. Subsequently, an action was brought to annul the sale. Complainant in that action and her attorney not having appeared on the date set for trial, the action was dismissed on motion of defendant, plaintiff herein. Incidentally, while said action was pending, defendants herein purchased the same parcels of land from complainant in the action to annul the first sale and took possession of the same. Hence, plaintiff's action to recover possession. After due hearing, judgment was rendered in favor of the plaintiff. Defendants appealed assigning as error, among others, the effect given by the trial court to the dismissal of the action to annul. Held, the dismissal being for failure to prosecute, the same had the effect of an adjudication on the merits, there being no evidence showing that it was made without prejudice. BALANGLAYOS *v.* BEJERANO, CA-GR No. 23437-R, Apr. 29, 1960.